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PROCEEDINGS AND DEBATES OF THE 102d CONGRESS, SECOND SESSION

# SENATE—*Wednesday, October 7, 1992*

*(Legislative day of Wednesday, September 30, 1992)*

The Senate met at 12 noon, on the expiration of the recess, and was called to order by the Honorable CHARLES S. ROBB, a Senator from the State of Virginia.

## PRAYER

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

Let us pray:

*Behold, how good and how pleasant it is for brethren to dwell together in unity!*—Psalm 133:1.

Eternal God, gracious Father in heaven, thank You for the wisdom and patience of leadership in resolving a frustrating and potentially explosive situation in the Senate. Guide and direct in these closing hours that all that ought to be done will be and that the Senate will adjourn, satisfied that it has accomplished all it could in the 102d Congress. May these final hours be ones of blessing and a sense of achievement.

To the glory of God and the welfare of the Nation. Amen.

## RESERVATION OF LEADER TIME

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

## MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 2 p.m. with Senators permitted to speak therein for not to exceed 5 minutes each.

## THE JOURNAL

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader, Senator MITCHELL.

Mr. MITCHELL. Mr. President, am I correct in my understanding that the Journal of proceedings has been approved to date?

The ACTING PRESIDENT pro tempore. The Senator is correct.

## SCHEDULE

Mr. MITCHELL. Mr. President and Members of the Senate, as just stated by the Chair, there will now be a period for morning business not to extend beyond the hour of 2 p.m., and during this period for morning business I anticipate that under the leadership of Senators FORD and SIMPSON, the Senate will be acting on a number of measures which have been cleared on both sides of the aisle.

At 2 p.m., pursuant to an agreement reached late last evening, the Senate will proceed to debate the pending Reclamation Act under an agreement which provides that 4 hours will be under the control of Senator SEYMOUR and 2 hours under the control of Senator BRADLEY.

As I announced last night and I repeat today for the information of Senators, the agreement which was reached last evening is printed on pages 2 and 3 of the calendar, and as Senators will note there will be rollcall votes tomorrow beginning at 11 a.m. on the energy conference report, followed by votes with intervening debate as set forth in the order on the reclamation bill conference report and finally on the tax bill conference report.

It is my hope and my intention that the Senate will complete its business tomorrow following the disposition of those measures and other matters which we hope to clear prior to the time of adjournment tomorrow.

I thank my colleagues for their cooperation.

Mr. President, I thank the distinguished whips, Senator FORD and Senator SIMPSON, for their cooperation and participation in the discussions which led to this agreement yesterday, and I now yield the floor.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Wyoming [Mr. SIMPSON].

Mr. SIMPSON. Mr. President, I want to commend Senator MITCHELL and Senator DOLE for their extraordinary work yesterday in getting us through a very troublesome situation. It was done with great comity and cooperation, and I am very pleased we have reached that result. I want to pay my respects to both of them and to the staff on both sides of the aisle.

It is a remarkable staff, professional staff. The reason it functions well for all of us is because there is a great element of trust between the two staffs. Yes, we have our partisan agendas. We do our partisan work. But when it comes down to giving one's word, I do not think I have ever seen a more positive relationship between the Democratic staff and the Republican staff on the professional level in this Chamber. And thanks to the Senate staff who must be approaching fatigue, there will be a long golden October waiting for you in a very few hours.

And so with that, the former Governor of Kentucky and I are left with 1 metric yard of material to churn through, and we will do it with great skill and grace, I am sure.

Mr. FORD. Mr. President, let me join with my colleague and friend from Wyoming, the assistant Republican leader, in saying how good it is to work together. I was brought up, as he was, that our word is our bond, and I feel that once that word is given here between the leadership, it is the goal and the path we follow.

Let me reiterate a point or two that he made about the staff. No group of men and women could work any harder, any better, and with more patience. That is on both sides of the aisle. I personally am grateful for not only their hard work but their friendship and their willingness to stay long hours and to work diligently to accomplish the goals of the Senators that they work for and in the best interests of our constituents.

## JOHN HEINZ CONGRESSIONAL FELLOWSHIP PROGRAM

Mr. FORD. So, Mr. President, I ask unanimous consent the Senate proceed

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



AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

to the immediate consideration of Senate Resolution 356, the John Heinz Senate Fellowship Program, a resolution submitted earlier today by Senators WOFFORD, SPECTER, and WIRTH.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 356) to establish a John Heinz Congressional Fellowship Program.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. WOFFORD. Mr. President, I came to the Senate 18 months ago under tragic circumstances, the death of John Heinz. At that time I vowed to do my best to carry on the strong legacy of the man who had served Pennsylvania with such grace and distinction.

Today, as the 102d Congress ends, I join with Senator Heinz' colleague, Senator SPECTER and his close friend, Senator WIRTH to submit legislation to create a congressional fellowship for children's issues to honor the life and continue the legacy of Senator John Heinz.

From his earliest days in Congress, John Heinz was a strong voice for children. John Heinz fought to decrease infant mortality by improving access to prenatal care. He led the effort to expand Medicaid eligibility for poor children, and to improve access to drug treatment, especially for pregnant women. And he was a crusader for a better American educational system—fighting for early intervention programs, for our public schools and for building opportunities for more children to attend college. It is up to each one of us to continue work on John Heinz' children's agenda.

The resolution I submit today creates the John Heinz Congressional Fellowship. These fellows will bring their firsthand experience in children's issues to the work of Congress. Teachers will spend a year to help us to learn about the effects of Federal policies on our schools. Social workers will help us find better ways to protect our Nation's children from abuse and neglect. And child health care providers will help us to build a health care system where no child falls through the cracks.

The fellowship will also enable us to identify and train new leaders in child protection, children's health, and education policy. The fellows will return to their work and their communities with new understanding about how to work with Government to build better lives for children.

The Heinz Family Foundation—which has a long history of work on behalf of childern—is ideally suited to help administer and oversee the John Heinz Congressional Fellowship Program. Teresa Heinz is the chairman and CEO of the Heinz Family Foundation, and will be involved in the program. Recipients will be placed on the staff of a committee which works on children's issues—or on the personal staff of a member whose focus is children's issues.

John Heinz was dedicated to building a safer, more caring world for our children. John Heinz congressional fellows will help the Senate continue that commitment to our Nation's children.

Mr. President, in closing, I am reminded of words used to describe the life of Martin Luther King: "His life informed us, his dreams sustain us yet."

Mr. President, I yield the floor.

Mr. SPECTER. Mr. President, this resolution to establish a John Heinz Congressional Fellowship Program is a fitting tribute to my late colleague and dear friend.

During his 20 years in the Congress, John Heinz compiled an enviable record of accomplishments. While he was successful in many areas, he built a national reputation for his strong commitment to the welfare and education of our Nation's children. As John traveled throughout Pennsylvania, he saw first hand the concern for the infant mortality rate, the lack of adequate health care for children and families, and poor nutritional diets of infants and children.

These concerns led Senator Heinz to lead the effort to improve Medicaid coverage for pregnant women and children, improve access to vital nutrition programs for pregnant women, infants, and children, and provide drug treatment and prenatal care for pregnant women in an effort to improve the health of infants.

Mr. President, the resolution we are introducing today will help continue the efforts of Senator Heinz to give our Nation's children a healthy start. The fellowship will be offered to two individuals who have demonstrated achievement in the areas of child abuse, drug prevention, day care, and child support.

As I have traveled through Pennsylvania since the loss of Senator Heinz, I have heard frequent comments about how much the people of the Commonwealth miss his service. I think this resolution to recognize the efforts of a great American is truly worthwhile. I urge the Senate's consideration and prompt enactment.

Mr. WIRTH. Mr. President, I rise in support of the resolution authorizing the creation of a congressional fellowship in honor of our late friend and colleague Senator John Heinz. This legislation would appropriately recognize Senator Heinz' contribution and commitment to children, by allowing those with experience in children's issues to learn about and contribute to our public policy efforts here in the Senate.

It is widely known that senior citizens had no greater friend than John Heinz. His work, however, was dedicated not only to the last leg of life's journey, but also to the dawning of it. Throughout his career, John Heinz dedicated himself to enhancing opportunities for America's children.

He believed Government should look after children, particularly children of the poor. He was devoted to ending the horror of child abuse, and outraged at the emergence of crack-addicted babies. He joined with Senator MOYNIHAN to introduce the Healthy Mothers, Healthy Babies Act to provide basic care for pregnant women in the throes of drug dependency. This commonsense approach was based on the premise that by treating one life, we might save many more.

John Heinz was also disturbed by the tragedy of infant mortality and the neglect of our disadvantaged children. "Literally millions of children enter life with less than a fair chance at a dream," he wrote. And he did something about it. He authored legislation to provide Medicaid benefits to poor children.

He created a Government endowment to produce educational children's television programming and wrote a bill to establish special nutrition projects at food banks. He wrote the Excellence in Education Act. He fought to eliminate discrimination with regard to coverage for treatment of mental illness under Medicare.

I have highlighted only a small part of the extraordinary legacy Senator John Heinz has left to our children and their grandchildren. It would be most fitting if, through this legislation, we in this body could further his commitment to our kids. This legislation would utilize Senate contingency funding to bring teachers, social and health care workers—anyone engaged in the often thankless task of aiding our children—to the Senate to further their experience and contribution.

By establishing such a program to help train a new generation of leaders—in child protection, health, welfare, and education policy—we can help ensure that public policy in the future is characterized by the same attention and care to issues of our children as they were by Senator Heinz in the past.

The ACTING PRESIDENT pro tempore. Is there further debate? If not, the question is on agreeing to the resolution.

The resolution (S. Res. 356) was agreed to, as follows:

S. RES. 356

*Resolved,*

**SECTION 1. SHORT TITLE.**

This resolution may be cited as the "John Heinz Senate Fellowship Program Resolution".

**SEC. 2. FINDINGS.**

The Senate finds that—

(1) Senator John Heinz believed that congress has a special responsibility to serve as the guardian for those who cannot protect themselves;

(2) Senator Heinz dedicated much of this congressional career to improving the lives of children; and

(3) it is especially appropriate to honor the memory of Senator Heinz through the creation of a Senate fellowship program to encourage the identification and training of new leadership in child protection, health, welfare and education policy and to bring experts with firsthand experience of children's issues to the assistance of the Congress in order to advance the development of public policy in issues that affect children.

**SEC. 3. FELLOWSHIP PROGRAM.**

(a) IN GENERAL.—In order to encourage the identification and training of new leadership in issues affecting children and to advance the development of public policy with respect thereto, there is established a John Heinz Senate Fellowship Program.

(b) SENATE FELLOWSHIPS.—The Heinz Family Foundation, in consultation with the Secretary of the Senate, is authorized to select Senate fellowship participants.

(c) SELECTION PROCESS.—The Heinz Family Foundation shall—

(1) publicize the availability of the fellowship program;

(2) develop and administer an application process for Senate fellowships; and

(3) conduct a screening of applicants for the fellowship program.

**SEC. 4. COMPENSATION; NUMBER OF FELLOWSHIPS; PLACEMENT.**

(a) COMPENSATION.—The Secretary of the Senate is authorized, from funds made available under section 5, to appoint and fix the compensation of each eligible participant selected under this resolution for a period determined by the Secretary.

(b) NUMBER OF FELLOWSHIPS.—No more than 2 fellowship participants shall be so employed. Any individual appointed pursuant to this resolution shall be subject to all laws, regulations and rules in the same manner and to the same extent as any other employee of the Senate.

(c) PLACEMENT.—The Secretary of the Senate, after consultation with the Majority Leader and Minority Leader of the Senate, shall place eligible participants in positions in the Senate that are, within practical considerations, supportive of the fellowship participants' areas of expertise.

**SEC. 5. FUNDS.**

The funds necessary to compensate eligible participants under this resolution for fiscal year 1993 shall be paid from the contingent fund of the Senate. Such funds shall not exceed, for fiscal year 1993, $71,000. There are authorized to be appropriated $71,000 for each of the fiscal years 1994 through 1997 to carry out the provisions of this resolution.

Mr. FORD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

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

The motion to lay on the table was agreed to.

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## ENVIRONMENTAL PROGRAMS ASSISTANCE ACT OF 1984 AMENDMENTS

Mr. FORD. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of S. 814, the Environmental Programs Assistance Act of 1984 amendments of 1991, and the Senate then proceed to its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 814) to amend the Environmental Programs Assistance Act of 1984.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3409

Mr. SIMPSON. Mr. President, I send an amendment to the desk on behalf of Senators CHAFEE, MOYNIHAN, and GRASSLEY, for immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON] for Mr. CHAFEE, (for himself, Mr. MOYNIHAN, and Mr. GRASSLEY), proposes an amendment numbered 3409.

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

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

The amendment is as follows:

On page 1, line 5, strike "1991" and insert "1992".

Beginning on page 2, strike line 1 and all that follows through the end of the bill, and insert the following:

**SEC. 2. AMENDMENTS TO THE ENVIRONMENTAL PROGRAMS ASSISTANCE ACT.**

(a) IN GENERAL.—Section 2 of the Environmental Program Assistance Act of 1984 (42 U.S.C. 4368a) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of law, any individual whose talents are authorized by section (a) to be used in connection with the programs administered by the Administrator of the Environmental Protection Agency shall have the same access as Federal employees have to, and shall be subject to the same penalties as Federal employees ares subject to for unauthorized disclosure of, trade secrets and confidential business information—

"(1) submitted in connection with—

"(A) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

"(D) the Clean Air Act (42 U.S.C. 7401 et seq.);

"(E) the Public Health Service Act (42 U.S.C. 201 et seq.), including section 1445(d) of such Act (42 U.S.C. 300j-4(d));

"(F) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

"(G) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

"(H) the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), including section 13(b) of such Act (42 U.S.C. 4912(b));

"(I) section 408(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(f)); or

"(J) the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 1101 et seq.);

"(2) submitted pursuant to any contract or other agreement with the United States; or

"(3) otherwise obtained by an officer or employee of the Environmental Protection Agency under any authority.

(b) APPLIABILITY OF ETHICS AND CONFLICT OF INTEREST PROVISIONS UNDER TITLE 18, UNITED STATES CODE.—Section 2 of such Act (42 U.S.C. 4368a), as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(e) Any individual whose talents and authorized by subsection (a) to be used in connection with the programs administration by the Administrator of the Environmental Protection Agency shall be subject to the requirements of sections 201 through 209 of title 18, United States Code (relating to ethics and conflict of interest).".

(c) TRADE SECRETS AND CONFIDENTIAL BUSINESS INFORMATION DEFINED.—Section 2 of such Act (42 U.S.C. 4368a), as amended by subsection (b), is further amended by adding at the end the following new subsection:

"(f) For purposes of this section, the term 'trade secrets and confidential business information' includes all information prohibited from disclosure by section 1905 of title 18, United States Code (relating to trade secrets), or by any other law referred to in this section.".

**SEC. 3. SUNSET PROVISION.**

The amendment made by section 2(a) shall be effective during the 2-year period beginning on the date of enactment of this Act.

The ACTING PRESIDENT pro tempore. Without objection, the amendment (No. 3409) is agreed to.

Mr. MOYNIHAN. Mr. President, I am pleased to support the passage of S. 814, a bill by Senator GRASSLEY to amend to the Environmental Programs Assistance Act of 1984. Senator CHAFEE, Senator GRASSLEY and I are offering amendments to the bill.

The Senior Environmental Employment Program, established by the Environmental Programs Assistance Act, has greatly strengthened the Environmental Protection Agency. Currently, SEE employees comprise 11 percent of EPA's work force, performing a variety of critical functions that range from the opening of mail to staffing hot lines and the compilation of data.

EPA's Office of General Counsel recently issued an opinion that SEE employees are largely prohibited from viewing confidential business information. EPA responded immediately and responsibly by prohibiting SEE employees from viewing such information. Legislation is now needed to provide the authority for SEE employees to review confidential data. Unless we provide such statutory authority, environmental protection will suffer, and meaningful employment will be denied to a dedicated and talented group of senior citizens.

The SEE Program has bipartisan support, and it is strongly supported by the administration. Mr. President, I urge my colleagues to support the passage of this bill.

Mr. CHAFEE. Mr. President, I want to express my strong support for passage of S. 814, a bill authored by Senator GRASSLEY, which will allow members of the Senior Environmental Employment Program at the Environmental Protection Agency to better perform their jobs. In short, this bill will provide SEE enrollees the same access to confidential business information as Federal employees.

You may ask why SEE enrollees need this access. The mission of the agency involves receipt of a large amount of confidential business information. The affected SEE enrollee staff perform functions such as opening mail, filing, answering phones, staffing hot lines, providing support to agency enforcement activities, and compiling data, etc. In order for SEE enrollees to continue performing these functions of support, EPA has informed us that it must have the authority to provide SEE enrollees access to confidential business information.

However, SEE enrollees, under this bill, as amended, will be subject to the same penalties as Federal employees for unauthorized disclosure of confidential business information. These penalties include criminal prosecution under the Trade Secrets Act and the Toxic Substances Control Act.

Most importantly, Mr. President, this legislation will allow SEE employees to more effectively perform their jobs. Legislation creating the SEE Program was developed in 1982, and supported by a number of Senators, including Senators GRASSLEY, MITCHELL, BAUCUS, STAFFORD, and myself. Since this program was signed into law in 1984, SEE enrollees have demonstrated beyond a doubt that they are a valuable asset to EPA in accomplishing its mission.

The SEE Program draws upon the vast pool of talent, experience and skills possessed by retired and older workers who wish to supplement retirement income. The purposes of the SEE Program are:

To give Americans age 55 and older an opportunity to use their skills in creative and meaningful jobs.

To demonstrate to the public and private sectors the tremendous productive wealth and talent of older Americans.

To supplement EPA staff in critical skill areas.

It is clear that the work being performed by SEE enrollees provides critical support in accomplishing the goals and objectives of EPA in protecting the environment. I hope my colleagues will join with me in supporting this bill.

Mr. GRASSLEY. Mr. President, I rise today to support passage by the Senate of legislation which would provide Senior Environmental Employment [SEE] Program enrollees at the Environmental Protection Agency with the same access to information needed to do their jobs that regular EPA employees presently have. I want to stress to my colleagues that it is very important to pass this legislation before the Senate adjourns this year, for reasons I will make clear shortly.

The Senior Environmental Employment Program began some years ago as a demonstration project jointly supported by the Administration on Aging in the then Department of Health, Education and Welfare, and the Environmental Protection Agency. The primary purpose of the project was to demonstrate ways in which older Americans could be effectively employed in jobs relating to the prevention, abatement and control of environmental pollution.

Over several years, considerable experience was accumulated with older workers in environmental protection activities. Older workers surveyed waste dumps, conducted surveys of hazardous waste products produced by industries, studied the extent to which migrant workers were exposed to pesticides, among other activities.

Then, in 1984, Senators Stafford, Heinz, SPECTER, PELL and myself introduced legislation to make the program permanent. The Environment and Public Works Committee agreed unanimously to report the legislation, and it was passed by the Senate on March 26, 1984, and signed by the President on June 12, 1984.

The SEE Program has been supported consistently by the leadership of EPA. The legislation which made the program permanent was strongly supported by the then EPA Administrator, William Ruckelshaus. The program has also caused no problems for other, career, EPA employees, since the managers of the program and the agency personnel office must insure that employment of SEE workers does not displace currently employed individuals, interfere with the employment of any Federal employee in layoff status, or affect existing contracts for services.

Older workers are hired by the SEE Program through contracts or cooperative agreements that EPA concludes with several of the national aging organizations. Prominently, involved have been the American Association of retired persons, the National Council of Aging, and the National Caucus and Center on the Black Aged.

Mr. President, this is a program which has conclusively demonstrated that older workers constitute a valuable resource whose talents we should make every effort to continue to use. In this program, the SEE workers are knowledgeable, often former EPA employees, or professionals who have worked in related fields.

It is important to pass this legislation today because the general counsel at the Environmental Protection Agency has ruled that the workers in question do not have the legal authority to review, in the course of their work, materials considered to contain proprietary information.

Many of the SEE Program enrollees perform functions such as opening mail, filing documents, clerical support, answering telephones, staffing hot lines, providing support to agency enforcement activities and compiling data. The general counsel's ruling will make it impossible for these enrollees to perform these functions. As a consequence, many, if not most of them, face the loss of their jobs. Furthermore, given that SEE enrollees constitute some 10 percent of the EPA's total employment, the agency will lose the considerable useful work now done by these enrollees.

The legislation now under consideration would make it clear that these enrollees are empowered to review such materials.

It is important to stress that these workers are under the close supervision of EPA officials. Furthermore, they are mature individuals with long histories of work comparable to work they would be performing for EPA. In other words, I believe they would be able to handle such information in a responsible way.

Mr. President, I urge my colleagues to support this legislation.

The ACTING PRESIDENT pro tempore. Are there further amendments. If not, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 814

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Environmental Programs Assistance Act of 1984 Amendments of 1992".

**SEC. 2. AMENDMENTS TO THE ENVIRONMENTAL PROGRAMS ASSISTANCE ACT.**

(a) IN GENERAL.—Section 2 of the Environmental Program Assistance Act of 1984 (42 U.S.C. 4368a) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of law, any individual whose talents are authorized by subsection (a) to be used in connection with the programs administered by the Administrator of the Environmental Protection Agency shall have the same access as Federal employees have to, and shall be subject to the same penalties as Federal employees are subject to for unauthorized disclosure of, trade secrets and confidential business information—

"(1) submitted in connection with—

"(A) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

"(D) the Clean Air Act (42 U.S.C. 7401 et seq.);

"(E) the Public Health Service Act (42 U.S.C. 201 et seq.), including section 1445(d) of such Act (42 U.S.C. 300j-4(d));

"(F) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

"(G) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

"(H) the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), including section 13(b) of such Act (42 U.S.C. 4912(b));

"(I) section 408(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(f)); or

"(J) the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.);

"(2) submitted pursuant to any contract or other agreement with the United States; or

"(3) otherwise obtained by an officer or employee of the Environmental Protection Agency under any authority.

(b) APPLICABILITY OF ETHICS AND CONFLICT OF INTEREST PROVISIONS UNDER TITLE 18, UNITED STATES CODE.—Section 2 of such Act (42 U.S.C. 4368a), as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(e) Any individual whose talents are authorized by subsection (a) to be used in connection with the programs administered by the Administrator of the Environmental Protection Agency shall be subject to the requirements of sections 201 through 209 of title 18, United States Code (relating to ethics and conflict of interest).".

(c) TRADE SECRETS AND CONFIDENTIAL BUSINESS INFORMATION DEFINED.—Section 2 of such Act (42 U.S.C. 4368a), as amended by subsection (b), is further amended by adding at the end the following new subsection:

"(f) For purposes of this section, the term 'trade secrets and confidential business information' includes all information prohibited from disclosure by section 1905 of title 18, United States Code (relating to trade secrets), or by any other law referred to in this section.".

**SEC. 3. SUNSET PROVISION.**

The amendment made by section 2(a) shall be effective during the 2-year period beginning on the date of enactment of this Act.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

## AUDIO HOME RECORDING ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives in S. 1623.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 1623) entitled "An Act to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Audio Home Recording Act of 1992".*

***SEC. 2. IMPORTATION, MANUFACTURE, AND DISTRIBUTION OF DIGITAL AUDIO RECORDING DEVICES AND MEDIA.***

*Title 17, United States Code, is amended by adding at the end the following:*

***"CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA***

*"SUBCHAPTER A—DEFINITIONS*

*"Sec.*
*"1001. Definitions.*
*"SUBCHAPTER B—COPYING CONTROLS*
*"1002. Incorporation of copying controls.*
*"SUBCHAPTER C—ROYALTY PAYMENTS*
*"1003. Obligation to make royalty payments.*
*"1004. Royalty payments.*
*"1005. Deposit of royalty payments and deduction of expenses.*
*"1006. Entitlement to royalty payments.*
*"1007. Procedures for distributing royalty payments.*
*"SUBCHAPTER D—PROHIBITION ON CERTAIN INFRINGEMENT ACTIONS, REMEDIES, AND ARBITRATION*
*"1008. Prohibition on certain infringement actions.*
*"1009. Civil remedies.*
*"1010. Arbitration of certain disputes.*

*"SUBCHAPTER A—DEFINITIONS*

***"§1001. Definitions***

*"As used in this chapter, the following terms have the following meanings:*

*"(1) A 'digital audio copied recording' is a reproduction in a digital recording format of a digital musical recording, whether that reproduction is made directly from another digital musical recording or indirectly from a transmission.*

*"(2) A 'digital audio interface device' is any machine or device that is designed specifically to communicate digital audio information and related interface data to a digital audio recording device through a nonprofessional interface.*

*"(3) A 'digital audio recording device' is any machine or device of a type commonly distributed to individuals for use by individuals, whether or not included with or as part of some other machine or device, the digital recording function of which is designed or marketed for the primary purpose of, and that is capable of, making a digital audio copied recording for private use, except for—*

*"(A) professional model products, and*

*"(B) dictation machines, answering machines, and other audio recording equipment that is designed and marketed primarily for the creation of sound recordings resulting from the fixation of nonmusical sounds.*

*"(4)(A) A 'digital audio recording medium' is any material object in a form commonly distributed for use by individuals, that is primarily marketed or most commonly used by consumers for the purpose of making digital audio copied recordings by use of a digital audio recording device.*

*"(B) Such term does not include any material object—*

*"(i) that embodies a sound recording at the time it is first distributed by the importer or manufacturer; or*

*"(ii) that is primarily marketed and most commonly used by consumers either for the purpose of making copies of motion pictures or other audiovisual works or for the purpose of making copies of nonmusical literary works, including computer programs or data bases.*

*"(5)(A) A 'digital musical recording' is a material object—*

*"(i) in which are fixed, in a digital recording format, only sounds, and material, statements, or instructions incidental to those fixed sounds, if any, and*

*"(ii) from which the sounds and material can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.*

*"(B) A 'digital musical recording' does not include a material object—*

*"(i) in which the fixed sounds consist entirely of spoken word recordings, or*

*"(ii) in which one or more computer programs are fixed, except that a digital musical recording may contain statements or instructions constituting the fixed sounds and incidental material, and statements or instructions to be used directly or indirectly in order to bring about the perception, reproduction, or communication of the fixed sounds and incidental material.*

*"(C) For purposes of this paragraph—*

*"(i) a 'spoken word recording' is a sound recording in which are fixed only a series of spoken words, except that the spoken words may be accompanied by incidental musical or other sounds, and*

*"(ii) the term 'incidental' means related to and relatively minor by comparison.*

*"(6) 'Distribute' means to sell, lease, or assign a product to consumers in the United States, or to sell, lease, or assign a product in the United States for ultimate transfer to consumers in the United States.*

*"(7) An 'interested copyright party' is—*

*"(A) the owner of the exclusive right under section 106(1) of this title to reproduce a sound recording of a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under this title that has been distributed;*

*"(B) the legal or beneficial owner of, or the person that controls, the right to reproduce in a digital musical recording or analog musical recording a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under this title that has been distributed;*

*"(C) a featured recording artist who performs on a sound recording that has been distributed; or*

*"(D) any association or other organization—*

*"(i) representing persons specified in subparagraph (A), (B), or (C), or*

*"(ii) engaged in licensing rights in musical works to music users on behalf of writers and publishers.*

*"(8) To 'manufacture' means to produce or assemble a product in the United States. A 'manufacturer' is a person who manufactures.*

*"(9) A 'music publisher' is a person that is authorized to license the reproduction of a particular musical work in a sound recording.*

*"(10) A 'professional model product' is an audio recording device that is designed, manufactured, marketed, and intended for use by recording professionals in the ordinary course of a lawful business, in accordance with such requirements as the Secretary of Commerce shall establish by regulation.*

*"(11) The term 'serial copying' means the duplication in a digital format of a copyrighted musical work or sound recording from a digital reproduction of a digital musical recording. The term 'digital reproduction of a digital musical recording' does not include a digital musical recording as distributed, by authority of the copyright owner, for ultimate sale to consumers.*

*"(12) The 'transfer price' of a digital audio recording device or a digital audio recording medium—*

*"(A) is, subject to subparagraph (B)—*

*"(i) in the case of an imported product, the actual entered value at United States Customs (exclusive of any freight, insurance, and applicable duty), and*

*"(ii) in the case of a domestic product, the manufacturer's transfer price (FOB the manufacturer, and exclusive of any direct sales taxes or excise taxes incurred in connection with the sale); and*

*"(B) shall, in a case in which the transferor and transferee are related entities or within a single entity, not be less than a reasonable arms-length price under the principles of the*

*regulations adopted pursuant to section 482 of the Internal Revenue Code of 1986, or any successor provision to such section.*

*"(13) A 'writer' is the composer or lyricist of a particular musical work.*

*"SUBCHAPTER B—COPYING CONTROLS*

***"§1002. Incorporation of copying controls***

*"(a) PROHIBITION ON IMPORTATION, MANUFACTURE, AND DISTRIBUTION.—No person shall import, manufacture, or distribute any digital audio recording device or digital audio interface device that does not conform to—*

*"(1) the Serial Copy Management System;*

*"(2) a system that has the same functional characteristics as the Serial Copy Management System and requires that copyright and generation status information be accurately sent, received, and acted upon between devices using the system's method of serial copying regulation and devices using the Serial Copy Management System; or*

*"(3) any other system certified by the Secretary of Commerce as prohibiting unauthorized serial copying.*

*"(b) DEVELOPMENT OF VERIFICATION PROCEDURE.—The Secretary of Commerce shall establish a procedure to verify, upon the petition of an interested party, that a system meets the standards set forth in subsection (a)(2).*

*"(c) PROHIBITION ON CIRCUMVENTION OF THE SYSTEM.—No person shall import, manufacture, or distribute any device, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any program or circuit which implements, in whole or in part, a system described in subsection (a).*

*"(d) ENCODING OF INFORMATION ON DIGITAL MUSICAL RECORDINGS.—*

*"(1) PROHIBITION ON ENCODING INACCURATE INFORMATION.—No person shall encode a digital musical recording of a sound recording with inaccurate information relating to the category code, copyright status, or generation status of the source material for the recording.*

*"(2) ENCODING OF COPYRIGHT STATUS NOT REQUIRED.—Nothing in this chapter requires any person engaged in the importation or manufacture of digital musical recordings to encode any such digital musical recording with respect to its copyright status.*

*"(e) INFORMATION ACCOMPANYING TRANSMISSIONS IN DIGITAL FORMAT.—Any person who transmits or otherwise communicates to the public any sound recording in digital format is not required under this chapter to transmit or otherwise communicate the information relating to the copyright status of the sound recording. Any such person who does transmit or otherwise communicate such copyright status information shall transmit or communicate such information accurately.*

*"SUBCHAPTER C—ROYALTY PAYMENTS*

***"§1003. Obligation to make royalty payments***

*"(a) PROHIBITION ON IMPORTATION AND MANUFACTURE.—No person shall import into and distribute, or manufacture and distribute, any digital audio recording device or digital audio recording medium unless such person records the notice specified by this section and subsequently deposits the statements of account and applicable royalty payments for such device or medium specified in section 1004.*

*"(b) FILING OF NOTICE.—The importer or manufacturer of any digital audio recording device or digital audio recording medium, within a product category or utilizing a technology with respect to which such manufacturer or importer has not previously filed a notice under this subsection, shall file with the Register of Copyrights a notice with respect to such device or medium, in such form and content as the Register shall prescribe by regulation.*

*"(c) FILING OF QUARTERLY AND ANNUAL STATEMENTS OF ACCOUNT.—*

*"(1) GENERALLY.—Any importer or manufacturer that distributes any digital audio recording device or digital audio recording medium that it manufactured or imported shall file with the Register of Copyrights, in such form and content as the Register shall prescribe by regulation, such quarterly and annual statements of account with respect to such distribution as the Register shall prescribe by regulation.*

*"(2) CERTIFICATION, VERIFICATION, AND CONFIDENTIALITY.—Each such statement shall be certified as accurate by an authorized officer or principal of the importer or manufacturer. The Register shall issue regulations to provide for the verification and audit of such statements and to protect the confidentiality of the information contained in such statements. Such regulations shall provide for the disclosure, in confidence, of such statements to interested copyright parties.*

*"(3) ROYALTY PAYMENTS.—Each such statement shall be accompanied by the royalty payments specified in section 1004.*

***"§1004. Royalty payments***

*"(a) DIGITAL AUDIO RECORDING DEVICES.—*

*"(1) AMOUNT OF PAYMENT.—The royalty payment due under section 1003 for each digital audio recording device imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 2 percent of the transfer price. Only the first person to manufacture and distribute or import and distribute such device shall be required to pay the royalty with respect to such device.*

*"(2) CALCULATION FOR DEVICES DISTRIBUTED WITH OTHER DEVICES.—With respect to a digital audio recording device first distributed in combination with one or more devices, either as a physically integrated unit or as separate components, the royalty payment shall be calculated as follows:*

*"(A) If the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.*

*"(B) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be based on the average transfer price of such devices during those 4 quarters.*

*"(C) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have not been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be based on a constructed price reflecting the proportional value of such device to the combination as a whole.*

*"(3) LIMITS ON ROYALTIES.—Notwithstanding paragraph (1) or (2), the amount of the royalty payment for each digital audio recording device shall not be less than $1 nor more than the royalty maximum. The royalty maximum shall be $8 per device, except that in the case of a physically integrated unit containing more than 1 digital audio recording device, the royalty maximum for such unit shall be $12. During the 6th year after the effective date of this chapter, and not more than once each year thereafter, any interested copyright party may petition the Copyright Royalty Tribunal to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the Tribunal shall prospectively increase such royalty maximum with the goal of having no more than 10 percent of such payments at the new royalty maximum; however the amount of any such increase as a percentage of the royalty maximum shall in no event exceed the percentage increase in the Consumer Price Index during the period under review.*

*"(b) DIGITAL AUDIO RECORDING MEDIA.—The royalty payment due under section 1003 for each digital audio recording medium imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 3 percent of the transfer price. Only the first person to manufacture and distribute or import and distribute such medium shall be required to pay the royalty with respect to such medium.*

***"§1005. Deposit of royalty payments and deduction of expenses***

*"The Register of Copyrights shall receive all royalty payments deposited under this chapter and, after deducting the reasonable costs incurred by the Copyright Office under this chapter, shall deposit the balance in the Treasury of the United States as offsetting receipts, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest under section 1007. The Register may, in the Register's discretion, 4 years after the close of any calendar year, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year. The Register shall submit to the Copyright Royalty Tribunal, on a monthly basis, a financial statement reporting the amount of royalties under this chapter that are available for distribution.*

***"§1006. Entitlement to royalty payments***

*"(a) INTERESTED COPYRIGHT PARTIES.—The royalty payments deposited pursuant to section 1005 shall, in accordance with the procedures specified in section 1007, be distributed to any interested copyright party—*

*"(1) whose musical work or sound recording has been—*

*"(A) embodied in a digital musical recording or an analog musical recording lawfully made under this title that has been distributed, and*

*"(B) distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions, during the period to which such payments pertain; and*

*"(2) who has filed a claim under section 1007.*

*"(b) ALLOCATION OF ROYALTY PAYMENTS TO GROUPS.—The royalty payments shall be divided into 2 funds as follows:*

*"(1) THE SOUND RECORDINGS FUND.—66⅔ percent of the royalty payments shall be allocated to the Sound Recordings Fund. 2⅚ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians or any successor entity) who have performed on sound recordings distributed in the United States. 1⅚ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation Television and Radio Artists or any successor entity) who have performed on sound recordings dis-*

*tributed in the United States. 40 percent of the remaining royalty payments in the Sound Recordings Fund shall be distributed to the interested copyright parties described in section 1001(7)(C), and 60 percent of such remaining royalty payments shall be distributed to the interested copyright parties described in section 1001(7)(A).*

*"(2) THE MUSICAL WORKS FUND.—*

*"(A) 33⅓ percent of the royalty payments shall be allocated to the Musical Works Fund for distribution to interested copyright parties described in section 1001(7)(B).*

*"(B)(i) Music publishers shall be entitled to 50 percent of the royalty payments allocated to the Musical Works Fund.*

*"(ii) Writers shall be entitled to the other 50 percent of the royalty payments allocated to the Musical Works Fund.*

*"(c) ALLOCATION OF ROYALTY PAYMENTS WITHIN GROUPS.—If all interested copyright parties within a group specified in subsection (b) do not agree on a voluntary proposal for the distribution of the royalty payments within each group, the Copyright Royalty Tribunal shall, pursuant to the procedures specified under section 1007(c), allocate royalty payments under this section based on the extent to which, during the relevant period—*

*"(1) for the Sound Recordings Fund, each sound recording was distributed in the form of digital musical recordings or analog musical recordings; and*

*"(2) for the Musical Works Fund, each musical work was distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions.*

***"§1007. Procedures for distributing royalty payments***

*"(a) FILING OF CLAIMS AND NEGOTIATIONS.—*

*"(1) FILING OF CLAIMS.—During the first 2 months of each calendar year after the calendar year in which this chapter takes effect, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Copyright Royalty Tribunal a claim for payments collected during the preceding year in such form and manner as the Tribunal shall prescribe by regulation.*

*"(2) NEGOTIATIONS.—Notwithstanding any provision of the antitrust laws, for purposes of this section interested copyright parties within each group specified in section 1006(b) may agree among themselves to the proportionate division of royalty payments, may lump their claims together and file them jointly or as a single claim, or may designate a common agent, including any organization described in section 1001(7)(D), to negotiate or receive payment on their behalf; except that no agreement under this subsection may modify the allocation of royalties specified in section 1006(b).*

*"(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—Within 30 days after the period established for the filing of claims under subsection (a), in each year after the year in which this section takes effect, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Tribunal determines that no such controversy exists, the Tribunal shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a), after deducting its reasonable administrative costs under this section.*

*"(c) RESOLUTION OF DISPUTES.—If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The Tribunal shall, before authorizing the distribution of such royalty payments, deduct its reasonable administrative costs under this section.*

*"SUBCHAPTER D—PROHIBITION ON CERTAIN INFRINGEMENT ACTIONS, REMEDIES, AND ARBITRATION*

***"§1008. Prohibition on certain infringement actions***

*"No action may be brought under this title alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or based on the noncommercial use by a consumer of such a device or medium for making digital musical recordings or analog musical recordings.*

***"§1009. Civil remedies***

*"(a) CIVIL ACTIONS.—Any interested copyright party injured by a violation of section 1002 or 1003 may bring a civil action in an appropriate United States district court against any person for such violation.*

*"(b) OTHER CIVIL ACTIONS.—Any person injured by a violation of this chapter may bring a civil action in an appropriate United States district court for actual damages incurred as a result of such violation.*

*"(c) POWERS OF THE COURT.—In an action brought under subsection (a), the court—*

*"(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain such violation;*

*"(2) in the case of a violation of section 1002, or in the case of an injury resulting from a failure to make royalty payments required by section 1003, shall award damages under subsection (d);*

*"(3) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof; and*

*"(4) in its discretion may award a reasonable attorney's fee to the prevailing party.*

*"(d) AWARD OF DAMAGES.—*

*"(1) DAMAGES FOR SECTION 1002 OR 1003 VIOLATIONS.—*

*"(A) ACTUAL DAMAGES.—(i) In an action brought under subsection (a), if the court finds that a violation of section 1002 or 1003 has occurred, the court shall award to the complaining party its actual damages if the complaining party elects such damages at any time before final judgment is entered.*

*"(ii) In the case of section 1003, actual damages shall constitute the royalty payments that should have been paid under section 1004 and deposited under section 1005. In such a case, the court, in its discretion, may award an additional amount of not to exceed 50 percent of the actual damages.*

*"(B) STATUTORY DAMAGES FOR SECTION 1002 VIOLATIONS.—*

*"(i) DEVICE.—A complaining party may recover an award of statutory damages for each violation of section 1002 (a) or (c) in the sum of not more than $2,500 per device involved in such violation or per device on which a service prohibited by section 1002(c) has been performed, as the court considers just.*

*"(ii) DIGITAL MUSICAL RECORDING.—A complaining party may recover an award of statutory damages for each violation of section 1002(d) in the sum of not more than $25 per digital musical recording involved in such violation, as the court considers just.*

*"(iii) TRANSMISSION.—A complaining party may recover an award of damages for each transmission or communication that violates section 1002(e) in the sum of not more than $10,000, as the court considers just.*

*"(2) REPEATED VIOLATIONS.—In any case in which the court finds that a person has violated section 1002 or 1003 within 3 years after a final judgment against that person for another such violation was entered, the court may increase the award of damages to not more than double the amounts that would otherwise be awarded under paragraph (1), as the court considers just.*

*"(3) INNOCENT VIOLATIONS OF SECTION 1002.—The court in its discretion may reduce the total award of damages against a person violating section 1002 to a sum of not less than $250 in any case in which the court finds that the violator was not aware and had no reason to believe that its acts constituted a violation of section 1002.*

*"(e) PAYMENT OF DAMAGES.—Any award of damages under subsection (d) shall be deposited with the Register pursuant to section 1005 for distribution to interested copyright parties as though such funds were royalty payments made pursuant to section 1003.*

*"(f) IMPOUNDING OF ARTICLES.—At any time while an action under subsection (a) is pending, the court may order the impounding, on such terms as it deems reasonable, of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that is in the custody or control of the alleged violator and that the court has reasonable cause to believe does not comply with, or was involved in a violation of, section 1002.*

*"(g) REMEDIAL MODIFICATION AND DESTRUCTION OF ARTICLES.—In an action brought under subsection (a), the court may, as part of a final judgment or decree finding a violation of section 1002, order the remedial modification or the destruction of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that—*

*"(1) does not comply with, or was involved in a violation of, section 1002, and*

*"(2) is in the custody or control of the violator or has been impounded under subsection (f).*

***"§1010. Arbitration of certain disputes***

*"(a) SCOPE OF ARBITRATION.—Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, importing, or distributing such device, and any interested copyright party may mutually agree to binding arbitration for the purpose of determining whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.*

*"(b) INITIATION OF ARBITRATION PROCEEDINGS.—Parties agreeing to such arbitration shall file a petition with the Copyright Royalty Tribunal requesting the commencement of an arbitration proceeding. The petition may include the names and qualifications of potential arbitrators. Within 2 weeks after receiving such a petition, the Tribunal shall cause notice to be published in the Federal Register of the initiation of an arbitration proceeding. Such notice shall include the names and qualifications of 3 arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select, and from potential arbitrators listed in the parties' petition. The arbitrators selected under this subsection shall constitute an Arbitration Panel.*

*"(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil action brought under section 1009 against a party to arbitration under this section shall, on application of one of the parties to the arbitration, be stayed until completion of the arbitration proceeding.*

*"(d) ARBITRATION PROCEEDING.—The Arbitration Panel shall conduct an arbitration proceed-*

*ing with respect to the matter concerned, in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record. Any party to the arbitration may submit relevant information and proposals to the Panel. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.*

*"(e) REPORT TO COPYRIGHT ROYALTY TRIBUNAL.—Not later than 60 days after publication of the notice under subsection (b) of the initiation of an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning whether the device concerned is subject to section 1002, or the basis on which royalty payments for the device are to be made under section 1003. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination.*

*"(f) ACTION BY THE COPYRIGHT ROYALTY TRIBUNAL.—Within 60 days after receiving the report of the Arbitration Panel under subsection (e), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel. The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly erroneous. If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting forth its decision and the reasons therefor. The Tribunal shall cause to be published in the Federal Register the determination of the Panel and the decision of the Tribunal under this subsection with respect to the determination (including any order issued under the preceding sentence).*

*"(g) JUDICIAL REVIEW.—Any decision of the Copyright Royalty Tribunal under subsection (f) with respect to a determination of the Arbitration Panel may be appealed, by a party to the arbitration, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. The pendency of an appeal under this subsection shall not stay the Tribunal's decision. The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal, that the Arbitration Panel or the Tribunal acted in an arbitrary manner. If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings as provided in this section.".*

***SEC. 3. TECHNICAL AMENDMENTS.***

*(a) FUNCTIONS OF REGISTER.—Chapter 8 of title 17, United States Code is amended—*

*(1) in section 801(b)—*

*(A) by striking "and" at the end of paragraph (2);*

*(B) by striking the period at the end of paragraph (3) and inserting "; and"; and*

*(C) by adding the following new paragraph at the end:*

*"(4) to distribute royalty payments deposited with the Register of Copyrights under section 1003, to determine the distribution of such payments, and to carry out its other responsibilities under chapter 10"; and*

*(2) in section 804(d)—*

*(A) by inserting "or (4)" after "801(b)(3)"; and*

*(B) by striking "or 119" and inserting "119, or 1007".*

*(b) DEFINITIONS.—Section 101 of title 17, United States Code, is amended by striking "As used" and inserting "Except as otherwise provided in this title, as used".*

*(c) MASK WORKS.—Section 912 of title 17, United States Code, is amended—*

*(1) in subsection (a) by inserting "or 10" after "8"; and*

*(2) in subsection (b) by inserting "or 10" after "8".*

*(d) CONFORMING AMENDMENT TO SECTION 337 OF THE TARIFF ACT OF 1930.—The second sentence of section 337(b)(3) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(3)) is amended to read as follows: "If the Commission has reason to believe that the matter before it (A) is based solely on alleged acts and effects which are within the purview of section 303, 671, or 673, or (B) relates to an alleged copyright infringement with respect to which action is prohibited by section 1008 of title 17, United States Code, the Commission shall terminate, or not institute, any investigation into the matter.".*

***SEC. 4. EFFECTIVE DATE.***

*This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.*

Mr. FORD. Mr. President, I move that the Senate concur in the amendment of the House.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

## CONCERNING UNITED STATES PARTICIPATION IN A CASCADIA CORRIDOR COMMISSION

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6077, a bill concerning U.S. participation in the Corridor Commission.

The legislative clerk read as follows:

A bill (H.R. 6077) concerning United States participation in a Cascadia Corridor Commission.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3410

(Purpose: To Express the sense of the Congress with respect to the Cascadia Corridor Commission)

Mr. FORD. Mr. President, I send a substitute amendment to the desk, and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. ADAMS (for himself and Mr. GORTON), proposes an amendment numbered 3410.

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

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

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. It is the sense of the Congress that—

(A) CASCADIA CORRIDOR COMMISSION.—The United States should continue negotiations with the Government of Canada and State, provincial, and local governments in the urbanized Cascadia corridor along Interstate 5/Highway 99 from Vancouver, British Columbia (including Vancouver Island), to Eugene, Oregon, in order to establish a commission to—

(1) act as a forum to coordinate consideration of regional issues in the Cascadia area by representatives from the private sector, nonprofit organizations, and local, State, provincial, regional, and national governments;

(2) develop a strategy for environmentally sound economic development in the Cascadia region which includes consideration of environmental issues, urban development, transportation, communications, and education; and

(3) submit a plan, developed by the commission and incorporating such strategy, to the Congress, the Canadian Parliament, the legislature of British Columbia, and the State legislatures of Oregon and Washington.

(B) ADVISORY COMMISSION.—The commission should be authorized to function only in an advisory capacity and should have no authority concerning any local, State, or Federal agency or government.

(C) COMPOSITION OF UNITED STATES DELEGATION.—If the United States and Canada conclude an agreement to establish such a commission concerning the Cascadia region, the United States delegation to the commission should include—

(1) 1 member appointed by the President, who should be a nonvoting member;

(2) a Washington State delegation; and

(3) an Oregon delegation.

(D) COST-SHARING AMONG U.S. DELEGATION.—Upon appointment of a United States delegation to such a commission, the United States delegation should decide the cost-sharing arrangements among the Federal, State, and local participants of the delegation. Federal Government contributions of the United States should not exceed one-fourth of the total budget of the commission for any fiscal year. If a Cascadia commission is established, it is the sense of the Congress that of funds appropriated for "International Commissions" for the Department of State $200,000 for fiscal year 1993 and $200,000 for fiscal year 1994 should be available for the commission.

The ACTING PRESIDENT pro tempore. Is there further debate?

If there is no further debate, the question is on agreeing to the amendment of the Senator from Washington.

The amendment (No. 3410) was agreed to.

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

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

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The ACTING PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 6077), as amended, was passed.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

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

The motion to lay on the table was agreed to.

## CONCERNING UNITED STATES PARTICIPATION IN A CASCADIA CORRIDOR COMMISSION

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 383, a concurrent resolution concerning the Corridor Commission; that the concurrent resolution be agreed to; the motion to reconsider be laid upon the table; and statements thereon appear in the RECORD at the appropriate place as though read.

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

So the concurrent resolution (S. Con. Res. 383) was agreed to.

## THEODORE ROOSEVELT FEDERAL BUILDING

## CONTAMINATED WATER TREATMENT AUTHORIZATION

## GEORGE C. YOUNG UNITED STATES COURTHOUSE AND FEDERAL BUILDING

## RONALD REAGAN FEDERAL BUILDING AND COURTHOUSE

## ROBERT A. ROE FEDERAL BUILDING

## ROBERT A. GRANT FEDERAL BUILDING AND UNITED STATES COURTHOUSE

## MARTIN LUTHER KING, JR. FEDERAL BUILDING

## JOHN PAUL HAMMERSCHMIDT FEDERAL BUILDING AND UNITED STATES COURTHOUSE

Mr. FORD. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged en bloc from consideration of the following bills: H.R. 3118, H.R. 3673, H.R. 3818, H.R. 4281, H.R. 5222, H.R. 5431, H.R. 5432, and H.R. 5831; and that the Senate then proceed en bloc to their immediate consideration; that the bills be deemed read three times, passed; and the motion to reconsider be laid upon the table en bloc; further, that any statements relative to the passage of these bills be placed in the RECORD at the appropriate place; and, the consideration of these items appear individually in the RECORD.

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

So the bill (H.R. 3118) to designate Federal Office Building No. 9 located at 1900 E Street, NW., in the District of Columbia, as the "Theodore Roosevelt Federal Building" was deemed read three times and passed.

So the bill (H.R. 3673) to authorize a research program through the National Science Foundation on the treatment of contaminated water through membrane processes was deemed read three times and passed.

So the bill (H.R. 3818) to designate the building located at 80 North Hughey Avenue in Orlando, FL, as the "George C. Young United States Courthouse and Federal Building" was deemed read three times and passed.

So the bill (H.R. 4281) to designate the U.S. Federal Building and courthouse to be constructed at 5th and Ross Streets in Santa Ana, CA, as the "Ronald Reagan Federal Building and Courthouse" was deemed read three times and passed.

So the bill (H.R. 5431) to designate the Federal building located at 200 Federal Plaza in Paterson, NJ, as the "Robert A. Roe Federal Building" was deemed read three times and passed.

So the bill (H.R. 5222) to designate the Federal building and U.S. courthouse located at 204 South Main Street in South Bend, IN, as the "Robert A. Grant Federal Building and United States Courthouse" was deemed read three times and passed.

So the bill (H.R. 5831) to designate the Federal building located at Main and Church Streets in Victoria, TX, as the "Martin Luther King, Jr. Federal Building" was deemed read three times and passed.

So the bill (H.R. 5432) to designate the Federal building and U.S. courthouse located at the corner of College Avenue and Mountain Street in Fayetteville, AR, as the "John Paul Hammerschmidt Federal Building and United States Courthouse" was deemed read three times and passed.

### ROBERT A. ROE BUILDING

• Mr. LAUTENBERG. Mr. President, I am pleased to support legislation to name the new Federal building in Paterson, NJ, for my retiring colleague and friend from New Jersey, Congressman BOB ROE.

This bill is a fitting tribute to the accomplishments of a man who has spent his adult life working for the people of New Jersey, and who has left such a mark on the infrastructure of this country.

Mr. President, I have known BOB ROE for more than 25 years. I am proud to have been able to call him my Congressman. I first knew him when I was a citizen and businessman actively involved in community affairs in New Jersey. Over the last 9 years, I have had the pleasure of working with him as a partner in the Congress in efforts to help our State and advance the cause of increasing American productivity and quality of life through investment in infrastructure across this country.

In 1967, in his capacity as Commissioner of the New Jersey Department of Conservation and Economic Development, BOB ROE attended the ground breaking of the Clifton, NJ, headquarters of my former company, ADP. Along with Joseph and Henry Taub, I founded ADP, and worked to build it into an industry leader that now employs more than 20,000 people worldwide. That ground breaking was an important event in my life and the lives of the people of ADP, and I was proud to have BOB ROE join us there.

BOB ROE was elected to Congress in 1969 to represent New Jersey's Eighth District. He rose through the ranks in the House, becoming chairman of the Science, Space, and Technology Committee in 1987, and then chairman of the Public Works and Transportation Committee in 1990. In that role, and as chairman of the Subcommittee on Water Resources for many years, BOB ROE established himself as a leader and an expert on infrastructure issues.

Last year, I worked closely with BOB ROE to help enact the landmark Intermodal Surface Transportation Efficiency Act of 1991, or ISTEA. This bill represented the largest shift in Federal transportation policy in 35 years. And, it was BOB ROE who led the efforts to get a bill through the House, and who chaired the conference committee that eventually worked out the details of ISTEA. As a member of the conference committee, I can assure my colleagues that managing that conference was no easy task. Significant policy positions were at stake, as was the question of transportation funding for every congressional district, and every State.

Mr. President, as a son of Paterson, I speak for all the residents of that city in saying that we will be proud to have the new Federal building named for BOB ROE. It is a building that he worked hard to have authorized and built. With enactment of this legislation, this building will serve as a lasting reminder of the efforts and accomplishments of BOB ROE.•

## TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1579.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 1579) entitled "An Act to provide for regulation and oversight of the development and application of the telephone technology known as pay-per-call, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause and insert:

***SECTION 1. SHORT TITLE, FINDINGS.***

*(a) SHORT TITLE.—This Act may be cited as the "Telephone Disclosure and Dispute Resolution Act".*

*(b) FINDINGS.—The Congress finds the following:*

*(1) The use of pay-per-call services, most commonly through the use of 900 numbers, has grown exponentially in the past few years. This payment mechanism is convenient to consumers, cost-effective to vendors, and profitable to communications common carriers.*

*(2) The interstate nature of the pay-per-call industry means that its activities are beyond the reach of individual States and therefore requires Federal regulatory treatment to protect the public interest.*

*(3) The lack of nationally uniform regulatory guidelines has led to confusion for consumers, industry, and regulatory agencies as to the rights of callers and the oversight responsibilities of regulatory authorities, and has allowed some pay-per-call businesses to engage in practices which abuse the rights of callers.*

*(4) Because the consumer most often incurs a financial obligation as soon as a pay-per-call transaction is initiated, the accuracy and descriptiveness of vendor advertisements become crucial in avoiding consumer abuse. The obligation for accuracy should include price-per-call and duration-of-call information, odds disclosure for lotteries, games, and sweepstakes, and obligations for obtaining parental consent from callers under 18.*

*(5) The continued growth of the legitimate pay-per-call industry is dependent upon consumer confidence that unfair and deceptive behavior will be effectively curtailed and that consumers will have adequate rights of redress.*

*(6) Vendors of telephone-billed goods and services must also feel confident in their rights and obligations for resolving billing disputes if they are to use this new marketplace for the sale of products of more than nominal value.*

*(7) Many applications employing audiotext technology such as lotteries, games, and sweepstakes, sometimes erroneously have informed consumers that they must utilize audiotext services to claim or win a prize, or have not adequately informed consumers of the right to participate in the same applications through other forms of entry.*

*(8) Some interstate audiotext services have offered programs aimed at children, inducing them to call such services without their parents' permission.*

*(9) Consequently, Congress should enact legislation that will offer consumers and vendors necessary protections and help facilitate the growth of a robust and competitive pay-per-call marketplace.*

***TITLE I—AUDIOTEXT INDUSTRY OBLIGATIONS AND CONSUMER RIGHTS***

***SEC. 101. AMENDMENT TO COMMUNICATIONS ACT OF 1934***

*Title II of the Communications Act of 1934 is amended by adding at the end thereof the following new section:*

***"SEC. 228. REGULATION OF AUDIOTEXT SERVICES.***

*"(a) PURPOSE.—It is the purpose of this section—*

*"(1) to put into effect a system of national regulation and review that will oversee the audiotext business;*

*"(2) to give the Commission authority to prescribe regulations and enforcement procedures and conduct oversight to afford reasonable protection to consumers and to assure that violations of this Act do not occur.*

*"(b) AUTHORITY FOR REGULATIONS.—*

*"(1) IN GENERAL.—The Commission shall, within 270 days after the date of enactment of this section, complete a rulemaking proceeding to establish a system for oversight and regulation of audiotext services in order to provide for the protection of consumers and providers in accordance with this Act and other applicable Federal statutes and regulations. The Commission's final rules shall—*

*"(A) include measures that provide a consumer of audiotext services with adequate and clear descriptions of the rights of the caller;*

*"(B) define the obligations of common carriers with respect to the provision of the audiotext services;*

*"(C) include requirements on such carriers to protect against abusive practices by providers of audiotext services;*

*"(D) prohibit customers from being disconnected from local exchange services for refusal to pay for audiotext services; and*

*"(E) identify procedures by which common carriers and providers of audiotext services may take affirmative steps to protect against nonpayment of legitimate charges.*

*"(2) MINIMUM STANDARDS FOR PROVIDERS OF AUDIOTEXT SERVICES.—The regulations required by paragraph (1) shall prohibit any common carrier from offering audiotext services of any provider of such services who fails—*

*"(A) to include in each audiotext message an introductory disclosure message that (i) describes the service being provided, (ii) specifies clearly and at a reasonably understandable volume the total cost or the cost per minute and any other fees for that service, and for any other audiotext service to which the caller may be transferred, (iii) informs the caller of the option to hang up at the end of the introductory message without incurring any charge, and (iv) informs the caller that parental consent is required for calls made by children;*

*"(B) to disable any bypass mechanism which allows frequent callers to avoid listening to the disclosure message described in subparagraph (A) after the institution of any price increase and for a period of time sufficient to give such frequent callers adequate and sufficient notice of the price change;*

*"(C) to stop the assessment of time-based charges immediately upon disconnection by the caller;*

*"(D) to include an appropriate and clear signal, at intervals determined by the Commission, where technically feasible, during live interactive group programs, to alert callers to the passage of time, and explain this signal in the disclosure required by subparagraph (A) for such programs, except that the requirements of this subparagraph do not apply to programs for which the caller is required to preregister or presubscribe; and*

*"(E) to comply with such additional standards as the Commission may prescribe to prevent abusive practices.*

*"(3) COMMON CARRIER OBLIGATIONS.—The regulations required by paragraph (1) shall require that any common carriers offering audiotext services shall—*

*"(A) require, pursuant to contract or tariff, that a provider of audiotext services comply with the regulations issued pursuant to paragraph (2), and terminate, in accordance with procedures specified in such regulations, the offering of an audiotext service of a provider if such service is not provided in compliance with such regulations;*

*"(B) ensure that a caller is not billed—*

*"(i) with respect to audiotext services provided in violation of the regulations issued pursuant to paragraph (2); or*

*"(ii) under such other circumstances as the Commission determines necessary in order to protect callers from abusive practices;*

*"(C) establish a local or a toll-free telephone number to answer questions and provide information on callers' rights and obligations with regard to their use of audiotext services and to provide to callers the name and mailing address of any provider of audiotext services offered by the common carrier;*

*"(D) within 60 days after the issuance of final regulations pursuant to paragraph (1), provide, either directly or through contract with any local exchange carrier that provides billing or collection services to the common carrier, to all of such common carrier's telephone subscribers, to all new subscribers, and to all subscribers requesting service at a new location, a disclosure statement that—*

*"(i) sets forth in clear, standard English, or other languages as specified by regulation, all rights and obligations held by the subscriber and the carrier with respect to the use and payment for audiotext services;*

*"(ii) describes any nonpayment option prescribed by the Commission under subparagraph (B) and the applicable blocking option; and*

*"(iii) provides an explanation of live interactive programming;*

*"(E) ensures that charges for audiotext services are stated separately on the bill from the sections relating to local and long distance telephone charges and that such statement includes the toll-free telephone number specified in subparagraph (C);*

*"(F) notify in writing the State regulatory commission of any State within which the carrier intends to offer audiotext services of such intention, which notification shall include a description of the service to be provided to telephone users within that State as well as a list of the carrier's policies and procedures;*

*"(G) subsequently make available to the State regulatory commission, upon request, a list of audiotext telephone numbers accessible by callers within that State through such carrier, which list shall include the name, business address, and business telephone number of the audiotext provider; and*

*"(H) obtain from any provider of audiotext services that solicits charitable contributions proof of the tax exempt status of any person or organization for which contributions are solicited.*

*"(4) BLOCKING REQUIREMENTS.—The regulations required by paragraph (1) shall require that any local exchange carrier carrying audiotext services shall offer callers the option of blocking access to all audiotext services from their telephone, whenever technologically feasible. Such regulation may permit the costs of such blocking to be recovered by contract or tariff, but such costs may not be recovered from local or long distance ratepayers. Such option shall be offered at no charge to the caller for a reasonable and appropriate period (established by the Commission in such regulations) after (A) the effective date of such regulation, (B) an ini-*

*tial connection, or (C) subscription for any new telephone line.*

*"(5) EXEMPTIONS FROM INTRODUCTORY MESSAGE REQUIREMENTS.—The regulations prescribed by the Commission pursuant to paragraph (2)(A) may exempt from the requirements of such paragraph—*

*"(A) calls from frequent callers or regular subscribers using a bypass mechanism to avoid listening to the disclosure message required by such regulations; or*

*"(B) audiotext services provided at nominal charges, as defined by the Commission in such regulations.*

*"(6) CONSUMER REFUND REQUIREMENTS.—The regulations required by paragraph (1) shall establish procedures, consistent with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act, to ensure that carriers offering audiotext services and other parties provide appropriate refunds to callers who have been billed for audiotext services pursuant to programs that have been found to have violated this subsection or such regulations or any other Federal, State, or local consumer protection law.*

*"(7) RECOMMENDATIONS ON DATA PAY-PER-CALL.—The Commission, within one year after the date of enactment of this section, shall submit to the Congress the Commission's recommendations with respect to the extension of regulations under this section to services that provide, for a per call charge, data services that are not audiotext services.*

*"(c) EFFECT ON OTHER LAW.—*

*"(1) NO PREEMPTION OF ELECTION LAW.—Nothing in this section shall relieve any information provider, common carrier, local exchange carrier, or any other person from the obligation to comply with Federal, State, and local election laws and regulations.*

*"(2) CONSUMER PROTECTION LAWS.—Nothing in this section shall relieve any provider of audiotext services, common carrier, local exchange carrier, or any other person from the obligation to comply with Federal, State, or local laws relating to consumer protection or unfair trade.*

*"(3) GAMBLING LAWS.—Nothing in this section shall preclude any State from enforcing its statutes and regulations with regard to lotteries, wagering, betting, and other gambling activities.*

*"(4) STATE AUTHORITY.—Nothing in this section shall preclude any State from enacting and enforcing additional and complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures do not significantly impede the enforcement of this section or other Federal statutes.*

*"(5) LIABILITY.—No cause of action may be brought in any court or administrative agency against any common carrier or any of its affiliates on account of any act of the carrier or affiliate, and which the carrier or affiliate shows to be in good faith, to terminate any audiotext service in order to comply with the regulations prescribed under subsection (b).*

*"(d) DEFINITIONS.—For purposes of this section—*

*"(1) The term 'audiotext services' means any service—*

*"(A) in which any person provides, through interstate telecommunications—*

*"(i) audio information or audio entertainment produced or packaged by such person; or*

*"(ii) access to simultaneous voice conversation services;*

*"(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and*

*"(C) the charge for which is billed and collected by a common carrier or local exchange carrier.*

*Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate or any service the charge for which is tariffed.*

*"(2) A common carrier 'offers audiotext services' by transmitting an audiotext service through interstate communications. A local exchange carrier shall not be considered to 'offer audiotext services' if the local exchange carrier only provides exchange access services or billing services, or both, to a common carrier in connection with the common carrier's offering of audiotext services.".*

***SEC. 102. TECHNICAL AMENDMENT.***

*Section 3(c) of the Telephone Consumer Protection Act of 1991 is amended by striking "section 228" and inserting "section 227".*

## *TITLE II—USE OF THE 900 TELEPHONE NUMBER*

***SEC. 201. REGULATIONS.***

*(a) IN GENERAL.—*

*(1) The Federal Trade Commission shall prescribe rules, as described in this subsection, for any advertisement for services or products procured through the use of a telephone number with a 900 service access code or any other access code under which liability for the service or product provided attaches to the telephone bill of the individual calling such number. Such rules shall require that the person offering such services or products—*

*(A) clearly and conspicuously disclose in any advertising the cost of the use of such telephone number, including the rate per minute and, if applicable, for the duration of the call,*

*(B) in the case of an advertisement which offers a prize or award or a service or product at no cost or for a reduced cost, clearly and conspicuously disclose the odds of being able to receive such prize, award, service, or product at no cost or reduced cost, or, if such odds are not calculable in advance, disclose the factors determining such odds,*

*(C) in the case of individuals under the age of 18 using such telephone number, clearly and conspicuously state, where appropriate, in any advertising that such individual must have the consent of such individual's parent or legal guardian for the use of such telephone number, and*

*(D) be prohibited from using advertisements that emit electronic tones which can automatically dial a pay-per-call telephone number.*

*(2) The Commission shall by rule require a common carrier that provides telephone services to a vendor who uses the telephone number described in paragraph (1) to make available to the Commission any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and vendor.*

*(3) A rule issued under paragraph (1) or (2) shall be treated as a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).*

*(b) RULEMAKING.—The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.*

*(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) regarding unfair or deceptive acts or practices. Notwithstanding section 5(a)(2) of such Act (15 U.S.C. 45(a)(2)), communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this Act.*

***SEC. 202. ACTIONS BY STATES.***

*(a) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 201(a)(1), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.*

*(b) NOTICE.—The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.*

*(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.*

*(d) ACTIONS BY THE COMMISSION.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 201, no State may, during the pendency of such action instituted by the Commission, institute a civil action under subsection (a) against any defendant named in the Commission's complaint for acts or omissions alleged in the complaint for violation of any rule as alleged in the Commission's complaint.*

*(e) ACTIONS BY OTHER STATE OFFICIALS.—*

*(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.*

*(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice of telemarketing which violates a rule of the Commission under section 201.*

***SEC. 203. ADMINISTRATION AND APPLICABILITY OF TITLE.***

*(a) IN GENERAL.—Except as otherwise provided in section 202, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act, except for purposes of this title.*

*(b) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 201 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal*

*Trade Commission Act were incorporated into and made a part of this title.*

**SEC. 204. DEFINITIONS.**

*For purposes of this title:*

*(1) The term "attorney general" means the chief legal officer of a State.*

*(2) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.*

*(3) The term "Commission" means the Federal Trade Commission.*

## TITLE III—TELEPHONE SERVICES BILLING AND COLLECTION

**SEC. 301. CORRECTION OF BILLING ERRORS.**

*(a) INITIATION OF BILLING REVIEW.—A customer may initiate a billing review under this section with respect to a telephone-billed purchase by sending, within 30 days after receipt of a billing statement from a billing carrier that contains a charge for such telephone-billed purchase, a written notice to that billing carrier in which the customer—*

*(1) sets forth or otherwise enables the billing carrier to identify the name of the customer and the phone number to which the charge was billed;*

*(2) indicates the customer's belief that the statement contains a billing error that relates to a telephone-billed purchase and the amount of such billing error; and*

*(3) sets forth the reasons for the customer's belief (to the extent applicable) that the statement contains a billing error.*

*(b) RESPONSE TO CUSTOMER NOTICE.—*

*(1) RESPONSE BY BILLING CARRIER.—A billing carrier that receives a notice from any customer under subsection (a) shall—*

*(A) if the billing error is described in section 308(6) (D), (E), or (F) or otherwise relates to the calculation of amounts due, be deemed to be a providing carrier for purposes of paragraph (2) of this subsection; or*

*(B) transmit such notice within 15 days to the providing carrier for the telephone-billed purchase to which the alleged billing error relates.*

*(2) RESPONSE BY PROVIDING CARRIER.—A providing carrier that receives from any customer a notice that meets the requirements of subsection (a) shall, unless the customer has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—*

*(A) not later than 30 days after the receipt of the notice, unless the action required in subparagraph (B) is taken within such 30-day period, send a written acknowledgement thereof to the customer, which acknowledgement shall include the name, mailing address, and business telephone number of the vendor that is the subject of the notice, and*

*(B) not later than two complete billing cycles of the billing carrier (in no event later than 90 days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the customer under subsection (a)(2) either—*

*(i) make appropriate corrections in the account of the customer, including the crediting of any related charges on amounts erroneously billed, and transmit to billing carrier and the customer a notification of such corrections and the providing carrier's explanation of any change in the amount indicated by the customer under subsection (a)(2) and, if any such change is made and the customer so requests, copies of documentary evidence of the customer's indebtedness; or*

*(ii) send a written explanation or clarification to the customer, after having conducted an investigation (including, where appropriate, contact with the vendor), setting forth to the extent applicable the reasons why the providing carrier believes the account of the customer was correctly shown in the statement and, upon request of the customer, provide copies of documentary evidence of the customer's indebtedness.*

*(3) INVESTIGATIONS CONCERNING DELIVERY OF TELEPHONE-BILLED PURCHASES.—In the case of a billing error where the customer alleges that the billing statement reflects goods or services not delivered to the customer in accordance with the stated terms of the transaction, a providing carrier may not construe such amount to be correctly shown unless the providing carrier investigates, with reasonable diligence, whether such goods or services were actually delivered or otherwise sent to the customer and provides the customer with a written statement of the results of such investigation.*

*(4) TERMINATION OF PROVIDING CARRIER RESPONSIBILITY.—After complying with the provisions of this subsection with respect to an alleged billing error, a providing carrier has no further responsibility under this section if the customer continues to make substantially the same allegation with respect to such error.*

*(5) PERMITTED ACTIONS BY BILLING CARRIERS.—Nothing in this title shall prohibit a billing carrier from removing a charge from a customer's billing statement upon receipt of a billing inquiry from the customer if the billing carrier—*

*(A) informs the appropriate providing carrier that the charge has been removed;*

*(B) informs the customer that removal of the charge does not limit customer liability for that charge if the vendor or providing carrier or its agent elects to pursue collection of the charge; and*

*(C) informs the customer that, to assure the protection of the customer's rights under this title, the customer must send a written notice in accordance with subsection (a).*

*(c) COLLECTION ACTIONS.—*

*(1) DEFINITION.—For the purposes of subsection (b)(2)(B) of this section, "action to collect the amount, or any part thereof, indicated by the customer under subsection (a)(2)" does not include the sending of statements of account, which may include late charges on amounts in dispute, to the customer following written notice from the customer as specified under subsection (a), if—*

*(A) the customer's account is not restricted or closed because of the failure of the customer to pay the amount indicated under subsection (a)(2), and*

*(B) the billing carrier indicates to the customer that the payment of such amount is not required pending the providing carrier's compliance with this section.*

*(2) NO EFFECT ON AMOUNTS NOT SUBJECT TO REVIEW.—Nothing in this section shall be construed to prohibit any action by a vendor, providing carrier, or billing carrier to collect any amount which has not been indicated by the customer under subsection (a)(2) to contain a billing error.*

*(d) FORFEITURE OF RIGHTS.—Any billing carrier or providing carrier who fails to comply with the requirements of this section or section 302 forfeits any right to collect from the customer the amount indicated by the customer under subsection (a)(2) of this section, and any late charges thereon.*

**SEC. 302. REGULATION OF REPORTS.**

*(a) ADVERSE REPORTS PROHIBITED.—After receiving a notice from a customer as provided in section 301, a vendor, billing carrier, providing carrier, or its agent may not directly or indirectly threaten to report to any person adversely on the customer's credit rating or credit standing because of the customer's failure to pay the amount indicated by the customer under section 301(a)(2), and such amount may not be reported as delinquent to any third party until the billing carrier or providing carrier has met the requirements of section 301 and has allowed the customer 20 days thereafter to make payment.*

*(b) REPORTS DURING CONTINUATION OF DISPUTE.—If a billing carrier or providing carrier receives a further written notice from a customer that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a vendor, billing carrier, or providing carrier or its agent may not report to any third party that the account of the customer is in arrears because the customer has failed to pay an amount indicated under section 301(a)(2), unless the vendor, billing carrier, providing carrier, or its agent also reports that the amount is in dispute and, at the same time, notifies the customer of the name and address of each party to whom the vendor, billing carrier, providing carrier, or its agent is reporting information concerning the arrearage.*

*(c) REPORTS OF RESOLUTIONS.—A vendor, billing carrier, providing carrier, or its agent shall report any subsequent resolution of any matter reported pursuant to subsection (b) to the parties to whom such matter was initially reported.*

**SEC. 303. PROMPT NOTIFICATION OF CREDIT.**

*With respect to any telephone-billed purchase where the vendor is a person other than the billing carrier, and where the vendor accepts or allows a forgiveness of a debit for the telephone-billed purchase, the vendor shall promptly transmit to the billing carrier a credit statement with respect thereto and the billing carrier shall credit the account of the customer for the amount of the purchase.*

**SEC. 304. RIGHTS OF CUSTOMERS.**

*A billing carrier or providing carrier who seeks to collect charges for a telephone-billed purchase from a customer for a vendor shall be subject to all claims (other than tort claims) and defenses arising out of any telephone-billed purchase in which the customer's telephone billing account is used as a method for collection, if the customer has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the purchase from the vendor or providing carrier. In no event shall the billing carrier be liable for any amount greater than the amount billed to the customer for the purchase.*

**SEC. 305. RELATION TO STATE LAWS.**

*(a) STATE LAW APPLICABLE UNLESS INCONSISTENT.—This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with, the laws of any State with respect to telephone billing practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Commission is authorized to determine whether such inconsistencies exist. The Commission may not determine that any State law is inconsistent with any provision of this chapter if the Commission determines that such law gives greater protection to the consumer.*

*(b) REGULATORY EXEMPTIONS.—The Commission shall by regulation exempt from the requirements of this title any class of telephone-billed purchase transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.*

**SEC. 306. ENFORCEMENT.**

*The Commission shall enforce the requirements of this title. For the purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All the functions and powers of the Federal Trade Commission*

*under that Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in that Act. The Commission may prescribe such regulations as are necessary or appropriate to implement the provisions of this title.*

***SEC. 307. STUDY OF NEED FOR ADDITIONAL REMEDIES.***

*(a) STUDY REQUIRED.—The Commission shall conduct an ongoing study of the need to develop and implement additional provisions to prevent evasions of the requirements of this title, through the use of alternative billing or other procedures, that undermine the rights provided to customers under this title. In examining such additional provisions, the Commission shall consider the extent to which such additional provisions may be implemented under the Commission's rulemaking authority pursuant to section 306.*

*(b) REPORTS REQUIRED.—The Commission shall submit to the Congress, not later than 18 months after the date of enactment of this Act, a report on the results (as of the end of such period) of the study required by subsection (a), and shall submit such additional reports to the Congress as are merited by later findings of such study. Such reports shall include such recommendations for legislation as the Commission considers necessary to carry out the purposes of this title.*

***SEC. 308. DEFINITIONS.***

*As used in this title—*

*(1) The term "providing carrier" means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint.*

*(2) The term "billing carrier" means a local exchange or interexchange common carrier that transmits to a customer a statement of charges for a telephone-billed purchase.*

*(3) The term "vendor" means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.*

*(4) The term "customer" means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase.*

*(5) The term "telephone-billed purchase" means any goods or services (including information services) acquired through the use of the telephone, any part of the charges for which are compiled and transmitted through the use of billing services provided by a local exchange or interexchange common carrier, except that such term does not include—*

*(A) local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines, by rule—*

*(i) is closely related to the provision of local exchange telephone services or interexchange telephone services; and*

*(ii) is subject to billing dispute resolution procedures required by Federal or State statute or regulation; or*

*(B) the purchase of goods or services which is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.*

*(6) A "billing error" consists of any of the following:*

*(A) A reflection on a billing statement from a billing carrier of a telephone-billed purchase which was not made by the customer or, if made, was not in the amount reflected on such statement.*

*(B) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.*

*(C) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.*

*(D) The billing carrier's failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.*

*(E) A computation error or similar error of an accounting nature of the billing carrier on a statement.*

*(F) Failure to transmit the billing statement to the last address of the customer which has been disclosed to the billing carrier, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.*

*(G) Any other error described in regulations prescribed by the Commission pursuant to section 553 of title 5, United States Code.*

*(7) The term "Commission" means the Federal Trade Commission.*

Amend the title so as to read: "An Act to protect the public interest and the future development of interstate pay-per-call technology by providing for the regulation and oversight of the applications and growth of the pay-per-call industry, and for other purposes.".

Mr. FORD. I move that the Senate concur in the House amendments, with the substitute amendment, which I now send to the desk on behalf of Senators INOUYE, MCCAIN, and HOLLINGS.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. INOUYE, Mr. MCCAIN, and Mr. HOLLINGS, proposes an amendment numbered 3411.

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

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

The amendment is as follows:

In lieu of the matter proposed to be inserted by the House amendment to the bill, insert the following:

**SECTION 1. SHORT TITLE, FINDINGS.**

(a) SHORT TITLE.—This Act may be cited as the "Telephone Disclosure and Dispute Resolution Act".

(b) FINDINGS.—The Congress finds the following:

(1) The use of pay-per-call services, most commonly through the use of 900 telephone numbers, has grown exponentially in the past few years into a national, billion-dollar industry as a result of recent technological innovations. Such services are convenient to consumers, cost-effective to vendors, and profitable to communications common carriers.

(2) Many pay-per-call businesses provide valuable information, increase consumer choices, and stimulate innovative and responsive services that benefit the public.

(3) The interstate nature of the pay-per-call industry means that its activities are beyond the reach of individual States and therefore requires Federal regulatory treatment to protect the public interest.

(4) The lack of nationally uniform regulatory guidelines has led to confusion for callers, subscribers, industry participants, and regulatory agencies as to the rights of callers and the oversight responsibilities of regulatory authorities, and has allowed some pay-per-call businesses to engage in practices that abuse the rights of consumers.

(5) Some interstate pay-per-call businesses have engaged in practices which are misleading to the consumer, harmful to the public interest, or contrary to accepted standards of business practices and thus cause harm to the many reputable businesses that are serving the public.

(6) Because the consumer most often incurs a financial obligation as soon as a pay-per-call transaction is completed, the accuracy and descriptiveness of vendor advertisements become crucial in avoiding consumer abuse. The obligation for accuracy should include price-per-call and duration-of-call information, odds disclosure for lotteries, games, and sweepstakes, and obligations for obtaining parental consent from callers under 18.

(7) The continued growth of the legitimate pay-per-call industry is dependent upon consumer confidence that unfair and deceptive behavior will be effectively curtailed and that consumers will have adequate rights of redress.

(8) Vendors of telephone-billed goods and services must also feel confident in their rights and obligations for resolving billing disputes if they are to use this new marketplace for the sale of products of more than nominal value.

**TITLE I—CARRIER OBLIGATIONS AND CONSUMER RIGHTS CONCERNING PAY-PER-CALL TRANSACTIONS**

**SEC. 101. AMENDMENT TO COMMUNICATIONS ACT OF 1934.**

Title II of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

**"SEC. 228. REGULATION OF CARRIER OFFERING OF PAY-PER-CALL SERVICES.**

"(a) PURPOSE.—It is the purpose of this section—

"(1) to put into effect a system of national regulation and review that will oversee interstate pay-per-call services;

"(2) to recognize the Commission's authority to prescribe regulations and enforcement procedures and conduct oversight to afford reasonable protection to consumers of pay-per-call services and to assure that violations of Federal law do not occur.

"(b) GENERAL AUTHORITY FOR REGULATIONS.—The Commission by regulation shall, within 270 days after the date of enactment of this section, establish a system for oversight and regulation of pay-per-call services in order to provide for the protection of consumers in accordance with this Act and other applicable Federal statutes and regulations. The Commission's final rules shall—

"(1) include measures that provide a consumer of pay-per-call services with adequate and clear descriptions of the rights of the caller;

"(2) define the obligations of common carriers with respect to the provision of pay-per-call services;

"(3) include requirements on such carriers to protect against abusive practices by providers of pay-per-call services;

"(4) identify procedures by which common carriers and providers of pay-per-call services may take affirmative steps to protect against nonpayment of legitimate charges; and

"(5) require that any service described in subparagraphs (A) and (B) of subsection (i)(1) be offered only through the use of certain telephone number prefixes and area codes.

"(c) COMMON CARRIER OBLIGATIONS.—Within 270 days after the date of enactment of

this section, the Commission shall, by regulation, establish the following requirements for common carriers:

"(1) CONTRACTUAL OBLIGATIONS TO COMPLY.—Any common carrier assigning to a provider of pay-per-call services a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) shall require by contract or tariff that such provider comply with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act and the regulations prescribed by the Federal Trade Commission pursuant to those titles.

"(2) INFORMATION AVAILABILITY.—A common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of a pay-per-call service shall make readily available on request to Federal and State agencies and other interested persons—

"(A) a list of the telephone numbers for each of the pay-per-call services it carries;

"(B) a short description of each such service;

"(C) a statement of the total cost or the cost per minute and any other fees for each such service;

"(D) a statement of the pay-per-call service's name, business address, and business telephone; and

"(E) such other information as the Commission considers necessary for the enforcement of this section and other applicable Federal statutes and regulations.

"(2) COMPLIANCE PROCEDURES.—A common carrier that by contract or tariff assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of pay-per-call services shall terminate, in accordance with procedures specified in such regulations, the offering of a pay-per-call service of a provider if the carrier knows or reasonably should know that such service is not provided in compliance with title II or III of the Telephone Disclosure and Dispute Resolution Act or the regulations prescribed by the Federal Trade Commission pursuant to such titles.

"(3) SUBSCRIBER DISCONNECTION PROHIBITED.—A common carrier shall not disconnect or interrupt a subscriber's local exchange telephone service or long distance telephone service because of nonpayment of charges for any pay-per-call service.

"(4) BLOCKING AND PRESUBSCRIPTION.—A common carrier that provides local exchange service shall—

"(A) offer telephone subscribers (where technically feasible) the option of blocking access from their telephone number to all, or to certain specific, prefixes or area codes used by pay-per-call services, which option—

"(i) shall be offered at no charge (I) to all subscribers for a period of 60 days after the issuance of the regulations under subsection (b), and (II) to any subscriber who subscribes to a new telephone number until 60 days after the time the new telephone number is effective; and

"(ii) shall otherwise be offered at a reasonable fee; and

"(B) offer telephone subscribers (where the Commission determines it is technically and economically feasible), in combination with the blocking option described under subparagraph (A), the option of presubscribing to or blocking only specific pay-per-call services for a reasonable one-time charge.

The regulations prescribed under subparagraph (A)(i) of this paragraph may permit the costs of such blocking to be recovered by contract or tariff, but such costs may not be recovered from local or long-distance ratepayers. Nothing in this subsection precludes a common carrier from filing its rates and regulations regarding blocking and presubscription in its interstate tariffs.

"(5) VERIFICATION OF CHARITABLE STATUS.—A common carrier that assigns by contract or tariff a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of pay-per-call services that the carrier knows or reasonably should know is engaged in soliciting charitable contributions shall obtain from such provider proof of the tax exempt status of any person or organization for which contributions are solicited.

"(6) BILLING FOR 800 CALLS.—A common carrier shall prohibit by tariff or contract the use of any 800 telephone number, or other telephone number advertised or widely understood to be toll free, in a manner that would result in—

"(A) the calling party being assessed, by virtue of completing the call, a charge for the call;

"(B) the calling party being connected to a pay-per-call service;

"(C) the calling party being charged for information conveyed during the call unless the calling party has a preexisting agreement to be charged for the information or discloses a credit or charge card number during the call; or

"(D) the calling party being called back collect for the provision of audio information services or simultaneous voice conservation services.

"(d) BILLING AND COLLECTION PRACTICES.—The regulations required by this section shall require that any common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of a pay-per-call service and that offers billing and collection services to such provider—

"(1) ensure that a subscriber is not billed—

"(A) for pay-per-call services that such carrier knows or reasonably should know was provided in violation of the regulations issued pursuant to title II of the Telephone Disclosure and Dispute Resolution Act; or

"(B) under such other circumstances as the Commission determines necessary in order to protect subscribers from abusive practices;

"(2) establish a local or a toll-free telephone number to answer questions and provide information on subscribers' rights and obligations with regard to their use of pay-per-call services and to provide to callers the name and mailing address of any provider of pay-per-call services offered by the common carrier;

"(3) within 60 days after the issuance of final regulations pursuant to subsection (b), provide, either directly or through contract with any local exchange carrier that provides billing or collection services to the common carrier, to all of such common carrier's telephone subscribers, to all new subscribers, and to all subscribers requesting service at a new location, a disclosure statement that sets forth all rights and obligations of the subscriber and the carrier with respect to the use and payment for pay-per-call services, including the right of a subscriber not to be billed and the applicable blocking option; and

"(4) in any billing to telephone subscribers that includes charges for any pay-per-call service—

"(A) display any charges for pay-per-call services in a part of the subscriber's bill that is identified as not being related to local and long distance telephone charges;

"(B) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call; and

"(C) identify the toll-free number established pursuant to paragraph (2).

"(e) LIABILITY.—

"(1) COMMON CARRIERS NOT LIABLE FOR TRANSMISSION OR BILLING.—No common carrier shall be liable for a criminal or civil sanction or penalty solely because the carrier provided transmission or billing and collection for a pay-per-call service unless the carrier knew or reasonably should have known that such service was provided in violation of a provision of, or regulation prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act or any other Federal law. This paragraph shall not prevent the Commission from imposing a sanction or penalty on a common carrier for a violation by that carrier of a regulation prescribed under this section.

"(2) CIVIL LIABILITY.—No cause of action may be brought in any court or administrative agency against any common carrier or any of its affiliates on account of any act of the carrier or affiliate to terminate any pay-per-call service in order to comply with the regulations prescribed under this section, title II or III of the Telephone Disclosure and Dispute Resolution Act, or any other Federal law unless the complainant demonstrates that the carrier or affiliate did not act in good faith.

"(f) SPECIAL PROVISIONS.—

"(1) CONSUMER REFUND REQUIREMENTS.—The regulations required by subsection (d) shall establish procedures, consistent with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act, to ensure that carriers and other parties providing billing and collection services with respect to pay-per-call services provide appropriate refunds to subscribers who have been billed for pay-per-call services pursuant to programs that have been found to have violated this section or such regulations, any provision of, or regulations prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act, or any other Federal law.

"(2) RECOVERY OF COSTS.—The regulations prescribed by the Commission under this section shall permit a common carrier to recover its cost of complying with such regulations from providers of pay-per-call services, but shall not permit such costs to be recovered from local or long distance ratepayers.

"(3) RECOMMENDATIONS ON DATA PAY-PER-CALL.—The Commission, within one year after the date of enactment of this section, shall submit to the Congress the Commission's recommendations with respect to the extension of regulations under this section to persons that provide, for a per-call charge, data services that are not pay-per-call services.

"(g) EFFECT ON OTHER LAW.—

"(1) NO PREEMPTION OF ELECTION LAW.—Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with Federal, State, and local election statutes and regulations.

"(2) CONSUMER PROTECTION LAWS.—Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with any Federal, State, or local statute or regulation relating to consumer protection or unfair trade.

"(3) GAMBLING LAWS.—Nothing in this section shall preclude any State from enforcing its statutes and regulations with regard to lotteries, wagering, betting, and other gambling activities.

"(4) STATE AUTHORITY.—Nothing in this section shall preclude any State from enacting and enforcing additional and complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures govern intrastate services and do not significantly impede the enforcement of this section or other Federal statutes.

"(5) ENFORCEMENT OF EXISTING REGULATIONS.—Nothing in this section shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of this section in fulfilling the requirements of this section to the extent that such regulations are consistent with the provisions of this section.

"(h) EFFECT ON DIAL-A-PORN PROHIBITIONS.—Nothing in this section shall affect the provisions of section 223 of this Act.

"(i) DEFINITION OF PAY-PER-CALL SERVICES.—For purposes of this section—

"(1) The term 'pay-per-call services' means any service—

"(A) in which any person provides or purports to provide—

"(i) audio information or audio entertainment produced or packaged by such person;

"(ii) access to simultaneous voice conversation services; or

"(iii) any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

"(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

"(C) which is accessed through use of a 900 telephone number or other prefix or area code designated by the Commission in accordance with subsection (b)(5).

"(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.".

**SEC. 102. TECHNICAL AMENDMENT.**

Section 3(c) of the Telephone Consumer Protection Act of 1991 is amended by striking "section 228" and inserting "section 227".

## TITLE II—REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH PAY-PER-CALL SERVICES

**SEC. 201. FEDERAL TRADE COMMISSION REGULATIONS.**

(a) IN GENERAL.—

(1) ADVERTISING REGULATIONS.—The Commission shall prescribe rules in accordance with this subsection to prohibit unfair and deceptive acts and practices in any advertisement for pay-per-call services. Such rules shall require that the person offering such pay-per-call services—

(A) clearly and conspicuously disclose in any advertising the cost of the use of such telephone number, including the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred;

(B) in the case of an advertisement which offers a prize or award or a service or product at no cost or for a reduced cost, clearly and conspicuously disclose the odds of being able to receive such prize, award, service, or product at no cost or reduced cost, or, if such odds are not calculable in advance, disclose the factors determining such odds;

(C) in the case of an advertisement that promotes a service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, include at the beginning of such advertisement a clear disclosure that the service is not authorized, endorsed, or approved by any Federal agency;

(D) shall not direct such advertisement at children under the age of 12, unless such service is a bona fide educational service;

(E) in the case of advertising directed primarily to individuals under the age of 18, clearly and conspicuously state in such advertising that such individual must have the consent of such individual's parent or legal guardian for the use of such services;

(F) be prohibited from using advertisements that emit electronic tones which can automatically dial a pay-per-call telephone number;

(G) ensure that, whenever the number to be called is shown in television and print media advertisements, the charges for the call are clear and conspicuous and (when shown in television advertisements) displayed for the same duration as that number is displayed;

(H) in delivering any telephone message soliciting calls to a pay-per-call service, specify clearly, and at no less than the audible volume of the solicitation, the total cost and the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred; and

(I) not advertise an 800 telephone number, or any other telephone number advertised or widely understood to be toll free, from which callers are connected to an access number for a pay-per-call service.

(2) PAY-PER-CALL SERVICE STANDARDS.—The Commission shall prescribe rules to require that each provider of pay-per-call services—

(A) include in each pay-per-call message an introductory disclosure message that—

(i) describes the service being provided;

(ii) specifies clearly and at a reasonably understandable volume the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred;

(iii) informs the caller that charges for the call begin at the end of the introductory message;

(iv) informs the caller that parental consent is required for calls made by children; and

(v) in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on any Federal program, a statement that clearly states that the service is not authorized, endorsed, or approved by any Federal agency;

(B) enable the caller to hang up at or before the end of the introductory message without incurring any charge whatsoever;

(C) not direct such services at children under the age of 12, unless such service is a bona fide educational service;

(D) stop the assessment of time-based charges immediately upon disconnection by the caller;

(E) disable any bypass mechanism which allows frequent callers to avoid listening to the disclosure message described in subparagraph (A) after the institution of any price increase and for a period of time sufficient to give such frequent callers adequate and sufficient notice of the price change;

(F) be prohibited from providing pay-per-call services through an 800 number or other telephone number advertised or widely understood to be toll free;

(G) be prohibited from billing consumers in excess of the amounts described in the introductory message and from billing for services provided in violation of the rules prescribed by the Commission pursuant to this section;

(H) ensure that any billing statement for such provider's charges shall—

(i) display any charges for pay-per-call services in a part of the consumer's bill that is identified as not being related to local and long distance telephone charges; and

(ii) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call;

(I) be liable for refunds to consumers who have been billed for pay-per-call services pursuant to programs that have been found to have violated the regulations prescribed pursuant to this section or title III of this Act or any other Federal law; and

(J) comply with such additional standards as the Commission may prescribe to prevent abusive practices.

(3) ACCESS TO INFORMATION.—The Commission shall by rule require a common carrier that provides telephone services to a provider of pay-per-call services to make available to the Commission any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

(4) EVASIONS.—The rules issued by the Commission under this section shall include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this title, including through the use of alternative billing or other procedures.

(5) EXEMPTIONS.—The regulations prescribed by the Commission pursuant to paragraph (2)(A) may exempt from the requirements of such paragraph—

(A) calls from frequent callers or regular subscribers using a bypass mechanism to avoid listening to the disclosure message required by such regulations, subject to the requirements of paragraph (2)(E); or

(B) pay-per-call services provided at nominal charges, as defined by the Commission in such regulations.

(6) CONSIDERATION OF OTHER RULES REQUIRED.—In conducting a proceeding under this section, the Commission shall consider requiring, by rule or regulation, that providers of pay-per-call services—

(A) automatically disconnect a call after one full cycle of the program; and

(B) include a beep tone or other appropriate and clear signal during a live interactive group program so that callers will be alerted to the passage of time.

(7) SPECIAL RULE FOR INFREQUENT PUBLICATIONS.—The rules prescribed by the Commission under subparagraphs (A) and (G) of paragraph (1) may permit, in the case of publications that are widely distributed, that are printed annually or less frequently, and that have an established policy of not publishing specific prices, advertising that in

lieu of the cost disclosures required by such subparagraphs, clearly and conspicuously disclose that use of the telephone number may result in a substantial charge.

(8) TREATMENT OF RULES.—A rule issued under this subsection shall be treated as a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) RULEMAKING.—The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule respecting unfair or deceptive acts or practices under section 5 of the Federal Trade Commission Act (15 U.S.C. 45). Notwithstanding section 5(a)(2) of such Act (15 U.S.C. 45(a)(2)), communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this title.

**SEC. 202. ACTIONS BY STATES.**

(a) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice which violates any rule of the Commission under section 201(a), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such pattern or practice, to enforce compliance with such rule of the Commission, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) VENUE.—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(d) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this section, nothing in this Act shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(f) LIMITATION.—Whenever the Commission has instituted a civil action for violation of any rule or regulation under this Act, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(g) ACTIONS BY OTHER STATE OFFICIALS.—

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice which violates a rule of the Commission under section 201(a).

**SEC. 203. ADMINISTRATION AND APPLICABILITY OF TITLE.**

(a) IN GENERAL.—Except as otherwise provided in section 202, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act, except for purposes of this title.

(b) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 201 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this title.

**SEC. 204. DEFINITIONS.**

For purposes of this title:

(1) The term "pay-per-call services" has the meaning provided in section 228 of the Communications Act of 1934.

(2) The term "attorney general" means the chief legal officer of a State.

(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term "Commission" means the Federal Trade Commission.

## TITLE III—BILLING AND COLLECTION

**SEC. 301. REGULATIONS.**

(a) IN GENERAL.—

(1) RULES REQUIRED.—The Commission shall, in accordance with the requirements of this section, prescribe rules establishing procedures for the correction of billing errors with respect to telephone-billed purchases. The rules prescribed by the Commission shall also include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this title.

(2) SUBSTANTIAL SIMILARITY TO CREDIT BILLING.—The Commission shall promulgate rules under this section that impose requirements that are substantially similar to the requirements imposed, with respect to the resolution of credit disputes, under the Truth in Lending and Fair Credit Billing Acts (15 U.S.C. 1601 et seq.).

(3) TREATMENT OF RULE.—A rule issued under paragraph (1) shall be treated as a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57(a)(1)(B)).

(b) RULEMAKING SCHEDULE AND PROCEDURE.—The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) regarding unfair or deceptive acts or practices. Notwithstanding section 5(a)(2) of such Act (15 U.S.C. 45(a)(2)), communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this title.

(d) CORRECTION OF BILLING ERRORS AND CORRECTION OF CREDIT REPORTS.—In prescribing rules under this section, the Commission shall consider, with respect to telephone-billed purchases, the following:

(1) The initiation of a billing review by a customer.

(2) Responses by billing entities and providing carriers to the initiation of a billing review.

(3) Investigations concerning delivery of telephone-billed purchases.

(4) Limitations upon providing carrier responsibilities, including limitations on a carrier's responsibility to verify delivery of audio information or entertainment.

(5) Requirements on actions by billing entities to set aside charges from a customer's billing statement.

(6) Limitations on collection actions by billing entities and vendors.

(7) The regulation of credit reports on billing disputes.

(8) The prompt notification of credit to an account.

(9) Rights of customers and telephone common carriers regarding claims and defenses.

(10) The extent to which the regulations should diverge from requirements under the Truth in Lending and Fair Credit Billing Acts in order to protect customers, and in order to be cost effective to billing entities.

**SEC. 302. RELATION TO STATE LAWS.**

(a) STATE LAW APPLICABLE UNLESS INCONSISTENT.—This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with, the laws of any State with respect to telephone billing practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Commission is authorized to determine whether such inconsistencies exist. The Commission may not determine that any State law is inconsistent with any provision of this chapter if the Commission determines that such law gives greater protection to the consumer.

(b) REGULATORY EXEMPTIONS.—The Commission shall by regulation exempt from the requirements of this title any class of telephone-billed purchase transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

**SEC. 303. ENFORCEMENT.**

The Commission shall enforce the requirements of this title. For the purpose of the exercise by the Commission of its functions

and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All the functions and powers of the Commission under that Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in that Act. The Commission may prescribe such regulations as are necessary or appropriate to implement the provisions of this title.

**SEC. 304. DEFINITIONS.**

As used in this title—

(1) The term "telephone-billed purchase" means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include—

"(A) a purchase by a caller pursuant to a preexisting agreement with the vendor;

(B) local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines, by rule—

(i) is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(ii) is subject to billing dispute resolution procedures required by Federal or State statute or regulation; or

(C) the purchase of goods or services which is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(2) A "billing error" consists of any of the following:

(A) A reflection on a billing statement for a telephone-billed purchase which was not made by the customer or, if made, was not in the amount reflected on such statement.

(B) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(C) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(D) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(E) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(F) A computation error or similar error of an accounting nature on a statement.

(G) Failure to transmit the billing statement to the last known address of the customer, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(H) Any other error described in regulations prescribed by the Commission pursuant to section 553 of title 5, United States Code.

(3) The term "Commission" means the Federal Trade Commission.

(4) The term "providing carrier" means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint.

(5) The term "vendor" means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(6) The term "customer" means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase.

Mr. INOUYE. Mr. President, I rise to offer a substitute amendment to S. 1579. The substitute amendment, like S. 1579 as passed by the Senate, is designed to address problems that have arisen due to the use of pay-per-call services, better known as 900 numbers. The substitute before us today resolves the differences between the measures approved by the House and Senate. I am especially grateful to the coauthor of this measure, Senator MCCAIN, for his efforts on this bill. I wish to thank the members of the House Commerce Committee and the Senate Commerce Committee for their work on this legislation. I also want to thank the Federal Communications Commission, the Federal Trade Commission, the telephone companies, and the 900 services industry, all of whom have worked with us to reach this compromise.

Let me take a few minutes to describe the industry and the problems that this substitute is intended to address. Pay-per-call services give callers access to a variety of information services through the telephone network. Customers can obtain access to this information by calling a 10 digit number whose prefix is typically 900 or 700. When consumers call one of these numbers, they are then assessed a charge in addition to the regular long distance charge. Generally, callers are charged either a flat fee per call, or by the minute. The charge appears on the caller's telephone bill and can be as high as $25 per call or $10 per minute.

These numbers are used to: provide information like stock quotes, and sports data; conduct polls, call one number for yes and another number for no; provide legal and other advice; provide mass announcements which play prerecorded messages; promote sweepstakes; sell goods; raise funds for charitable and political organizations; provide dating services and group access bridging, gab lines or party lines.

Most 900 service providers enter into a contract with a telephone company, most often long distance companies. The telephone company makes telephone lines available to the information service provider and also handles the billing and collection. The 900 service provider offers the information, such as stock quotes. The service provider then advertises the service and the 900 number. When a consumer calls the stock quote 900 number, he or she is then billed directly on his or her telephone bill. The telephone company collects the charge for the consumer, takes out its share to cover the cost of providing the lines and the billing service, and passes the remainder of the charge to the service provider. It is important to note that the telephone company does not provide the information; the telephone company provides the telephone lines and billing but generally does not provide the information content.

The 900 pay-per-call business, which began in the early 1980's, has developed into a $759 million industry and is projected to grow into a $1.6 billion industry this year. Testimony presented at a Communications Subcommittee hearing on this issue estimated that there are over 14,000 different pay-per-call programs available.

In recent years, the increased usage of 900 numbers has resulted in many consumer complaints. The most frequent complaints concern false or deceptive disclosure of rates and products. Advertisements often fail to disclose the cost of calls to 900 numbers, or the cost of the call is printed in small, illegible mice print. Some ads only state the cost of the call once, or in slurred, last minute voice-overs, but repeat the 900 numbers frequently throughout the advertisement.

Some of these services target children who do not appreciate the costs of dialing these numbers. Given the fact that children, particularly children under the age of 12, are impressionable and unable to understand and make fully informed decisions, we believed that it was important to adopt provisions to protect children. Especially dangerous are those that run TV and radio advertisements telling children to hold the phone up to the TV or radio. The tones associated with each telephone number are then broadcast over the TV or radio so that the call is dialed automatically. As a result, children do not even have to know how to dial to be connected to one of these services.

Finally, this problem is exacerbated by the fact that these charges are collected through the monthly telephone bill. This not only lends legitimacy to the charge, because it looks like the telephone company is responsible for the charge, but the consumer believes that he or she must pay the charge or the telephone company will disconnect his or her service.

These problems have not gone unnoticed. Some telephone companies have voluntarily begun to institute measures to provide some protections to consumers. For example, GTE Hawaiian Telephone Co. has made call blocking of 900 and 700 numbers available to all of its customers. The blocking service is free the first time it is requested by a customer. If the customer cancels the service and then reinstates it, there will be a charge. However, this only addresses part of the problem and this service is not universally available.

To address these problems the substitute expands the jurisdiction of the Federal Communications Commission and the Federal Trade Commission to address the problems raised by the explosive growth of the pay-per-call in-

dustry. The major provisions of this substitute are essentially the same as in the bill approved by the Senate. This bill will: Require that 900 services provide a preamble stating the cost of the call and all per-call charges, describing the information, product or service to be provided, and giving the caller the option to hang up after the preamble without being charged. Ban 900 services aimed at children under the age of 12; Require the phone companies to give their subscribers the option to block all calls to 900 numbers from their phone; prohibit local telephone companies from disconnecting subscribers for failure to pay interstate 900 number charges; prohibit advertisements that emit tones that automatically dial a telephone number when the phone is held up to the radio or television; require full and clear disclosure of the rates of these calls in all advertisements; require the telephone company who contracts with 900 service providers to make available on request the information concerning the 900 service providers it contracts with, including the name and address of the 900 service provider, the costs of the service and any other information the FCC deems appropriate; give the FCC, FTC, and the States the authority to enforce the provisions of this legislation.

The two most significant differences between the Senate bill as originally passed and the substitute before us today are: That the provision concerning the use of 800 numbers has been revised to clarify that consumers that call 800 numbers—or toll free numbers—cannot be charged for calls to such numbers; and that the FTC must establish dispute resolution procedures similar to those used for credit card customers for anyone who bills and collects for 900 service providers.

The provision involving 800 numbers was revised because it has come to our attention that some pay-per-call services urge people to call an 800 number, which most people assume to be free calls, when in fact the caller is subsequently charged for the call. This provision was revised to ensure that this practice is stopped. This provision does not affect the ability of catalog companies to give consumers an 800 number to call if the consumers are paying with a credit card or similar arrangement.

Title III, the dispute resolution provision, was in the House measure. However, the House bill specified the rules that had to be adopted by the FTC in great detail. Because of the concerns raised by the telephone industry and the 900 service providers, we amended this title to provide that the FTC must conduct a rulemaking to adopt rules substantially similar to, but not identical, to those contained in the Truth in Lending and Fair Credit Billings Acts which provide protections for consumers who dispute credit card bills.

Title III contains a number of issues that the FTC must consider in this rulemaking: it no longer specifies in detail what the content of those rules should be. In fact, it requires the FTC to consider if any of the provisions of the Truth in Lending and Fair Bills Act should not be applied to pay-per-call service transactions. In other words, the FTC is not expected to simply modify all the provisions of the Truth in Lending and Fair Credit Billings Acts to have all of those provisions apply to the 900 services industry and carriers and others who bill for those services.

On the contrary, I expect that the FTC will use the Truth in Lending and Fair Credit Billings Acts as models recognizing that while some provisions or concepts addressed in those acts may well be applicable or needed in the pay-per-call area, there may also be provisions or concerns that are not appropriate for pay-per-call transactions. It is also our intention that the FTC weigh the costs and burdens on the subscribers as well as the entities doing the billing as part of its rulemaking. For example, the FTC could determine, after notice and comment, that there is no need for any rules to apply to disputes over nominal charges, as such rules may cost the billing entities and the consumer more than the cost of the call in dispute to comply with the provisions of this title. While the FTC is given some flexibility in implementing these provisions, I want to reiterate that consumers should be given protection against billing errors. That is the purpose of this provision.

For the record, there are a few issues that I want to clarify. The provisions of this substitute are not intended to prevent telephone companies or 900 service providers from taking steps they deem appropriate to protect themselves against consumers who abuse the provisions of this Act. For example, should a consumer make 900 calls over a period of many months and repeatedly refuse to pay the charges for the calls and also fail to take advantage of the option to block calls from that number, then the telephone company or the 900 service provider should be able to block that consumer's ability to call 900 services or take such other legal action as may be appropriate.

In addition, as set out in the committee report accompanying S. 1579, the provisions of this bill do not apply to services where consumers pay for products, services or information with a credit card or charge card. There is no need to apply the provisions of this bill to credit card purchases made over the telephone because the consumer who chooses to pay with a credit card is not automatically billed merely by placing or completing the call. Similarly, the substitute is not intended to cover services offered by telephone companies such as conference calling. The substitute also does not cover data services. The FCC is required to conduct a study on this issue and make recommendations to Congress concerning whether any data services, including facsimile services, should be subject to regulation.

The provision of this legislation that concerns State authority—section 228(g)(4)—does not preclude any State from enacting complementary oversight and regulatory procedures with regard to 900 services. However, such regulatory procedures as the States may devise cannot thwart or impede other Federal policy objectives of the FCC, the enforcement of this section, or any other Federal statutes.

I need to make one other point clear: I do not intend that telephone companies should at any time monitor 900 service providers' calls to ensure compliance with this provision. Telephone companies should remain common carriers and should not invade the privacy of callers by monitoring calls, whether they provide transmission or billing and collection services. The substitute provides that common carriers shall not assign telephone lines to 900 service providers unless they agree to comply with the terms of this act. In addition, common carriers are required to terminate service to 900 providers only when the common carrier knows, or reasonably believes, that the 900 service provider is not in compliance with or has violated this act.

I also want to note that nothing in titles II and III of the substitute are intended to give the FTC the authority to adopt rules and regulations on the basis that the activities are unfair. In addition, in promulgating its rules concerning advertisements that offer a prize or award, the FTC's rules must require that the advertisement state the odds of receiving the prize or award. The requirement to disclose odds is not intended to apply to discounts that are intended to be received by every caller during a specified period.

In closing, I believe that this legislation is very important, and I urge all of my colleagues to support this effort. This substitute has virtually no opposition. It ensures that consumers are protected against abuses by pay-per-call service providers while permitting legitimate service providers to expand their business opportunities.

The ACTING PRESIDENT pro tempore. Are there additional amendments?

AMENDMENT NOS. 3412 THROUGH 3415

Mr. FORD. I now ask unanimous consent it be now in order to send to the desk en bloc four amendments to the substitute, and I ask unanimous consent the amendments be agreed to en bloc; that the motion to reconsider be laid upon the table; that the substitute amendment, as amended, then be

agreed to; and the motion to reconsider the adoption of this amendment and previous motion be laid upon the table.

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

Mr. FORD. Mr. President, I send these amendments in behalf of Senator BRYAN, Senator PRESSLER, Senator LEAHY, and Senator GORTON; I further ask unanimous consent that various statements appear in the RECORD at the appropriate place.

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

The amendments (Nos. 3412 through 3415) considered and agreed to en bloc, are as follows:

(Purpose: To provide an exemption for chapter 61 of title 18, United States Code, to permit certain radio and television advertising)

AMENDMENT NO. 3412

At the end of the proposed amendment in the nature of a substitute, add the following new title:

TITLE IV—MISCELLANEOUS

**SEC. 401. EXEMPTION FROM CHAPTER 61 OF TITLE 18, UNITED STATES CODE.**

Section 1307(a)(2) of title 18, United States Code, is amended by striking "that is authorized" and all that follows and inserting "that is conducted in a State in which it is authorized by statute to be conducted throughout the State.".

Mr. BRYAN. Mr. President, I am amending S. 1579, the 900 Service Consumer Protection Act of 1991 to permit gaming advertising in Nevada.

In 1934, Congress enacted legislation prohibiting the broadcasting of lottery information. Since that time, the prohibition has been lifted for Governments, Indian tribes, nonprofit organizations, and certain for-profit businesses including horse and dog tracks. It is time to remove this archaic provision for for-profit casino advertising.

This amendment takes the first step in fixing this inequity by permitting casinos to advertise in States where gaming is authorized statewide by statute. Nevada has such a statute, and the television and radio stations in Nevada should be permitted to carry casino advertising upon the enactment of this legislation.

I believe former Federal Communications Commission Chairman Dennis Patrick stated it best when he said that the current prohibition "unnecessarily restricts the free flow of information concerning legal activities." Afterall, 48 States allow some form of legal gaming.

I believe this is a good first step toward totally lifting this outdated, inequitable restriction. I appreciate the support of my colleagues.

AMENDMENT NO. 3413

(Purpose: To provide for the protection of cellular telecommunications)

**SEC. . INTERCEPTION OF CELLULAR TELECOMMUNICATIONS.**

(a) AMENDMENT.—Section 302 of the Communications Act of 1934 (47 U.S.C. 302) is amended by adding the following new subsection:

"(d)(1) INTERCEPTION OF CELLULAR TELECOMMUNICATIONS. Within 180 days after the date of enactment of the Telephone Disclosure and Dispute Resolution Act, the Commission shall prescribe and make effective regulations denying equipment authorization (under part 15 of title 47, Code of Federal Regulations, or any other part of that title) for any scanning receiver that is capable of—

"(A) receiving transmissions in the frequencies allocated to the domestic cellular radio telecommunications service,

"(B) readily being altered by the user to receive transmissions in such frequencies, or

"(C) being equipped with decoders that convert digital cellular transmissions to analog voice audio.

"(2) MANUFACTURE OR IMPORT OF NONCOMPLYING EQUIPMENT.—Beginning one year after the effective date of the regulations adopted pursuant to subsection (a), no receiver having the capabilities described in subparagraph (A), (B), or (C) of paragraph (1), as such capabilities are defined in such regulations, shall be manufactured in the United States or imported for use in the United States."

(b) REPORT TO CONGRESS.—The Commission shall report to Congress no later than June 1, 1993, on available security features for both analog and digital radio signals. This report shall include a study of security technologies currently available as well as those in development. The study shall assess the capabilities of such technologies, level of security afforded, and cost, with widespread deployment of such technologies.

(c) EFFECT ON OTHERS LAWS.—This section shall not effect Section 2512 (2) of title 18, United States Code."

(d) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of the Telephone Disclosure and Dispute Resolution Act.

AMENDMENT TO TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT

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

Mr. President, the amendment I am introducing today will stop the manufacturing of radio scanners designed to monitor cellular calls. The amendment makes it illegal to manufacture or import radio scanners that intercept cellular frequencies by denying FCC part 15 equipment authorization to scanners that do not comply with the law. Currently, equipment approval is required for all radio scanners before they are sold in the United States; however, part 15 rules do not cover the interception of cellular frequencies.

My amendment requires that the Federal Communications Commission will, within 180 days after enactment of the underlying legislation, develop rules to deny part 15 equipment authorization for any radio scanner that is capable of receiving cellular frequencies, can be easily altered to receive cellular frequencies, or can be equipped with decoders that can convert digital cellular transmissions to analog voice audio. One year after these rules are established it will be illegal to manufacture or import any radio scanner that has those capabilities.

Mr. President, my amendment is similar to section 9 of the FCC reauthorization bill (H.R. 1674) that passed the House of Representatives last year. This amendment is not intended to ban scanners that are not capable of receiving cellular transmissions. The Commission should take this into account when considering its rules to carry out this amendment.

This bill is not intended to deny equipment authorization to or ban the manufacture of all scanners. The purpose of the amendment is to require manufacturers of scanners to design their equipment so that the equipment does not allow users to listen to cellular calls. I expect the FCC, in adopting regulations to enforce this provision, to be conscious of the fact that some uses of scanners are perfectly legal. My intention in offering this amendment is simply to increase the privacy protections of cellular telephone users without causing harm to legitimate users of scanners.

Mr. President, I urge the adoption of my amendment and ask unanimous consent to insert the legislative history accompanying the House passed provision, which sets forth the intent of my amendment.

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

SECTION 9. INTERCEPTION OF CELLULAR TELECOMMUNICATIONS

The Committee finds that scanning receivers continue to be manufactured with the capability of monitoring the frequencies allocated to cellular telephone service. Such equipment enables users to violate the provisions of the 1986 Electronic Communications Privacy Act (ECPA), which extends Federal privacy protections to cellular telephone users. Equally disturbing, even equipment that blocks out cellular calls can often be easily modified to receive cellular transmissions, often by cutting a single wire. Moreover, the Committee has received numerous examples of "how-to" manuals for modifying scanners so that they can be used to eavesdrop on cellular calls. The Committee has obtained copies of advertisements for scanners that do not block out the cellular frequencies or that pitch easy restoration of such frequencies. This amendment is intended to address these ongoing problems, and bring the Commission's certification process in line with ECPA.

Section 8 of the bill amends the Communications Act of 1934 by adding a new subsection (d) to section 302. Subsection 302(d) requires the Commission to promulgate regulations denying equipment authorization under Part 15 (or any other part) of the Commission's rules for any scanning receiver that can (1) receive transmissions in the cellular frequencies; (2) readily be altered to receive such transmissions; or (3) be equipped with a decoder that can convert cellular transmissions to analog voice audio. The bar on scanners equipped with digital-to-analog converters that work in the cellular bands is intended to ensure that the additional privacy protection afforded by the conversion of cellular systems from analog to digital

transmission is not undermined. Any question of whether such a receiver complies with the regulations shall be determined by the Commission.

Subsection 302(d)(2) prohibits the manufacture or importation of scanning receivers with the prohibited capabilities beginning one year after the effective date of the regulations required under subsection 302(d)(1). Subsection 302(d)(2) does not bar the sale or use of non-complying scanning receivers, since the Committee expects that the stock of new non-complying scanners available for sale or use will diminish rapidly once the regulations are adopted. The Committee takes note that this subsection contrasts with subsection 302(a) and (b), which do bar the sale or use of certain radio frequency devices. As such, the section 510 enforcement powers, which apply to violations of section 302, would not be applicable to scanners other than those manufactured or imported subsequent to adoption of regulations required by this section. Subsection 302(b) applies to scanning receivers only to the extent that they fail to comply with the Commission's rules governing their interference potential.

For a number of years, several manufacturers have blocked voluntarily the reception of cellular frequencies in their scanning receivers. Additionally, some have refused to repair modified equipment that is returned for service, or have restored such equipment to its original configuration. However, methods of converting equipment have been devised and distributed by third parties. The Committee believes that as long as the equipment complies with the Commission's regulations adopted pursuant to subsection 302(d)(1), there shall be no liability under this section for manufacturers due to the actions of third parties.

COMPUTER ABUSE AMENDMENTS

Mr. LEAHY. Mr. President, I am also pleased to join with Senators BROWN and KOHL in offering the Computer Abuse Amendments Act of 1992 as an amendment to S. 1579.

It is important to update our laws to stay abreast of rapid changes in computer technology and computer abuse techniques. In the 101st Congress, the Senate responded to the threat posed by new forms of computer abuse—destructive viruses, worms, and Trojan horses—by unanimously passing S. 2476. That bill was not considered by the House of Representatives in the last Congress, so I joined with Senators BROWN and KOHL in reintroducing the bill, S. 1322, in this Congress. S. 1322 passed the Senate as an amendment to S. 1241, the Violent Crime Control Act. The provision was altered slightly in the crime conference with the House in November 1991. It passed the House in this modified form as part of the conference report to H.R. 3371, the Violent Crime Control Act.

The Computer Abuse Amendments Act of 1992 is the product of over 2 years of work by the Subcommittee on Technology and the Law. In the 101st Congress, I chaired two hearings on computer abuse. This proposal has been drafted and revised on the basis of careful review of issues raised in the subcommittee's hearings, and with the benefit of consultation with computer experts. The bill has been broadly supported by the computer industry and by computer users. At the subcommittee's hearing on July 31, 1990, Deputy Assistant Attorney General Mark Richard testified that this bill "* * * provides a useful improvement over and clarification of, the scope of existing law."

The free flow of information is vital to our competitiveness as a nation. Innovations in computer technology create new opportunities for improving the flow of information and advancing America's economic future, but they also create new opportunities for abuse by those who seek to undermine our computer systems. The maintenance of the security and integrity of computer systems has become increasingly critical to interstate and foreign commerce, communications, education, technology, and national security.

The National Research Council [NRC] published a major study, "Computers at Risk: Safe Computing in the Information Age." The study finds that we risk computer breaches that could cause economic disaster and even threaten human life. According to the NRC study, "Tomorrow's terrorist may be able to do more damage with a keyboard than with a bomb." The NRC study underscores the need for immediate action to protect our computer systems.

This legislation deals with new technologies and newly discovered forms of computer abuse. An alarming number of new techniques—computer viruses, worms, and Trojan horses—can be used to enter computers secretly. Their simple names belie their insidious nature. Thousands of virus attacks have been reported and hundreds of different viruses have been identified. Computer breaches can cause economic disaster and even threaten human life.

Hidden programs can destroy or alter data. For example, a Michigan hospital reported that its patient information had been scrambled or altered by a virus that came with a vendor's image display system. Hidden programs can also hopelessly clog computer networks, as we saw with the Internet worm of November 1988.

Other computer incidents, using the same kinds of programs, have been inadvertent. For example, in December 1989, the Vermont State computer network froze. It was impossible to sign on to the system. Rather than a virus or sabotage, it turned out to be a security device in the form of a time bomb, built into the system's hardware to deter outside access. The manufacturer of the software had failed to inform the State that a special code would be triggered after a given date, locking out access through normal channels. It was a nuisance to be sure, but certainly not criminal.

The subcommittee held a hearing on May 15, 1989, to explore the threat to computers and the information stored in them posed by new forms of computer abuse. We heard testimony from FBI Director William Sessions, who stressed the seriousness of the threat posed by computer viruses and other techniques.

The subcommittee also heard testimony from Dr. Clifford Stoll, an astrophysicist at the Harvard-Smithsonian Center for Astrophysics. He testified that many researchers throughout the United States were prevented from using their computers for 2 days as a result of a worm that was introduced onto the Internet computer network in November 1988. While managing the computer system at the Lawrence Berkeley Laboratory, Dr. Stoll caught a West German spy using computer networks to try to gain access to military information.

As a prosecutor for more than 8 years in Vermont, I learned that the best deterrent to crime was the threat of swift apprehension, conviction, and punishment. Whether the offense is murder, drunk driving, or computer crime, we need clear laws to bring offenders to justice. Trespassing, breaking and entering, vandalism, and stealing are against the law. They have always been against the law because they are contrary to the values and principles that society holds dear. That has not changed and will not change.

In crafting this legislation we have been mindful of the need to balance clear punishment for destructive conduct with the need to encourage legitimate experimentation and the free flow of information. As several witnesses testified in the subcommittee's hearings, the open exchange of information is crucial to scientific development and the growth of new industries. We cannot unduly inhibit that inquisitive 13-year-old who, if left to experiment today, may tomorrow develop the telecommunications or computer technology to lead the United States into the 21st century. He or she represents our future and our best hope to remain a technologically competitive nation.

Mr. President, this amendment clarifies the intent standards, the actions prohibited, and the jurisdiction of the current Computer Fraud and Abuse Act [CFAA], section 1030 of title 18, United States Code. Under the current statute, prosecution of computer abuse crimes must be predicated upon the violator's gaining "unauthorized access" to the affected "Federal interest computers." However, computer abusers have developed an arsenal of new techniques which result in the replication and transmission of destructive programs or codes that inflict damage upon remote computers to which the violator never gained access in the commonly understood sense of that term. The new subsection of the CFAA created by this bill places the focus on harmful intent and resultant harm, rather than on the technical concept of computer access.

The amendment makes it a felony intentionally to cause harm to a computer or the information stored in it by transmitting a computer program or code—including destructive computer viruses—without the knowledge and authorization of the person responsible for the computer attacked. This is broader than existing law, which prohibits "intentionally access[ing] a Federal interest computer without authorization," if that causes damage.

This legislation recognizes that some computer incidents are not malicious—or even intentional—and they are treated differently. The amendment creates a parallel misdemeanor for knowingly transmitting a computer program with reckless disregard of a substantial and unjustifiable risk that the transmission will cause harm. The standard for recklessness is taken from the Model Penal Code. This provision will give prosecutors and juries greater flexibility to get convictions for destructive conduct.

The amendment creates a new, civil remedy for those harmed by violations of the CFAA. This would boost the deterrence of the statute by allowing aggrieved individuals to obtain relief.

The legislation expands the jurisdiction of the CFAA. It would cover all computers involved in interstate commerce, not just Federal interest computers, as the current law does. This is appropriate because of the interstate nature of computer networks. American society is increasingly dependent on computer networks that span State and national boundaries. The potential for abuse of computer networks knows no boundaries. The act addresses this threat by expanding the jurisdiction of the CFAA to the full extent of the powers of Congress under the commerce clause of the U.S. Constitution, article I, section 8.

I want to thank Senators BROWN and KOHL for joining me in offering this amendment. I urge my colleagues to join us in supporting this measure. Enactment of this sound and balanced legislation would help ensure that our laws keep pace with new forms of computer abuse.

Mr. President, I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS

SECTION (a)

This title, when enacted, may be cited as the "Computer Abuse Amendments Act of 1992."

SECTION (b)

Subsection (b)(1) would amend subsection (a)(5) of the Computer Fraud and Abuse Act of 1986, 18 U.S.C. 1030. It clarifies the intent standards, the actions prohibited and the jurisdiction of the statute. The amendments would cover all computers involved in interstate commerce, not just "Federal interest computers," as the current law does. This is appropriate because of the interstate nature of computer networks and the ease with which computer abuse, such as destructive computer viruses or worms, can spread across State lines. The legislation retains the jurisdictional threshold of $1,000 worth of damage, except for tampering with medical records, where no dollar amount is required.

The new statutory subsection (a)(5)(A)(i) would prohibit knowingly transmitting or causing to be transmitted a program or computer code, if the perpetrator intends that the program will damage or prevent the use of the affected computer. The new subsection focuses on criminal intent, making it clear that the perpetrator must intend to transmit the code and intend to cause damage. This clarifies the existing felony provision, which prohibits "intentionally access[ing] a Federal interest computer without authorization." 18 U.S.C. 1030(a)(5). The act adopts the Justice Department's formulation of the actions that should be prohibited in 18 U.S.C. 1030(a)(5) as a more precise formulation than the original language in the computer abuse bill in the 101st Congress.

The new subsection (a)(5)(A)(ii), requires that, in order to be criminal, actions would have to be taken without the authorization of the person responsible for the computer system receiving the program. This would prevent criminal liability for honest mistakes and legitimate experimentation under the guidance of a system manager.

The legislation also would create a misdemeanor, in the new subsection (a)(5)(B), for knowingly transmitting a computer program with reckless disregard of a substantial and unjustifiable risk that the transmission will cause harm. The standard for recklessness used in the bill is taken from the Model Penal Code. The misdemeanor parallels the felony created above in new subsection (a)(5)(A).

Subsection (b)(2) creates penalties for violations of the new felony and misdemeanor, modifying 18 U.S.C. 1030(c). This provision tracks current law for the felony penalty: Up to 5 years in prison and/or a fine of up to $250,000. It creates an appropriate penalty for the misdemeanor: Up to 1 year in prison and/or a fine of up to $5,000.

Subsection (b)(3) would create a civil cause of action for those who suffer violations of the Computer Fraud and Abuse Act. Plaintiffs would still have to meet the $1,000 threshold, except for medical records violations. This remedy would authorize private suits in an area that law enforcement has sometimes been reluctant to investigate or prosecute. Deterrence is another goal. The act narrows the damages available and adds a 2-year statute of limitations from earlier versions of the bill. Damages are limited to economic damages, except for violations of the medical records section, when pain and suffering damages would be permitted.

Subsection (b)(4) requires the Attorney General and the Secretary of the Treasury to report to Congress annually for the first 3 years after this legislation is enacted, about prosecutions under the new subsections (a)(5)(A) and (B). This provision will both enable Congress to evaluate the effectiveness of the new law in an area of continually changing technology and provide oversight on the prosecution brought. The reporting requirement is patterned after the original reporting requirement in the Computer Fraud and Abuse Act of 1984, Public Law 98-473.

Finally, Subsection (b)(5) clarifies that a violation of 18 U.S.C. 1030(a)(3), regarding gaining unauthorized access to Federal Government computers, occurs only if the unauthorized access adversely affects the Government's use of the computer. Merely signing on to a Government computer can "affect" the Government's use of the computer, without causing harm.

AMENDMENT NO. 3414

(Purpose: To provide for a study of security features for analog and digital radio signals, and for other purposes)

At the appropriate place, insert the following:

**SEC. . FCC STUDY OF SECURITY FEATURES FOR ANALOG AND DIGITAL RADIO SIGNALS**

(c) The Commission shall report to Congress, no later than June 1, 1993, on available security features for both analog and digital radio signals. This report shall include a study of security technologies currently available as well as those in development. The study shall assess the technological capabilities, level of security afforded, and cost, with widespread deployment, of any given system.

**SEC. . FBI ACCESS TO TELEPHONE SUBSCRIBER INFORMATION.**

(a) REQUIRED CERTIFICATION.—Section 2709(b) of title 18, United States Code, is amended to read as follows:

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director, may—

"(1) request the name, address, length of service, and toll billing records of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

"(2) request the name, address, and length of service of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

"(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

"(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.".

(b) REPORT TO JUDICIARY COMMITTEES.—Section 2709(e) of title 18, United States Code, is amended by inserting after "Senate" the following: "and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,".

**SEC. . COMPUTER ABUSE AMENDMENTS ACT OF 1992.**

(a) SHORT TITLE.—This section may be cited as the "Computer Abuse Amendments Act of 1992".

(b) AMENDMENTS TO THE COMPUTER FRAUD AND ABUSE ACT.—

(1) PROHIBITION.—Section 1030(a)(5) of title 18, United States Code, is amended to read as follows:

"(5)(A) through means of a computer used in interstate commerce or communications, knowingly causes the transmission of a program, information, code, or command to a computer or computer system if—

"(i) the person causing the transmission intends that such transmission will—

"(I) damage, or cause damage to a computer, computer system network information date or program; or

"(II) withhold or deny, or cause the withholding or denial of the use of a computer, computer services, system or network, information, data or program; and

"(ii) the transmission of the harmful component of the program information code or command—

"(I) occurred without the knowledge and authorization of the persons or entities who own or are responsible for the computer system receiving the program, information, code, or command; and

"(II)(aa) causes loss or damage to one or more other persons of value aggregating $1,000 or more during any 1-year period; or

"(bb) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or

"(B) through means of a computer used in interstate commerce or communication, knowingly causes the transmission of a program, information, code, or command to a computer or computer system—

"(i) with reckless disregard of a substantial and unjustifiable risk that the transmission will—

"(I) damage, or cause damage to, a computer, computer system, network, information, data or program; or

"(II) withhold or deny or cause the withholding or denial of the use of a computer, computer services, system, network, information, data or program; and

"(ii) if the transmission of the harmful component of the program, information, code, or command—

"(I) occurred without the knowledge and authorization of the persons or entities who own or are responsible for the computer system receiving the program, information, code, or command; and

"(II)(aa) causes loss or damage to one or more other persons of a value aggregating $1,000 or more during any 1-year period; or

"(bb) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals;"

(2) PENALTY.—Section 1030(c) of title 18, United States Code, is amended—

(A) in paragraph (2)(B) by striking "and" after the semicolon;

(B) in paragraph (3)(A) by inserting "(A)" after "(a)(5)";

(C) in paragraph (3)(B) by striking the period at the end thereof and inserting ", and"; and

(D) by adding at the end thereof the following:

"(4) a fine under this title or imprisonment for not more than 1 year, or both, in the case of an offense under subsection (a)(5)(B).".

(3) CIVIL ACTION.—Section 1030 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) Any person who suffers damage or loss by reason of a violation of the section, other than a violation of subsection (a)(5)(B), may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief. Damages for violations of any subsection other than subsection (a)(5)(A)(ii)(II)(bb) or (a)(5)(B)(ii)(II)(bb) are limited to economic damages. No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of or the date of the discovery of the damage.".

(4) REPORTING REQUIREMENTS.—Section 1030 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) The Attorney General and the Secretary of the Treasury shall report to the Congress annually, during the first 3 years following the date of the enactment of this subsection, concerning investigations and prosecutions under section 1030(a)(5) of title 18, United States Code.".

(5) PROHIBITION.—Section 1030(a)(3) of title 18, United States Code, is amended by inserting "adversely" before "affects the use of the Government's operation of such computer".

Mr. LEAHY. Mr. President, the purpose of the amendment is to enable the FBI to identify the subscribers to telephones that are used to communicate with foreign powers or foreign agents who engage in clandestine intelligence activities or international terrorism. This section amends section 2709 of the Electronic Communication Privacy Act [ECPA], 18 U.S.C. 2709, to require that a wire or electronic communication service provider give the FBI access, without a court order or subpoena, to information identifying certain telephone subscribers for use in foreign counterintelligence and international terrorism investigations.

The administration initially proposed an earlier version of this amendment in September 1989 and again in successive intelligence authorization acts. Indeed, I am advised that FBI Director William S. Sessions testified in favor of the amendment at a closed Intelligence Committee hearing on May 10, 1990, and that the amendment was publicly endorsed by a special counterintelligence panel established by the Intelligence Committee on May 23, 1990. The amendment, as it was originally introduced, however, was not acted upon, largely because of civil liberties concerns raised with respect to the original wording.

In 1991, however, new wording was worked out by the House and Senate Judiciary Committee, responding to these concerns, and this provision was included in the 1991 crime bill.

BACKGROUND

In adopting ECPA in 1986, Congress established certain privacy protections for subscriber records and other information held by telephone companies and other electronic communication service providers. Congress provided that the Government could obtain a subscriber's transactional records or other information from a telephone company without the subscriber's permission only pursuant to a subpoena, search warrant or court order where there is reason to believe that the information is relevant to a legitimate law enforcement inquiry. 18 U.S.C. 2703.

Congress created a limited exception to this rule for use in counterintelligence and international terrorism cases. In 18 U.S.C. 2709, Congress gave the FBI authority to compel production of identifying information and toll records with a so-called "national security letter," signed by an FBI official without judicial review and without a relevance to a criminal investigation, where the subscriber is believed to be a foreign power or agent of a foreign power, as defined in the Foreign Intelligence Surveillance Act. "Foreign power" includes international terrorist groups.

The FBI has concluded that the authority in section 2709 is, in one specific respect, too narrow. To illustrate the problem, the Bureau cites the case of a former employee of the U.S. Government who called a foreign embassy and offered to provide sensitive U.S. Government information. The conversation was monitored, but the former employee did not identify himself. The former employee subsequently met with representatives of the foreign nation and compromised highly sensitive information about U.S. intelligence capabilities. The FBI argues that if it had been able to trace the number from which the first call offering information was placed, it might have been able to identify the former employee sooner or prevent the loss of information.

However, under sections 2703 and 2709 as they were adopted in 1986, the FBI could not, without a subpoena or court order, obtain the identity of a subscriber, unless there was a reason to believe that the subscriber was a foreign power or agent of a foreign power. In the case described above, the FBI did not have reason to believe that the caller was a foreign agent. Instead, the caller appeared to be a possible volunteer to be an agent, and therefore did not meet the section 2709 standard.

In response to this limitation, the FBI asked Congress to expand the reach of section 2709, to allow the FBI certification to require phone companies to identify not only suspected agents of foreign powers but also persons who have been in contact with foreign powers or suspected agents of foreign powers. As originally proposed by the FBI, the amendment would have applied to any caller to a foreign diplomatic establishment and any caller to

official foreign visitors such as scholars from government universities abroad. This was deemed by the Judiciary Committee to be too broad.

Exempt from the judicial scrutiny normally required for compulsory process, the national security letter is an extraordinary device. New applications are disfavored. However, after careful study, the committee concluded that a narrow change in section 2709 to meet the FBI's focused and demonstrated needs was justified. The provision reported by the committee is a modification of the language originally proposed by the FBI. It allows access where: First, there is a contact with a suspected intelligence officer or a suspected terrorist; or second, the circumstances of the conversation indicate, as they did in the case described above, that it may involve spying or an offer of information.

In addition to covering a future case like the one described above, this new authority would allow the FBI to identify subscribers in the following types of cases, cited by the FBI in justifying its need for this amendment:

First, persons whose phone numbers were listed in an address book seized from a suspected terrorist;

Second, all persons who call an embassy and ask to speak with a suspected intelligence officer; and

Third, all callers to the home of a suspected intelligence officer or the apartment of a suspected terrorist.

Section 2709 as enacted in 1986 used the phrase "subscriber information and toll billing records information" to describe the information that the FBI could obtain. Instead of "subscriber information," the amendment here uses more specific terms: "names, address, length of service." As used in this section, toll billing records consist of information maintained by a wire or electronic communication service provider identifying the telephone numbers called from a particular phone or attributable to a particular account for which a communication service provider might charge a service fee. The Committee intends, and the FBI agrees, that the authority to obtain subscriber information and toll billing records under section 2709 does not require communications service providers to create records which they do not maintain in the ordinary course of business.

This amendment strengthens congressional oversight of the exercise of this authority by amending section 2709(e) to add a requirement that the FBI report on its use of the authority to both House and Senate Judiciary Committees as well as both Intelligence Committees. It is the Committee's intent regarding this section that the FBI should, without identifying the subjects of pending investigations, inform the committees, as part of this report, of the facts and circumstances that are the basis for obtaining information concerning any domestic political organization or groups under section 2709.

Under section 2703(e), wire or electronic communication service providers who provide information in response to a "court order, warrant, subpoena or certification under this chapter" are protected from liability for such disclosure. The certification signed by the Director or the Director's designee under the section 2709(b) is a certification for purposes of section 2703(e).

I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS

Section amends 18 U.S.C. section 2709 by striking subsection (b) and inserting in lieu thereof a new subsection containing two paragraphs.

Paragraph (1) of the new section 2709(b) reenacts the existing authority for FBI access to the names, address, length of service and toll billing records of a person or entity when the Director or the Director's designee certifies in writing to the wire or electronic communication service provider to which the request is made—(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and (B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in the Foreign Intelligence Surveillance Act.

Paragraph (2) of the new section 2709(b) authorizes the FBI Director or the Director's designee to obtain the name, address and length of service of a person or entity if the Director or the director's designee certifies in writing to the wire or electronic communications service provider to which the request is made that—(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and (B) there is reason to believe that communications facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with (i) an individual who is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States or (ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism or clandestine intelligence activities.

Section adds the House and Senate Judiciary Committees to the oversight provision in section 2709(e).

AMENDMENT NO. 3415

Purpose: To require a proposal for demonstrating the potential of innovative communications equipment and services

At the appropriate place, insert the following new section:

**SEC. . PROPOSAL FOR DEMONSTRATING THE POTENTIAL OF INNOVATIVE COMMUNICATIONS EQUIPMENT AND SERVICES.**

(a) DEMONSTRATION PROPOSAL.—Within 180 days after the date of enactment of this Act, the Assistant Secretary of Energy for Conservation and Renewable Energy, in consultation with the Assistant Secretary of Commerce for Communications and Information, shall submit to Congress a proposal for demonstrating the ability of new and innovative communications equipment and services to further the national goals of conserving energy and protecting public health and safety.

(b) FACTORS TO BE ADDRESSED.—The demonstration proposal required by subsection (a) shall address—

(1) the feasibility of using communications technologies to read meters from remote locations;

(2) the feasibility of managing the consumption of electrical power and natural gas by residences and businesses, thereby reducing the demand for new and additional sources of energy, and controlling the cost of providing improved utility services; and

(3) the public safety implications of monitoring utility services outages during earthquakes, hurricanes, typhoons, tornados, volcanos, and other natural disasters.

(c) PROJECT TO DEMONSTRATE ENERGY CONSERVATION POTENTIAL.—Upon submission of the demonstration proposal to the Congress, the Secretary of Energy shall consider requesting from the Assistant Secretary of Commerce for Communications and Information the authority to use radio frequencies, pursuant to section 305 of the Communications Act of 1934 (47 U.S.C. 305), to carry out demonstration projects consistent with the proposal that are designed to demonstrate the energy conservation potential of communications technologies and which are administered by the Secretary of Energy.

**SEC. . TECHNICAL AMENDMENTS.**

Section 227(h)(2) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect.".

Mr. GORTON. Mr. President, the legislation before the Senate today includes an important provision to promote energy conservation. I would like to thank Senators MCCAIN, INOUYE, DANFORTH, and HOLLINGS for working with me and with Speaker FOLEY to include this provision.

Washington Water Power Co. is a major participant in a separate corporation known as ITRON which was organized to develop advanced technologies that benefit utilities and their customers by promoting the most efficient use of energy. ITRON, together with AMRplus Partners which was formed by other domestic and international utilities, have developed an automatic meter reading unit and two way communications system that will improve customer service, reduce power outage durations, and lower overall utility system maintenance

costs. This technology will allow local utilities to better manage their energy consumption between peak and offpeak times by offering rate inducements to their customers for using energy at certain times of the day or week. This technology is wireless and utilizes the radio frequency spectrum.

The provision which I have asked to be included in the legislation today directs an office in the Department of Energy to work with the National Telecommunications and Information Administration [NTIA] to put forward a proposal within 180 days that demonstrates the feasibility, among other requirements, of using communications technologies to read meters from remote locations and for managing the consumption of electrical power and natural gas. Upon submission of this proposal, the Secretary of Energy is then directed to consider requesting spectrum managed by the NTIA for the purpose of carrying out demonstration projects that are consistent with the proposal. It is my hope that the Secretary will recognize the need for advancing innovative energy conserving devices such as that which has been developed by ITRON and AMRplus Partners.

Mr. HOLLINGS. Mr. President, today the Senate considers S. 1579, the Telephone Disclosure and Dispute Resolution Act. I commend Senator INOUYE, the Communications Subcommittee chairman, for all of his work on this measure. The bill before us today represents a compromise with the House of Representatives, and it has taken much hard work to get to this point.

Mr. President, consumers are under attack. Everywhere they turn they are bombarded with advertisements for pay-per-call services—so-called 900 services. A recent advertisement in a Washington area paper reads: "if you want to be sure you are going to heaven call 1-900-535-4900." 900 services are used to promote anything and everything. Unfortunately, these advertisements often deceive customers as to the cost of these calls. The charges can be as high as $50 per call or $10 per minute. Further, when a consumer calls, the provider often fails to give the consumer what was advertised.

The South Carolina Department of Consumer Affairs has received more complaints about 900 services than any other issue except computerized phone calls. The 900 pay-per-call business is close to a billion-dollar-a-year industry which is expected to double within 2 years. The complaints seem to be growing faster than the industry.

These services prey upon people's hopes and dreams and add to their despair. At hearings in Greenville and Columbia, SC, I heard from my constituents, and there is no doubt in my mind that this legislation is needed. One woman received a call on a night while she was trying to figure out which bills she could afford to pay that month. The call promised that she would receive a VISA card if she called a 900 number. She was charged $50 for the call and got nothing, not even an application to complete.

Another constituent had charges for 900 calls on his phone bill one month. When he called his local phone company to complain, he was told to call the long distance carrier. While he was waiting for a response from the long distance company, his phone was disconnected for failing to pay these charges. This went on for several months, each time because of the same charges that appeared on one bill. He finally gave up and decided to do without a phone. Then he lost his job, and now has no home phone to use in his job search.

S. 1579 will address these problems. The bill before us continues to provide the same protections to consumers as were provided in the bill passed by the Senate. It will prohibit telephone companies from disconnecting basic phone service for failure to pay charges for 900 calls; it will require that callers be informed about the charges they will incur, and the service or product to be provided; and, most importantly, it will impose penalties on information service providers and telephone companies for failure to comply with the requirements of this legislation.

The bill, like the Senate's earlier version, will prohibit the use of 900 services aimed at children under 12. In addition, a new provision has been added to this bill to require the Federal Trade Commission [FTC] to adopt procedures to protect consumers from unscrupulous billing and collection practices by 900 service providers. I note that none of the provisions requiring the FTC to adopt rules is intended to vest in the FTC the authority to promulgate rules on the grounds that activities are unfair. This authority has been restricted since 1980, and this legislation does not restore any authority that has been limited.

As with most industries, many 900 service providers are operated by responsible individuals who do not take advantage of consumers. However, there are clearly those who abuse consumers. We need this legislation to provide consumers with information and additional protection against fraud and abuses perpetrated by certain unprincipled 900 service providers. Even the 900 service providers realize that this is an issue Congress needs to address and have worked with the committee on this legislation.

I believe that we cannot assume a hands-off attitude while consumers are being harmed. We must act to prevent further abuses from 900 services, and I urge my colleagues to support this legislation.

Mr. MCCAIN. Mr. President, the passage of the Telephone Disclosure and Dispute Resolution Act by this Congress is an important event for consumers in this country.

The growth of fraudulent practices by pay-per-call service providers has led to increasing concern among consumers. I introduced S. 471, the 900 Services Consumer Protection Act of 1991 on February 21, 1991 because of the flagrant abuses against consumers perpetrated by some information services providers, more commonly referred to as 900 service providers or pay-per-call services. Senator INOUYE later introduced S. 1166, the Telephone Consumer Assistance Act, on April 25, 1991. S. 1166 also sought to address the issue of consumer fraud in the 900 services industry.

S. 471 and S. 1166 were merged following a hearing on the two bills on July 16, 1991. S. 1579, the 900 Services Consumer Protection Act of 1991, was the result of this collaboration. This legislation was passed by the Senate on October 29, 1991. The House of Representatives passed companion legislation on February 25, 1992.

Pay-per-call fraud is committed in a variety of ways. Of the many methods commonly used to defraud consumers, nondisclosure and misinformation stand as the most prevalent. Many of the services offered through the pay-per-call industry have shown this to be true time and time again.

For example, advertisements of services may not disclose the full price of the call, or may fail to state the price in a manner which is clear to the consumer. Thus, consumers are not always aware of the cost of the call, and are confused when they receive the charge on their phone bill.

In addition to nondisclosure concerns, there have been complaints to both the Federal Communications Commission [FCC] and the Federal Trade Commission [FTC] about 800 telephone number calls. The newest scams involving 800 numbers, which are commonly perceived to be toll free, include the use of 800 numbers used to charge unsuspecting callers without their knowledge. Another abuse of 800 numbers occurs where a consumer places a toll-free call, then is called back collect, or charges reversed, for the provision of services the caller was led to believe would be toll free.

There is also great concern about the fact that the identity of the information provider is not available on the phone bill where the charge appears. The charge is attributed to the long-distance carrier. Therefore, the consumer cannot verify whether they did indeed call that service. This creates a burden for both the consumer and the long-distance carrier, and leads to increased confusion in the dispute resolution process.

Abuses by pay-per-call service providers have become increasingly problematic for parents of young children.

Children are the most common victims of consumer fraud in this industry. Minors are not in a position where they can make an informed decision about whether or not they should incur the cost of pay-per-call services. This has been recognized by Federal policymakers in the area of communications since the 1960's. For this reason, the FCC has placed restrictions on certain kinds of television advertisements aimed at children. Because of their youth and inexperience, children cannot distinguish between actual programming and the purpose of advertisements. This necessitates the consideration of children as a protected consumer class.

So-called latchkey kids are particularly susceptible to the temptation of placing a toll call as a result of watching a commercial, since they cannot ask their parents for permission or guidance because their parents are away at work.

Some of these services do not even deliver what they promise. One notorious example of this is the Santa Claus line which promised a conversation with Santa. This is particularly enticing to young children during the Christmas holiday season. In this particular case, upon calling one particular Santa line, the child was informed that Santa was in the restroom, and that the child should call back in 10 minutes. The result is a disappointed child and an angry, frustrated parent. Regardless of whether or not the call was authorized by an adult, the child did not receive the service he or she was promised. If the child is still interested enough in contacting Santa Claus, he will continue to call in the hopes of speaking to him and rack up the charges in the process.

Another case involves a different Santa Claus advertisement which directed children to put the phone up to the television set and delivered a series of tones which automatically dialed the phone number for the service. Clearly, the advertisement was aimed at very young children who may have difficulty dialing the telephone. If a child is too young to dial a telephone, then that child is obviously too young to make an informed consumer decision.

In the case of unmonitored pay-per-call services usage, this unmonitored time often results in costly phone bills, up into the hundreds of dollars per month, because children were enticed to place a call by advertisement aimed directly at them, the innocent consumer.

These abuses led the National Association of Attorneys General to issue a report in March 1991 on the state of the pay-per-call industry. The report concluded that consumer abuses required Federal regulation of the industry. It particularly stressed the importance of protecting children, and recommended a ban on services aimed at children.

I believe that all consumers have a right to all of the information they need to make an informed decision about the service for which they will be chaired. This legislation facilitates the exercise of that right by:

First, requiring that pay-per-call services provide a preamble, free of charge, that describes the service being provided, specifies clearly and at a reasonable understandable volume the total cost or the cost per minute, informs the caller that charges for the call begin at the end of the introductory message, informs the caller that parental consent is required for calls made by children, and, in the case of a pay-per-call service providing information on any Federal program, a statement that clearly states that the service is not authorized, endorsed, or approved by any Federal agency;

Second, prohibiting services directed at children under the age of 12, unless such service is a bona fide educational service;

Third, requiring the local phone companies to give each subscriber the option of blocking access from their telephone number to all, or to certain specific, prefixes or area codes used by pay-per-call services;

Fourth, requiring that common carriers contracting with pay-per-call services providers terminate the contract if that service provider does not comply with the requirements set forth in this act;

Fifth, prohibiting common carriers from disconnecting a subscriber's telephone service for failure to pay interstate 900 number charges;

Sixth, prohibiting the use of electric tones in advertisements which can automatically dial a pay-per-call telephone number;

Seventh, requiring that any common carrier engaged in billing and collection for a pay-per-call service display in bills sent to subscribers the charges for pay-per-call services in a part of the subscriber's bill that is identified as not being related to local and long distance telephone charges, and, for each charge displayed, specify the type of service, the amount of the charge, and the date, time, and duration of the call, and identify the toll-free number established to provide further information about the pay-per-call service provider;

Eighth, requiring full and clear disclosure of the rates for these calls in all advertisements;

Ninth, prohibiting use of 800 numbers, or toll-free calls, that automatically connect a consumer to pay-per-call telephone numbers for which the caller is ultimately charged;

Tenth, prohibiting the use of any 800 telephone number, or other telephone number advertised or widely understood to be toll free, in a manner that would result in a charge for the call for merely completing the call, the calling party being charged for information conveyed during the call, or the calling party being called back collect for the provision of the service;

Eleventh, requiring common carriers that contract with pay-per-call service providers to make available on request the name, business address, and phone number of pay-per-call service providers contracting with that provider, a short description of the service provided, the access number for the service, and the maximum charges for the service;

Twelfth, giving the FCC, the FTC, and the States the authority to enforce the provisions of this legislation;

Thirteenth, requiring the establishment of dispute resolution procedures over billing errors following telephone-billed purchases, including the establishment of rules to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers.

Mr. President, this is only a partial list of the benefits to consumers prescribed in this bill. It is my hope that with all of the provisions in the bill, consumers will be able to use pay-per-call service without concern that they will become victims of fraud. This industry has afforded consumers a broad array of choices, giving them the convenience of receiving services and entertainment through an interactive system. Consumers have benefited from the growth of this industry, which is largely comprised of honest, legitimate pay-per-call service providers.

The passage of this legislation represents a joint cooperation between the telecommunications industry, the pay-per-call service providers, consumers, the FCC, the FTC, and Congress. I look forward to this continued cooperation in an effort to ultimately strengthen the industry and foster consumer confidence.

I would like to thank Senator INOUYE for his commitment to bringing consumer protection to the forefront in this area. His support, as always, has been unwavering and I am pleased to have had this opportunity to work with him in this effort.

Mr. FORD. Mr. President, I ask unanimous consent the title be appropriately amended.

The title was amended so as to read: "An Act to protect the public interest and the future development of pay-per-call technology by providing for the regulation and oversight of the applications and growth of the pay-per-call industry, and for other purposes."

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

## INDIAN EMPLOYMENT TRAINING AND RELATED SERVICES DEMONSTRATION ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a mes-

sage from the House of Representatives on S. 1530.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives.

*Resolved*, That the bill from the Senate (S. 1530) entitled "An Act to authorize the integration of employment, training, and related services provided by Indian tribal governments," do pass with the following amendment:

Strike out all after the enacting clause, and insert:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Indian Employment, Training and Related Services Demonstration Act of 1992".

**SEC. 2. STATEMENT OF PURPOSE.**

The purposes of this Act are to demonstrate how Indian tribal governments can integrate the employment, training and related services they provide in order to improve the effectiveness of those services, reduce joblessness in Indian communities and serve tribally-determined goals consistent with the policy of self-determination.

**SEC. 3. DEFINITIONS.**

For the purposes of this Act, the following definitions apply:

(1) INDIAN TRIBE.—The terms "Indian tribe" and "tribe" shall have the meaning given the term "Indian tribe" in section 4(e) of the Indian Self-Determination and Education Assistance Act.

(2) INDIAN.—The term "Indian" shall have the meaning given such term in section 4(d) of the Indian Self-Determination and Education Assistance Act.

(3) SECRETARY.—Except where otherwise provided, the term "Secretary" means the Secretary of the Interior.

**SEC. 4. INTEGRATION OF SERVICES AUTHORIZED.**

The Secretary of the Interior, in cooperation with the appropriate Secretary of Labor, Secretary of Health and Human Services, or Secretary of Education, shall, upon the receipt of a plan acceptable to the Secretary of the Interior submitted by an Indian tribal government, authorize the tribal government to coordinate, in accordance with such plan, its federally funded employment, training, and related services programs in a manner that integrates the program services involved into a single, coordinated, comprehensive program and reduces administrative costs by consolidating administrative functions.

**SEC. 5. PROGRAMS AFFECTED.**

The programs that may be integrated in a demonstration project under any such plan referred to in section 4 shall include any program under which an Indian tribe is eligible for receipt of funds under a statutory or administrative formula for the purposes of job training, tribal work experience, employment opportunities, or skill development, or any program designed for the enhancement of job opportunities or employment training.

**SEC. 6. PLAN REQUIREMENTS.**

For a plan to be acceptable pursuant to section 4, it shall—

(1) identify the programs to be integrated;

(2) be consistent with the purposes of this Act authorizing the services to be integrated in a demonstration project;

(3) describe a comprehensive strategy which identifies the full range of potential employment opportunities on and near the tribal government's service area, and the education, training and related services to be provided to assist Indian workers to access those employment opportunities;

(4) describe the way in which services are to be integrated and delivered and the results expected from the plan;

(5) identify the projected expenditures under the plan in a single budget;

(6) identify the agency or agencies of the tribal government to be involved in the delivery of the services integrated under the plan;

(7) identify any statutory provisions, regulations, policies, or procedures that the tribal government believes need to be waived in order to implement its plan; and

(8) be approved by the governing body of the affected tribe.

**SEC. 7. PLAN REVIEW.**

Upon receipt of the plan from a tribal government, the Secretary of the Interior shall consult with the Secretary of each Federal department providing funds to be used to implement the plan, and with the tribal government submitting the plan. The parties so consulting shall identify any waivers of statutory requirements or of Federal departmental regulations, policies, or procedures necessary to enable the tribal government to implement its plan. Notwithstanding any other provision of law, the Secretary of the affected department shall have the authority to waive any regulation, policy, or procedure promulgated by that department that has been so identified by such tribal government or department, unless the Secretary of the affected department determines that such a waiver is inconsistent with the purposes of this Act or those provisions of the statute from which the program involved derives its authority which are specifically applicable to Indian programs.

**SEC. 8. PLAN APPROVAL.**

Within 90 days after the receipt of a tribal government's plan by the Secretary, the Secretary shall inform the tribal government, in writing, of the Secretary's approval or disapproval of the plan. If the plan is disapproved, the tribal government shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend its plan or to petition the Secretary to reconsider such disapproval.

**SEC. 9. JOB CREATION ACTIVITIES AUTHORIZED.**

The plan submitted by a tribal government may involve the expenditure of funds for the creation of employment opportunities and for the development of the economic resources of the tribal government or of individual Indian people if such expenditures are consistent with an overall regional economic activity which has a reasonable likelihood of success and consistent with the purposes specifically applicable to Indian programs in the statute under which the funds are authorized.

**SEC. 10. PRIVATE SECTOR TRAINING PLACEMENTS.**

A tribal government participating in a demonstration program under this Act is authorized to utilize funds available under such plan to place participants in training positions with private employers and pay such participants a training allowance or wage for a period not to exceed 12 months, if the tribal government obtains a written agreement from the private employer to provide on-the-job training to such participants and, upon satisfactory completion of the training period, to guarantee permanent employment to such participants for a minimum of 12 months.

**SEC. 11. FEDERAL RESPONSIBILITIES.**

(a) RESPONSIBILITIES OF THE DEPARTMENT OF THE INTERIOR.—Within 180 days following the date of enactment of this Act, the Secretary of the Interior, the Secretary of Labor, the Secretary of Health and Human Services and the Secretary of Education shall enter into an interdepartmental memorandum of agreement providing for the implementation of the demonstration projects authorized under this Act. The lead agency for a demonstration program under this Act shall be the Bureau of Indian Affairs, Department of the Interior. The responsibilities of the lead agency shall include—

(1) the use of a single report format related to the plan for the individual project which shall be used by a tribal government to report on the activities undertaken under the project;

(2) the use of a single report format related to the projected expenditures for the individual project which shall be used by a tribal government to report on all project expenditures;

(3) the development of a single system of Federal oversight for the project, which shall be implemented by the lead agency; and

(4) the provision of technical assistance to a tribal government appropriate to the project, except that a tribal government shall have the authority to accept or reject the plan for providing such technical assistance and the technical assistance provider.

(b) REPORT REQUIREMENTS.—The single report format shall be developed by the Secretary, consistent with the requirements of this Act. Such report format, together with records maintained on the consoldiated program at the tribal level shall contain such information as will allow a determination that the tribe has complied with the requirements incorporated in its approved plan and will provide assurances to each Secretary that the tribe has complied with all directly applicable statutory requirements and with those directly applicable regulatory requirements which have not been waived.

**SEC. 12. NO REDUCTION IN AMOUNTS.**

In no case shall the amount of Federal funds available to a tribal government involved in any demonstration project be reduced as a result of the enactment of this Act.

**SEC. 13. INTERAGENCY FUND TRANSFERS AUTHORIZED.**

The Secretary of the Interior, Secretary of Labor, Secretary of Health and Human Services, or the Secretary of Education, as appropriate, is authorized to take such action as may be necessary to provide for an interagency transfer of funds otherwise available to a tribal government in order to further the purposes of this Act.

**SEC. 14. ADMINISTRATION OF FUNDS AND OVERAGE.**

(a) ADMINISTRATION OF FUNDS.—

(1) IN GENERAL.—Program funds shall be administered in such a manner as to allow for a determination that funds from specific programs (or an amount equal to the amount attracted from each program) are spent on allowable activities authorized under such program.

(2) SEPARATE RECORDS NOT REQUIRED.—Nothing in this section shall be construed as requiring the tribe to maintain separate records tracing any services or activities conducted under its approved plan to the individual programs under which funds were authorized, nor shall the tribe be required to allocate expenditures among such individual programs.

(b) OVERAGE.—All administrative costs may be commingled and participating Indian tribes shall be entitled to the full amount of such costs (under each program or department's regulations), and no overage shall be

counted for Federal audit purposes, provided that the overage is used for the purposes provided for under this Act.

**SEC. 15. FISCAL ACCOUNTABILITY.**

Nothing in this Act shall be construed so as to interfere with the ability of the Secretary or the lead agency to fulfill the responsibilities for the safeguarding of Federal funds pursuant to the Single Audit Act of 1984.

**SEC. 16. REPORT ON STATUTORY OBSTACLES TO PROGRAM INTEGRATION.**

(a) PRELIMINARY REPORT.—Not later than two years after the date of the enactment of this Act, the Secretary shall submit a preliminary report to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives on the status of the implementation of the demonstration program authorized under this Act.

(b) FINAL REPORT.—Not later than five years after the date of the enactment of this Act, the Secretary shall submit a report to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs and the Committee on Education and Labor of the House of Representatives on the results of the implementation of the demonstration program authorized under this Act. Such report shall identify statutory barriers to the ability of tribal governments to integrate more effectively their employment, training, and related services in a manner consistent with the purposes of this Act.

**SEC. 17. LABOR MARKET INFORMATION ON THE INDIAN WORK FORCE.**

(a) REPORT.—The Secretary, in consultation with the Secretary of Labor, shall, in a consistent and reliable manner, develop, maintain and publish, not less than biennially, a report on the population, by gender, eligible for the services which the Secretary provides to Indian people. The report shall include, but is not limited to, information at the national level by State, Bureau of Indian Affairs Service area, and tribal level for the—

(1) total service population;

(2) the service population under age 16 and over 64;

(3) the population available for work, including those not considered to be actively seeking work;

(4) the employed population, including those employed with annual earnings below the poverty line; and

(5) the numbers employed in private sector positions and in public sector positions.

(b) INDIAN DEMOGRAPHIC INFORMATION.—The Secretary, in consultation with the Bureau of the Census of the Department of Commerce, and the National Center for Native American Studies and Policy Development authorized by Public Law 101-301, shall prepare a report on the need for comprehensive, accurate and periodically updated information on the size and characteristics of the Indian and Alaska Native population throughout the entire United States. This report shall include the need for information, together with the cost of acquiring such information, on the characteristics and need for education, health, housing, job training, and other basic needs of such population, and shall take into consideration the need for this information by Indian tribes and organizations serving Indians in nonreservation areas. The report shall be submitted to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs and the Committee on Education and Labor of the House of Representatives not later than 12 months after the date of enactment of this Act.

**SEC. 18. ASSIGNMENT OF FEDERAL PERSONNEL TO STATE INDIAN ECONOMIC DEVELOPMENT PROGRAMS.**

Any State with an economic development program targeted to Indian tribes shall be eligible to receive, at no cost to the State, such Federal personnel assignments as the Secretary, in accordance with the applicable provisions of the Intergovernmental Personnel Act of 1970, may deem appropriate to help ensure the success of such program.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the moiton.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

## ROBERT C. BYRD LOCKS AND DAM

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3345, a bill to designate the Gallipolis Locks and Dams, Ohio River, Ohio and West Virginia, as the "Robert C. Byrd locks and dam," introduced earlier today by Senators ROCKEFELLER and MOYNIHAN; that the bill be deemed read three times, passed; and the motion to reconsider laid upon the table; that a statement by Senator ROCKEFELLER appear in the RECORD at the appropriate place.

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

The bill (S. 3345) was deemed read three times and passed.

RENAMING GALLIPOLIS LOCKS AND DAM FOR SENATOR ROBERT C. BYRD

Mr. ROCKEFELLER. Mr. President, I am exceedingly proud to report the passage of legislation that will rename the Gallipolis locks and dam for the senior Senator from West Virginia, ROBERT C. BYRD. It has been my privilege to sponsor this amendment legislation, honoring this great servant of the people of the State of West Virginia and the Nation. His lifetime has been devoted to public service. Senator BYRD has held more legislative elective offices than any other individual in the history of West Virginia, and he has the distinct honor of having held more Senate leadership positions than any other Senator in Senate history.

I am privileged every day to serve at his side. I have watched him lead, and I have watched him fight. He has been my mentor and he is my friend. He is the epitome of a West Virginia Mountaineer. He is proud, tough, and independent, and he cares about the people he serves. He is more than deserving of this tribute that we pay him today.

Senator BYRD has been the driving force behind this project, which has taken many years to plan and construct. As Governor, I worked along with Senator BYRD in pushing for improvements to this facility—a project that is not only vital to West Virginia commerce, but to all of the States that use the Ohio River for shipment of their goods.

The replacement locks and dam that we are renaming in honor of Senator BYRD were originally constructed in the mid-1930's. As soon as construction was completed, the lock chambers were operating at capacity. Delays of up to 10 hours to get through the locks are not infrequent. The inadequate size of the lock chambers and the dangerous approach are responsible for massive congestion. This project, that will be dedicated next week, will alleviate both the danger and the delays that have been associated with Gallipolis for over 55 years.

Each year, 42 million tons are locked through this facility to move coal, steel, chemicals, and other products to ports for export. The Ohio River is a vital link in the transportation system of this Nation. Without the efforts of Senator ROBERT C. BYRD, one of the worst bottlenecks to naviagation commerce in the Nation would not have been eliminated. Because of his efforts, we will spur more jobs, more opportunity, and more hope for the people we serve.

I would like to take a moment to thank the floor staff for their assistance in helping to get this legislation to the floor, especially Lula Davis who has gone above and beyond what is required to make this happen in a very short amont of time.

## CHILD SUPPORT RECOVERY ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1002.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 1002) entitled "An Act to impose a criminal penalty for flight to avoid payment of arrearages in child support", do pass with the following amendment:

Strike out all after the enacting clause and insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Child Support Recovery Act of 1992".*

***SEC. 2. FAILURE TO PAY LEGAL CHILD SUPPORT OBLIGATIONS.***

*(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 11 the following new chapter:*

***"CHAPTER 11A—CHILD SUPPORT***

*"Sec.*

*"228. Failure to pay legal child support obligations.*

**"§228. Failure to pay legal child support obligations**

"(a) OFFENSE.—Whoever willfully fails to pay a past due support obligation with respect to a child who resides in another State shall be punished as provided in subsection (b).

"(b) PUNISHMENT.—The punishment for an offense under this section is—

"(1) in the case of a first offense under this section, a fine under this title, imprisonment for not more than 6 months, or both; and

"(2) in any other case, a fine under this title, imprisonment for not more than 2 years, or both.

"(c) RESTITUTION.—Upon a conviction under this section, the court shall order restitution under section 3663 in an amount equal to the past due support obligation as it exists at the time of sentencing.

"(d) DEFINITIONS.—As used in this section—

"(1) the term 'past due support obligation' means any amount—

"(A) determined under a court order or an order of an administrative process pursuant to the law of a State to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living; and

"(B) that has remained unpaid for a period longer than one year, or is greater than $5,000; and

"(2) the term 'State' includes the District of Columbia, and any other possession or territory of the United States.".

(b) TECHNICAL AMENDMENT.—The part analysis for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 11 the following new item:

**"11A. Child support ..... 228".**

**SEC. 3. DISCRETIONARY CONDITION OF PROBATION.**

Section 3563(b) of title 18, United States Code, is amended—

(1) by striking "or" at the end of paragraph (20);

(2) by redesignating paragraph (21) as paragraph (22); and

(3) by inserting after paragraph (20) the following new paragraph:

"(21) comply with the terms of any court order or order of an administrative process pursuant to the law of a State, the District of Columbia, or any other possession or territory of the United States, requiring payments by the defendant for the support and maintenance of a child or of a child and the parent with whom the child is living; or".

**SEC. 4. CRIMINAL CHILD SUPPORT ENFORCEMENT.**

(a) AMENDMENT OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) by redesignating part P as part Q;

(2) by redesignating section 1601 as section 1701; and

(3) by inserting after part O the following new part:

**"PART P—CRIMINAL CHILD SUPPORT ENFORCEMENT**

**"SEC. 1601. GRANT AUTHORIZATION.**

"(a) IN GENERAL.—The Director of the Bureau of Justice Assistance may make grants under this part to States, for the use by States, and local entities in the States to develop, implement, and enforce criminal interstate child support legislation and coordinate criminal interstate child support enforcement efforts.

"(b) USES OF FUNDS.—Funds distributed under this part shall be used to—

"(1) develop a comprehensive assessment of existing criminal interstate child support enforcement efforts, including the identification of gaps in, and barriers to, the enforcement of such efforts;

"(2) plan and implement comprehensive long-range strategies for criminal interstate child support enforcement;

"(3) reach an agreement within the State regarding the priorities of such State in the enforcement of criminal interstate child support legislation;

"(4) develop a plan to implement such priorities; and

"(5) coordinate criminal interstate child support enforcement efforts.

**"SEC. 1602. STATE APPLICATIONS.**

"(a) IN GENERAL.—(1) To request a grant under this part, the chief executive of a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(2) An application under paragraph (1) shall include assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

"(b) STATE OFFICE.—The office designated under section 507 of title I—

"(1) shall prepare the application required under section 1602; and

"(2) shall administer grant funds received under this part, including review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

**"SEC. 1603. REVIEW OF STATE APPLICATIONS.**

"(a) IN GENERAL.—The Bureau shall make a grant under section 1601(a) to carry out the projects described in the application submitted by an applicant under section 1602 upon determining that—

"(1) the application is consistent with the requirements of this part; and

"(2) before the approval of the application, the Bureau has made an affirmative finding in writing that the proposed project has been reviewed in accordance with this part.

"(b) APPROVAL.—Each application submitted under section 1602 shall be considered approved, in whole or in part, by the Bureau not later than 45 days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

"(c) DISAPPROVAL NOTICE AND RECONSIDERATION.—The Bureau shall not disapprove any application without first affording the applicant reasonable notice and an opportunity for reconsideration.

**"SEC. 1604. LOCAL APPLICATIONS.**

"(a) IN GENERAL.—(1) To request funds under this part from a State, the chief executive of a local entity shall submit an application to the office designated under section 1602(b).

"(2) An application under paragraph (1) shall be considered approved, in whole or in part, by the State not later than 45 days after such application is first received unless the State informs the applicant in writing of specific reasons for disapproval.

"(3) The State shall not disapprove any application submitted to the State without first affording the applicant reasonable notice and an opportunity for reconsideration.

"(4) If an application under paragraph (1) is approved, the local entity is eligible to receive funds under this part.

"(b) DISTRIBUTION TO LOCAL ENTITIES.—A State that receives funds under section 1601 in a fiscal year shall make such funds available to a local entity with an approved application within 45 days after the Bureau has approved the application submitted by the State and has made funds available to the State. The Director may waive the 45-day requirement in this section upon a finding that the State is unable to satisfy the requirement of the preceding sentence under State statutes.

**"SEC. 1605. DISTRIBUTION OF FUNDS.**

"The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the project described in the application submitted under section 1602(a) for the fiscal year for which the project receives assistance under this part.

**"SEC. 1606. EVALUATION.**

"(a) IN GENERAL.—(1) Each State and local entity that receives a grant under this part shall submit to the Director an evaluation not later than March 1 of each year in accordance with guidelines issued by the Director and in consultation with the Director of the National Institute of Justice.

"(2) The Director may waive the requirement specified in subsection (a) if the Director determines that such evaluation is not warranted in the case of the State or local entity involved.

"(b) DISTRIBUTION.—The Director shall make available to the public on a timely basis evaluations received under subsection (a).

"(c) ADMINISTRATIVE COSTS.—A State or local entity may use not more than 5 percent of the funds it receives under this part to develop an evaluation program under this section.

**"SEC. 1607. DEFINITIONS.**

"For purposes of this part, the term 'local entity' means a child support enforcement agency, law enforcement agency, prosecuting attorney, or unit of local government.".

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking the matter relating to part P and inserting the following:

"PART P—CRIMINAL CHILD SUPPORT ENFORCEMENT

"Sec. 1601. Grant authorization.
"Sec. 1602. State applications.
"Sec. 1603. Review of State applications.
"Sec. 1604. Local applications.
"Sec. 1605. Distribution of funds.
"Sec. 1606. Evaluation.
"Sec. 1607. Definitions.

"PART Q—TRANSITION—EFFECTIVE DATE—REPEALER

"Sec. 1701. Continuation of rules, authorities, and proceedings.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended—

(1) by redesignating the last three paragraphs sequentially as paragraphs (7), (8), and (9); and

(2) by adding at the end the following new paragraph:

"(10) There are authorized to be appropriated $10,000,000 for each of the fiscal years 1994, 1995, and 1996 to carry out projects under part P.".

**SEC. 5. COMMISSION ON CHILD AND FAMILY WELFARE.**

(a) ESTABLISHMENT.—There is established a commission to be known as the Commission on Child and Family Welfare (referred to in this section as the "Commission").

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 15 members of whom—

(A) 3 shall be appointed by the President, in consultation with the Attorney General and the Secretary of Health and Human Services;

(B) 4 shall be appointed by the President pro tempore of the Senate;

(C) 2 shall be appointed by the minority leader of the Senate;

(D) 4 shall be appointed by the Speaker of the House of Representatives; and

(E) 2 shall be appointed by the minority leader of the House of Representatives.

(2) QUALIFICATIONS.—Members of the Commission shall be—

*(A) persons who have expertise in family law, children's issues, mental health, and related policies;*

*(B) persons who have expertise, through research and practice, in laws and policies related to child and family welfare;*

*(C) persons who represent organizations that seek to protect the civil rights of children;*

*(D) persons who represent advocacy groups that work for the interests of children;*

*(E) persons who represent advocacy groups that work for the interests of both custodial and noncustodial parents; and*

*(F) persons who have conducted extensive research on, or delivered services to, children adversely affected by divorce.*

*(3) DATE.—The appointments of the members of the Commission shall be made no later than June 1, 1993.*

*(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.*

*(d) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.*

*(e) MEETINGS.—The Commission shall meet at the call of the Chairman.*

*(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.*

*(g) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall select a Chairman and Vice Chairman from among its members.*

*(h) DUTIES.—The Commission shall—*

*(1) compile information and data on the issues that affect the best interests of children, including domestic issues such as abuse, family relations, services and agencies for children and families, family courts and juvenile courts;*

*(2) compile a report that lists the strengths and weaknesses of the child welfare system as it relates to placement (including child custody and visitation), summarizes State laws and regulations relating to visitation, and makes recommendations for changing the system or developing a Federal role in strengthening the system;*

*(3) study the strengths and weaknesses of the juvenile and family courts as they relate to visitation, custody, and child support enforcement and suggest any recommendations for changing these systems; and*

*(4) study domestic issues that relate to the treatment and placement of children (such as child and spousal abuse) and suggest recommendations for any needed changes, including models for mediation and other programs.*

*(i) REPORT.—Not later than January 1, 1994, the Commission shall submit to the President and the Congress an interim report, and not later than January 1, 1995, a final report, which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers to be appropriate.*

*(j) HEARINGS.—*

*(1) IN GENERAL.—Subject to paragraph (2), the Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this section.*

*(2) BROAD PUBLIC PARTICIPATION.—The Commission shall conduct hearings in various areas of the country, including inner cities, suburbs, and rural areas, to gather a broad spectrum of information on the issues to be addressed. Parents, children, experts, religious leaders, and public and private agency officials shall be afforded the opportunity to give testimony at such hearings.*

*(k) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission to the extent permitted by law.*

*(l) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.*

*(m) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.*

*(n) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.*

*(o) STAFF.—*

*(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.*

*(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.*

*(p) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.*

*(q) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.*

*(r) TERMINATION OF THE COMMISSION.—(1) The Commission shall terminate 90 days after the date on which the Commission submits its final report under subsection (i).*

*(2) Any funds held by the Commission on the date of termination of the Commission shall be deposited in the general fund of the Treasury of the United States and credited as miscellaneous receipts. Any property (other than funds) held by the Commission on that date shall be disposed of as excess or surplus property.*

*(s) AUTHORIZATION OF APPROPRIATIONS.—*

*(1) IN GENERAL.—There are authorized to be appropriated to the Commission $2,000,000 for fiscal years 1993 and 1994 to carry out this section.*

*(2) AVAILABILITY.—Any sums appropriated under the authorization contained in this subsection shall remain available, without fiscal year limitation, until expended.*

Mr. KOHL. Mr. President, I am pleased that the Senate will pass the amended version of S. 1002, the so-called deadbeat parents bill. This measure—authored by myself, Senator SHELBY, and Congressmen HYDE and SCHUMER—makes it a Federal offense for noncustodial parents who live in another State to evade their child support obligations.

All too often around here, partisan politics and gridlock undermine even the most substantive proposals. In fact, that could be the epitaph of the 102d Congress. So, I am especially grateful that this legislation represents a triumph of bipartisan spirit over a legislative traffic jam.

Today, we're sending the message that the best interests of the child are held paramount by all of us.

And here's more good news: This bipartisan concern for children who suffer without needed child support has reached even our Presidential candidates.

Both Bill Clinton and President Bush have vowed to make deadbeat parents face their financial responsibility to their children and pay up. Both candidates have developed several child support reform proposals of their own. And, both Bush and Clinton have a particular interest in deadbeat parents who are involved in interstate child support cases and are not paying up. All of us are speaking with the same voice when we say it's time to stop letting noncustodial parents who deliberately ignore their children's financial needs get away with neglect.

Mr. President, back in July I chaired a Juvenile Justice Subcommittee hearing on S. 1002. The subcommittee heard from custodial and noncustodial parents' groups, the legal community, and the recently concluded U.S. Commission on Interstate Child Support.

This bill is a step in the right direction, and Senator SHELBY is to be commended for his efforts.

But some improvements have been made in S. 1002 since that hearing. As originally drafted, the bill seemed to create a presumption that any nonpayment was intentional. We changed the language so the Government will now have to prove willful failure to pay child support

This change makes sense for two reasons: First, because it protects noncustodial parents who are not able to pay child support; second, because it tells real deadbeats, pay up or go to jail.

Another change calls for the creation of a Commission on Child and Family Welfare. The commission is not an attempt to link child support and child access; in fact, I do not believe that linkage is legitimate. But I do believe

that some noncustodial parents, many of whom faithfully pay their child support, have legitimate concerns. They want to contribute to the emotional, as well as the financial, well-being of their children. We should look at this issue just as we studied interstate nonpayment, and that is what this provision charges the commission to do.

A third improvement is a provision that authorizes funds to States so they can develop, implement, and enforce interstate child support criminal laws.

Mr. President, in sum, I am confident that when this measure reaches President Bush's desk, he will sign it into law. And I am convinced that our collective, bipartisan efforts will help improve the financial and emotional welfare of millions of children.

Mr. FORD. Mr. President, I move that the Senate concur in the amendment of the House.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

## LAND REMOTE SENSING POLICY ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 760, the Land Remote Sensing act of 1992.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2297) to enable the United States to maintain its leadership in land remote sensing by providing data continuity for the Landsat program, by establishing a new national land remote sensing policy, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Land Remote Sensing Policy Act of 1992".*

***SEC. 2. FINDINGS.***

*The Congress finds and declares the following:*

*(1) The continuous collection and utilization of land remote sensing data from space are of major benefit in studying and understanding human impacts on the global environment, in managing the Earth's natural resources, in carrying out national security functions, and in planning and conducting many other activities of scientific, economic, and social importance.*

*(2) The Federal Government's experimental Landsat system established the United States as the world leader in land remote sensing technology.*

*(3) The national interest of the United States lies in maintaining international leadership in satellite land remote sensing and in broadly promoting the beneficial use of remote sensing data.*

*(4) The cost of unenhanced Landsat data has impeded the use of such data for scientific purposes, such as for global environmental change research, as well as for other public sector applications.*

*(5) Given the importance of the Landsat program to the urgent actions of the United States, including expedited procurement procedures, must be followed in order to provide data continuity.*

*(6) Full commercialization of the Landsat program cannot be achieved within the foreseeable future, and thus should not serve as the near-term goal of national policy on land remote sensing.*

*(7) Despite the success and importance of the Landsat system, funding and organizational uncertainties over the past several years have placed its future in doubt and have jeopardized United States leadership in land remote sensing.*

*(8) Recognizing the importance of the Landsat program in helping to meet national and commercial objectives, the President approved, on February 11, 1992, a National Space Policy Directive which was developed by the National Space Council and commits the United States to ensuring the continuity of Landsat coverage into the 21st century.*

*(9) Because unenhanced Landsat data is particularly important for global environmental change and national security purposes, management responsibilities for the program should be transferred from the Department of Commerce to an integrated program management involving the National Aeronautics and Space Administration and the Department of Defense.*

*(10) Regardless of management responsibilities for the Landsat program, the Nation's broad civilian, national security, commercial, and foreign policy interests in remote sensing will best be served by ensuring that Landsat remains an unclassified program that operates according to the principles of open skies and nondiscriminatory access.*

*(11) Technological advances aimed at reducing the size and weight of satellite systems hold the potential for dramatic reductions in the cost, and substantial improvements in the capabilities, of future land remote sensing systems, but such technological advances have not been demonstrated for land remote sensing and therefore cannot be relied upon as the sole means of achieving data continuity for the Landsat program.*

*(12) A technology demonstration program involving advanced remote sensing technologies could serve a vital role in determining the design of a follow-on spacecraft to Landsat 7, while also helping to determine whether such a spacecraft should be funded by the United States Government, by the private sector, or by an international consortium.*

*(13) To maximize the value of the Landsat program to the American public, unenhanced Landsat 1 through 6 data should be made available, at a minimum, to Federal agencies, to global environmental change researchers, and to other researchers who are financially supported by the United States Government, at the cost of fulfilling user requests, and unenhanced Landsat 7 data should be made available to all users at the cost of fulfilling user requests.*

*(14) Development of the remote sensing market and the provision of commercial value-added services based on remote sensing data should remain exclusively the function of the private sector.*

*(15) It is in the best interest of the United States to maintain a permanent, comprehensive Government archive of global Landsat and other land remote sensing data for long-term monitoring and study of the changing global environment.*

***SEC. 3. DEFINITIONS.***

*In this Act, the following definitions apply:*

*(1) The term "Administrator" means the Administrator of the National Aeronautics and Space Administration.*

*(2) The term "data continuity" means the continued acquisition and availability of unenhanced data which are, from the point of view of the user—*

*(A) sufficiently consistent (in terms of acquisition geometry, coverage characteristics, and spectral characteristics) with previous Landsat data to allow comparisons for global and regional change detection and characterization; and*

*(B) compatible with such data and with methods used to receive and process such data.*

*(3) The term "data preprocessing" includes—*

*(A) rectification of system and sensor distortions in land remote sensing data as it is received directly from the satellite in preparation for delivery to a user; and*

*(B) calibration of spectral response with respect to such data, but does not include conclusions, manipulations, or calculations derived from such data or a combination of such data with other data.*

*(4) The term "land remote sensing" means the collection of data which can be processed into imagery of surface features of the Earth from an unclassified satellite or satellites, other than an operational United States Government weather satellite.*

*(5) The term "Landsat Program Management" means the integrated program management structure—*

*(A) established by, and responsible to, the Administrator and the Secretary of Defense pursuant to section 101(a); and*

*(B) consisting of appropriate officers and employees of the National Aeronautics and Space Administration, the Department of Defense, and any other Federal agencies the President designates as responsible for the Landsat program.*

*(6) The term "Landsat system" means Landsats 1, 2, 3, 4, 5, and 6, and any follow-on land remote sensing system operated and owned by the United States Government, along with any related United States Government-owned ground equipment, systems, and facilities.*

*(7) The term "Landsat 6 contractor" means the private sector entity which was awarded the contract for spacecraft construction and data marketing rights for the Landsat 6 spacecraft.*

*(8) The term "Landsat 7" means the follow-on satellite to Landsat 6.*

*(9) The term "noncommercial purposes"—*

*(A) except as provided in subparagraph (B), refers to those activities undertaken by individuals or entities on the condition, upon receipt of unenhanced data, that—*

*(i) such data shall not be used in connection with any bid for a commercial contract or any other activity that is expected, or has the potential, to be profitmaking, except in any case where a Government agency contracts with the private sector for services; and*

*(ii) the results of such activities are disclosed in a timely and complete fashion in the open technical literature or other method of public release; and*

*(B) includes those activities undertaken by individuals and entities to provide services to a Federal agency pursuant to a contract entered into with the agency.*

*(10) The term "Secretary" means the Secretary of Commerce.*

*(11) The term "unenhanced data" means land remote sensing signals or imagery products that*

*are unprocessed or subject only to data preprocessing.*

*(12) The term "United States Government and its affiliated users" means—*

*(A) Federal agencies;*

*(B) researchers involved with the United States Global Change Research Program and its international counterpart programs; and*

*(C) other researchers and international entities that have signed with the United States Government a cooperative agreement involving the use of Landsat data for noncommercial purposes.*

*(13) The term "cost of fulfilling user requests" means the costs associated with the product generation, reproduction, and distribution of data in response to a user request, and does not include capital acquisition, administrative, fixed operational, or other costs which are not directly associated with the task of fulfilling a user request.*

*(14) The term "National Satellite Land Remote Sensing Data Archive" means the archive, established by the Secretary of the Interior pursuant to the archival responsibilities defined in section 502, that is located at the EROS Data Center of the United States Geological Survey, Sioux Falls, South Dakota.*

***SEC. 4. REPEAL OF LAND REMOTE-SENSING COMMERCIALIZATION ACT OF 1984.***

*The Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.) is repealed.*

## *TITLE I—LANDSAT*

***SEC. 101. LANDSAT PROGRAM MANAGEMENT.***

*(a) ESTABLISHMENT.—The Administrator and the Secretary of Defense shall be responsible for management of the Landsat program. Such responsibility shall be carried out by establishing an integrated program management structure for the Landsat system.*

*(b) MANAGEMENT PLAN.—The Administrator, the Secretary of Defense, and any other Federal official the President designates as responsible for part of the Landsat program shall establish, through a management plan, the roles, responsibilities, and funding expectations for the Landsat Program of the appropriate Federal agencies. The management plan shall—*

*(1) specify that the fundamental goal of the Landsat Program Management is the continuity of unenhanced Landsat data through the acquisition and operation of a Landsat 7 satellite as quickly as practicable which is, at a minimum, functionally equivalent to the Landsat 6 satellite, with the addition of a tracking and data relay satellite communications capability;*

*(2) include a baseline funding profile that—*

*(A) is mutually acceptable to the National Aeronautics and Space Administration and the Department of Defense for the period covering the development and operation of Landsat 7; and*

*(B) provides for total funding responsibility of the National Aeronautics and Space Administration and the Department of Defense, respectively, to be approximately equal to the funding responsibility of the other as spread across the development and operational life of Landsat 7;*

*(3) specify that any improvements over the Landsat 6 functional equivalent capability for Landsat 7 will be funded by a specific sponsoring agency, if the required funding exceeds the baseline funding profile required by paragraph (2), and that additional improvements will be sought only if the improvements will not jeopardize data continuity; and*

*(4) provide for a technology demonstration program whose objective shall be the demonstration of advanced land remote sensing technologies that may potentially yield a system which is less expensive to build and operate, and more responsive to data users, than is the current Landsat system.*

*(c) RESPONSIBILITIES.—The Landsat Program Management shall be responsible for—*

*(1) Landsat 7 procurement, launch, and operations;*

*(2) ensuring that the operation of the Landsat system is responsive to the broad interests of the civilian, national security, commercial, and foreign users of the Landsat system;*

*(3) ensuring that all unenhanced Landsat data remains unclassified and that, except as provided in section 506 (a) and (b), no restrictions are placed on the availability of unenhanced data;*

*(4) ensuring that land remote sensing data of high priority locations will be acquired by the Landsat 7 system as required to meet the needs of the United States Global Change Research Program, as established in the Global Change Research Act of 1990, and to meet the needs of national security users;*

*(5) Landsat data responsibilities pursuant to this Act;*

*(6) oversight of Landsat contracts entered into under sections 102 and 103;*

*(7) coordination of a technology demonstration program, pursuant to section 303; and*

*(8) ensuring that copies of all data acquired by the Landsat system are provided to the National Satellite Land Remote Sensing Data Archive.*

*(d) AUTHORITY TO CONTRACT.—The Landsat Program Management may, subject to appropriations and only under the existing contract authority of the Federal agencies that compose the Landsat Program Management, enter into contracts with the private sector for services such as satellite operations and data preprocessing.*

*(e) LANDSAT ADVISORY PROCESS.—*

*(1) ESTABLISHMENT.—The Landsat Program Management shall seek impartial advice and comments regarding the status, effectiveness, procurement, and operation of the Landsat system, using existing advisory committees and other appropriate mechanisms. Such advice shall be sought from individuals who represent—*

*(A) a broad range of perspectives on basic and applied science and operational needs with respect to land remote sensing data;*

*(B) the full spectrum of users of Landsat data, including representatives from Federal agencies, State and local government agencies, academic and research institutions, nonprofit organizations, value-added companies, the agricultural and mineral extraction industries, and the public; and*

*(C) a broad diversity of age groups, sexes, and races.*

*(2) REPORTS.—Within 1 year after the date of the enactment of this Act and biennially thereafter, the Landsat Program Management shall prepare and submit to the Congress a report that summarizes the findings and conclusions of the advice provided under this section and any recommendations for policy or programmatic changes to improve the utility and operation of the Landsat system.*

***SEC. 102. PROCUREMENT OF LANDSAT 7.***

*(a) CONTRACT NEGOTIATIONS.—The Landsat Program Management shall, subject to appropriations and only under the existing contract authority of the Federal agencies that compose the Landsat Program Management, expeditiously contract with a United States private sector entity for the development and delivery of Landsat 7.*

*(b) DEVELOPMENT AND DELIVERY CONSIDERATIONS.—In negotiating a contract under this section for the development and delivery of Landsat 7, the Landsat Program Management shall—*

*(1) seek, as a fundamental objective, to have Landsat 7 operational by the expected end of the design life of Landsat 6;*

*(2) seek to ensure data continuity by the development and delivery of a satellite which is, at a minimum, functionally equivalent to the Landsat 6 satellite; and*

*(3) seek to incorporate in Landsat 7 any performance improvements required to meet United States Government needs that would not jeopardize data continuity.*

*(c) NOTIFICATION OF COST AND SCHEDULE CHANGES.—The Landsat Program Management shall promptly notify the Congress of any significant deviations from the expected cost, delivery date, and launch date of Landsat 7 that are specified by the Landsat Program Management upon award of the contract under this section.*

*(d) UNITED STATES PRIVATE SECTOR ENTITIES.—The Landsat Program Management shall, for purposes of this Act, define the term "United States private sector entities", taking into account operations, the location of assets, employment, and other such factors.*

***SEC. 103. DATA POLICY FOR LANDSATS 1 THROUGH 6.***

*(a) CONTRACT NEGOTIATIONS.—Within 30 days after the date of enactment of this Act, the Landsat Program Management shall enter into negotiations, with the Landsat 6 contractor, with respect to pricing, distribution, acquisition, archiving, and access of unenhanced data gathered by Landsats 1 through 6.*

*(b) CONSIDERATIONS.—In carrying out negotiations under this section, the Landsat Program Management shall—*

*(1) seek to ensure that such unenhanced data shall be provided, at a minimum, to the United States Government and its affiliated users at the cost of fulfilling user requests, on the condition that such unenhanced data is used solely for noncommercial purposes;*

*(2) seek to ensure that instructional data sets, selected from the Landsat data archives, will be made available to educational institutions exclusively for noncommercial, educational purposes at the cost of fulfilling user requests;*

*(3) seek to ensure that Landsat data users are able to acquire unenhanced data contained in the collective archives of foreign ground stations as easily and affordably as practicable;*

*(4) seek to ensure that adequate data to meet the needs of global environmental change researchers and national security users is acquired;*

*(5) seek to ensure that the United States Government and its affiliated users shall not be prohibited from reproduction or dissemination of unenhanced data to other agencies of the United States Government and other affiliated users, as long as the unenhanced data will be used solely for noncommercial purposes;*

*(6) seek to ensure the provision of vouchers and data grants, for providing unenhanced data to nonprofit, public interest entities, at the cost of fulfilling user requests as long as the unenhanced data will be used solely for noncommercial purposes;*

*(7) seek to ensure a viable role for the private sector in the promotion and development of the commercial market for value added and other services using unenhanced data from the Landsat system;*

*(8) seek to ensure that the data policy for data gathered by Landsats 1 through 6 is consistent with the data policy for Landsat 7 data upon the date of initial operations of Landsat 7; and*

*(9) seek to ensure that a copy of all unenhanced Landsat data is provided to the National Satellite Land Remote Sensing Data Archive at no more than the cost of fulfilling the user request.*

*(c) FAILURE TO REACH AGREEMENT.—If negotiations under subsection (a) have not, within 120 days after the date of enactment of this Act, resulted in an agreement that the Landsat Program Management determines generally achieves the goals stated in subsection (b)(1) through (9), the Administrator and the Sec-*

*retary of Defense shall, within 30 days after the date of such determination, jointly certify and report such determination to the Congress. The report shall include a review of options and projected costs for achieving such goals, and shall include recommendations for achieving such goals. The options reviewed shall include—*

*(1) retaining the existing or modified contract with the Landsat 6 contractor;*

*(2) terminating existing contracts for the exclusive marketing rights of Landsat unenhanced data; and*

*(3) establishing an alternative private sector mechanism for the marketing and commercial distribution of such data.*

***SEC. 104. TRANSFER OF LANDSAT 6 PROGRAM RESPONSIBILITIES.***

*The responsibilities of the Secretary with respect to Landsat 6 shall be transferred to the Landsat Program Management, as agreed to between the Secretary, the Secretary of Defense, and the Administrator pursuant to section 101.*

***SEC. 105. DATA POLICY FOR LANDSAT 7.***

*(a) LANDSAT 7 DATA POLICY PLANS.—The Landsat Program Management, in consultation with the Secretary and appropriate officers of other appropriate Federal agencies, shall develop and implement a data policy for Landsat 7 which shall—*

*(1) provide data to all users at the cost of fulfilling user requests;*

*(2) ensure timely and dependable delivery of unenhanced data to the full spectrum of civilian, national security, commercial, and foreign users and the National Satellite Land Remote Sensing Data Archive;*

*(3) ensure that the United States retains ownership of all unenhanced data generated by Landsat 7;*

*(4) not extend exclusive marketing rights for Landsat 7 data to any contractor;*

*(5) ensure that the proposed data distribution system contributes to the commercialization goal for land remote sensing; and*

*(6) to the extent possible, ensure that the data distribution system for Landsat 7 is compatible with the Earth Observing System Data Information System.*

## *TITLE II—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS*

***SEC. 201. GENERAL LICENSING AUTHORITY.***

*(a) LICENSING AUTHORITY OF SECRETARY.—(1) In consultation with other appropriate Federal agencies, the Secretary is authorized to license private sector parties to operate private remote sensing space systems for such period as the Secretary may specify and in accordance with this title.*

*(2) In the case of a private space system that is used for remote sensing and other purposes, the authority of the Secretary under this title shall be limited only to the remote sensing operations of such space system.*

*(b) COMPLIANCE WITH LAW, REGULATIONS, INTERNATIONAL OBLIGATIONS, AND NATIONAL SECURITY.—No license shall be granted by the Secretary unless the Secretary determines in writing that the applicant will comply with the requirements of this Act, any regulations issued pursuant to this Act, and any applicable international obligations and national security concerns of the United States.*

*(c) DEADLINE FOR ACTION ON APPLICATION.—The Secretary shall review any application and make a determination thereon within 120 days of the receipt of such application. If final action has not occurred within such time, the Secretary shall inform the applicant of any pending issues and of actions required to resolve them.*

*(d) IMPROPER BASIS FOR DENIAL.—The Secretary shall not deny such license in order to protect any existing licensee from competition.*

*(e) REQUIREMENT TO PROVIDE UNENHANCED DATA.—(1) The Secretary, in consultation with other appropriate Federal agencies and pursuant to paragraph (2), shall designate in a license issued pursuant to this title any unenhanced data required to be provided by the licensee under section 202(b)(3).*

*(2) The Secretary shall make a designation under paragraph (1) after determining that—*

*(A) such data is generated by a system whose development, fabrication, launch, or operations costs have been or will be paid for in part by the United States Government; or*

*(B) it is in the interest of the United States to require such data to be provided by the licensee consistent with section 202(b)(3), after considering the impact on the licensee and the importance of promoting widespread access to remote sensing data from United States and foreign systems.*

*(3) A designation made by the Secretary under paragraph (1) shall not be inconsistent with any contract or other arrangement entered into between a Federal agency and the licensee.*

***SEC. 202. CONDITIONS FOR OPERATION.***

*(a) LICENSE REQUIRED FOR OPERATION.—No person who is subject to the jurisdiction or control of the United States may, directly or through any subsidiary or affiliate, operate any private remote sensing space system without a license pursuant to section 201.*

*(b) LICENSE REQUIREMENTS.—Any license issued pursuant to this title shall specify that the licensee shall comply with all of the requirements of this Act and shall—*

*(1) operate the system in such manner as to preserve the national security of the United States and to observe the international obligations of the United States in accordance with section 507;*

*(2) make available to the government of any country (including the United States) unenhanced data collected by the system concerning the territory under the jurisdiction of such government as soon as such data is available and on reasonable terms and conditions;*

*(3) make unenhanced data designated by the Secretary in the license pursuant to section 201(e) available to all users without preference, bias, or any other special arrangement regarding delivery, format, pricing, or technical considerations which would favor one customer or class of customers over another;*

*(4) upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President;*

*(5) promptly make available all unenhanced data which the Secretary may request pursuant to section 502;*

*(6) furnish the Secretary with complete orbit and data collection characteristics of the system, and inform the Secretary immediately of any unintended deviation; and*

*(7) notify the Secretary of any agreement the licensee intends to enter with a foreign nation, entity, or consortium involving foreign nations or entities.*

***SEC. 203. ADMINISTRATIVE AUTHORITY OF THE SECRETARY.***

*(a) FUNCTIONS.—In order to carry out the responsibilities specified in this title, the Secretary may—*

*(1) grant, condition, or transfer licenses under this Act;*

*(2) seek an order of injunction or similar judicial determination from a United States District Court with personal jurisdiction over the licensee to terminate, modify, or suspend licenses under this title and to terminate licensed operations on an immediate basis, if the Secretary determines that the licensee has substantially failed to comply with any provision of this Act, with any terms, conditions, or restrictions of such license, or with any international obligations or national security concerns of the United States;*

*(3) provide penalties for noncompliance with the requirements of licenses or regulations issued under this title, including civil penalties not to exceed $10,000 (each day of operation in violation of such licenses or regulations constituting a separate violation);*

*(4) compromise, modify, or remit any such civil penalty;*

*(5) issue subpoenas for any materials, documents, or records, or for the attendance and testimony of witnesses for the purpose of conducting a hearing under this section;*

*(6) seize any object, record, or report pursuant to a warrant from a magistrate based on a showing of probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this Act or the requirements of a license or regulation issued thereunder; and*

*(7) make investigations and inquiries and administer to or take from any person an oath, affirmation, or affidavit concerning any matter relating to the enforcement of this Act.*

*(b) REVIEW OF AGENCY ACTION.—Any applicant or licensee who makes a timely request for review of an adverse action pursuant to subsection (a)(1), (a)(3), or (a)(6) shall be entitled to adjudication by the Secretary on the record after an opportunity for an agency hearing with respect to such adverse action. Any final action by the Secretary under this subsection shall be subject to judicial review under chapter 7 of title 5, United States Code.*

***SEC. 204. REGULATORY AUTHORITY OF THE SECRETARY.***

*The Secretary may issue regulations to carry out this title. Such regulations shall be promulgated only after public notice and comment in accordance with the provisions of section 553 of title 5, United States Code.*

***SEC. 205. AGENCY ACTIVITIES.***

*(a) LICENSE APPLICATION AND ISSUANCE.—A private sector party may apply for a license to operate a private remote sensing space system which utilizes, on a space-available basis, a civilian United States Government satellite or vehicle as a platform for such system. The Secretary, pursuant to this title, may license such system if it meets all conditions of this title and—*

*(1) the system operator agrees to reimburse the Government immediately for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and*

*(2) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for such civilian platform.*

*(b) ASSISTANCE.—The Secretary may offer assistance to private sector parties in finding appropriate opportunities for such utilization.*

*(c) AGREEMENTS.—To the extent provided in advance by appropriation Acts, any Federal agency may enter into agreements for such utilization if such agreements are consistent with such agency's mission and statutory authority, and if such remote sensing space system is licensed by the Secretary before commencing operation.*

*(d) APPLICABILITY.—This section does not apply to activities carried out under title III.*

*(e) EFFECT IN FCC AUTHORITY.—Nothing in this title shall affect the authority of the Federal Communications Commission pursuant to the Communications Act of 1934 (47 U.S.C. 151 et seq.).*

## *TITLE III—RESEARCH, DEVELOPMENT, AND DEMONSTRATION*

***SEC. 301. CONTINUED FEDERAL RESEARCH AND DEVELOPMENT.***

*(a) ROLES OF NASA AND DEPARTMENT OF DEFENSE.—(1) The Administrator and the Secretary*

*of Defense are directed to continue and to enhance programs of remote sensing research and development.*

*(2) The Landsat Program Management is authorized and encouraged to—*

*(A) conduct experimental space remote sensing programs (including applications demonstration programs and basic research at universities);*

*(B) develop remote sensing technologies and techniques, including those needed for monitoring the Earth and its environment; and*

*(C) conduct such research and development in cooperation with other Federal agencies and with public and private research entities (including private industry, universities, State and local governments, foreign governments, and international organizations) and to enter into arrangements (including joint ventures) which will foster such cooperation.*

*(b) ROLES OF DEPARTMENT OF AGRICULTURE AND DEPARTMENT OF THE INTERIOR.—(1) In order to enhance the United States ability to manage and utilize its renewable and nonrenewable resources, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to conduct programs of research and development in the applications of remote sensing, using funds appropriated for such purposes.*

*(2) Such programs may include basic research at universities, demonstrations of applications, and cooperative activities involving other Government agencies, private sector parties, and foreign and international organizations.*

*(c) ROLE OF OTHER FEDERAL AGENCIES.—Other Federal agencies are authorized and encouraged to conduct research and development on the use of remote sensing in fulfillment of their authorized missions, using funds appropriated for such purposes.*

***SEC. 302. AVAILABILITY OF FEDERALLY GATHERED UNENHANCED DATA.***

*(a) GENERAL RULE.—All unenhanced land remote sensing data gathered and owned by the United States Government, including unenhanced data gathered under the technology demonstration program carried out pursuant to section 303, shall be made available to users in a timely fashion.*

*(b) PROTECTION FOR COMMERCIAL DATA DISTRIBUTOR.—The President shall seek to ensure that unenhanced data gathered under the technology demonstration program carried out pursuant to section 303 shall, to the extent practicable, be made available on terms that would not adversely affect the commercial market for unenhanced data gathered by the Landsat 6 spacecraft.*

***SEC. 303. TECHNOLOGY DEMONSTRATION PROGRAM.***

*(a) ESTABLISHMENT.—As a fundamental component of a national land remote sensing strategy, the President shall establish, through appropriate Federal agencies, a technology demonstration program. The goals of such program shall be to—*

*(1) seek to launch advanced land remote sensing system components within the period beginning 5 years after the date of enactment of this Act;*

*(2) demonstrate within such 5-year period advanced sensor capabilities suitable for use in the anticipated land remote sensing program; and*

*(3) demonstrate within such 5-year period an advanced land remote sensing system design that could be less expensive to procure and operate than the Landsat system in effect on the date of enactment of this Act, and that therefore holds greater potential for private sector investment and control.*

*(b) EXECUTION OF PROGRAM.—In executing the technology demonstration program, the President shall seek to apply United States National Technical Means of intelligence gathering, to the extent that such technologies are appropriate for the technology demonstration and can be declassified for such purposes without causing adverse harm to United States national security interests.*

*(c) BROAD APPLICATION.—To the greatest extent practicable, the technology demonstration program established under subsection (a) shall be designed to be responsive to broad civilian, national security, commercial, and foreign policy interests in land remote sensing.*

*(d) PRIVATE SECTOR FUNDING.—The technology demonstration program under this section may be carried out in part with private sector funding.*

*(e) LANDSAT PROGRAM MANAGEMENT COORDINATION.—The Landsat Program Management shall have a coordinating role in the technology demonstration program carried out under this section.*

*(f) REPORT TO CONGRESS.—The President shall assess the progress of the technology demonstration program under this section and, within 2 years after the date of enactment of this Act, submit a report to the Congress on such progress.*

***TITLE IV—ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM***

***SEC. 401. ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM.***

*(a) ASSESSMENT.—Within 5 years after the date of enactment of this Act, the Landsat Program Management, in consultation with representatives of appropriate Federal agencies, shall assess and report to the Congress on the options for a successor land remote sensing system to Landsat 7. The report shall include a full assessment of the advantages and disadvantages of—*

*(1) private sector funding and management of a successor land remote sensing system;*

*(2) establishing an international consortium for the funding and management of a successor land remote sensing system;*

*(3) funding and management of a successor land remote sensing system by the United States Government; and*

*(4) a cooperative effort between the United States Government and the private sector for the funding and management of a successor land remote sensing system.*

*(b) GOALS.—In carrying out subsection (a), Landsat Program Management shall consider the ability of each of the options to—*

*(1) encourage the development, launch, and operation of a land remote sensing system that adequately serves the civilian, national security, commercial, and foreign policy interests of the United States;*

*(2) encourage the development, launch, and operation of a land remote sensing system that maintains data continuity with the Landsat system; and*

*(3) incorporate system enhancements, including any such enhancements developed under the technology demonstration program under section 303, which may potentially yield a system that is less expensive to build and operate, and more responsive to data users, than is the Landsat system in effect on the date of enactment of this Act.*

***TITLE V—GENERAL PROVISIONS***

***SEC. 501. ARCHIVING OF DATA.***

*(a) PUBLIC INTEREST.—It is in the public interest for the United States Government to—*

*(1) maintain an archive of land remote sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;*

*(2) control the content and scope of the archive; and*

*(3) assure the quality, integrity, and continuity of the archive.*

*(b) ARCHIVING PRACTICES.—The Secretary of the Interior, in consultation with the Landsat Program Management, shall provide for long-term storage, maintenance, and upgrading of a basic, global, land remote sensing data set (hereinafter referred to as the "basic data set") and shall follow reasonable archival practices to assure proper storage and preservation of the basic data set and timely access for parties requesting data.*

*(c) DETERMINATION OF CONTENT OF BASIC DATA SET.—In determining the initial content of, or in upgrading, the basic data set, the Secretary of the Interior shall—*

*(1) use as a baseline the data archived on the date of enactment of this Act;*

*(2) take into account future technical and scientific developments and needs, paying particular attention to the anticipated data requirements of global environmental change research;*

*(3) consult with and seek the advice of users and producers of remote sensing data and data products;*

*(4) consider the need for data which may be duplicative in terms of geographical coverage but which differ in terms of season, spectral bands, resolution, or other relevant factors;*

*(5) include, as the Secretary of the Interior considers appropriate, unenhanced data generated either by the Landsat system, pursuant to title I, or by licensees under title II;*

*(6) include, as the Secretary of the Interior considers appropriate, data collected by foreign ground stations or by foreign remote sensing space systems; and*

*(7) ensure that the content of the archive is developed in accordance with section 507.*

*(d) RIGHTS OF LICENSEES.—Any licensee under title II shall have the exclusive right to sell all data that the licensee provides to the United States remote sensing data archive for a period to be determined by the Secretary of the Interior but not to exceed 10 years from the date the data are sensed. A licensee under title II may relinquish the exclusive right and consent to distribution from the archive before the period of exclusive right has expired by terminating the offer to sell particular data.*

*(e) PUBLIC DOMAIN.—After the expiration of any exclusive right to sell, or after relinquishment of such right, the data provided to the United States remote sensing data archive shall be in the public domain and shall be made available to requesting parties by the Secretary at the cost of fulfilling the user request.*

***SEC. 502. NONREPRODUCTION.***

*Unenhanced data distributed by any land remote sensing system operator under this Act may be sold on the condition that such data will not be reproduced or disseminated by the purchaser except as provided in section 103(b)(5).*

***SEC. 503. REIMBURSEMENT FOR ASSISTANCE.***

*The Administrator, the Secretary of Defense, and the heads of other Federal agencies may provide assistance to land remote sensing system operators under the provisions of this Act. Substantial assistance shall be reimbursed by the operator, except as otherwise provided by law.*

***SEC. 504. ACQUISITION OF EQUIPMENT.***

*The Secretary may, by means of a competitive process, allow a licensee under title II or any other private party to buy, lease, or otherwise acquire the use of equipment from the Landsat system, when such equipment is no longer needed for the operation of such system or for the sale of data from such system. Officials of other Federal civilian agencies are authorized and encouraged to cooperate with the Secretary in carrying out this section.*

***SEC. 505. RADIO FREQUENCY ALLOCATION.***

*(a) APPLICATION TO FEDERAL COMMUNICATIONS COMMISSION.—To the extent required by the Communications Act of 1934 (47 U.S.C. 151 et*

*seq.), an application shall be filed with the Federal Communications Commission for any radio facilities involved with the commercial remote sensing space system.*

*(b) DEADLINER FOR FCC ACTION.—It is the intent of Congress that the Federal Communications Commission complete the radio licensing process under the Communications Act of 1934 (47 U.S.C. 151 et seq.) upon the application of any private sector party or consortium operator of any commercial land remote sensing space system subject to this Act, within 120 days after the receipt of an application for such licensing. If final action has not occurred within 120 days after the receipt of such an application, the Federal Communications Commission shall inform the applicant of any pending issues and of actions required to resolve them.*

*(c) DEVELOPMENT AND CONSTRUCTION OF UNITED STATES SYSTEM.—Authority shall not be required from the Federal Communications Commission for the development and construction of any United States land remote sensing space system (or component thereof, other than radio transmitting facilities or components), while any licensing determination is being made.*

*(d) CONSISTENCY WITH INTERNATIONAL OBLIGATIONS AND PUBLIC INTEREST.—Frequency allocations made pursuant to this section by the Federal Communications Commission shall be consistent with international obligations and with the public interest.*

***SEC. 506. CONSULTATION.***

*(a) CONSULTATION WITH SECRETARY OF DEFENSE.—The Landsat Program Management shall consult with the Secretary of Defense on all matters under this Act affecting national security. The Secretary of Defense shall be responsible for determining those conditions, consistent with this Act, necessary to meet national security concerns of the United States and for notifying the Secretary and the Landsat Program Management promptly of such conditions.*

*(b) CONSULTATION WITH SECRETARY OF STATE.—(1) The Landsat Program Management shall consult with the Secretary of State on all matters under this Act affecting international obligations. The Secretary of State shall be responsible for determining those conditions, consistent with this Act, necessary to meet international obligations and policies of the United States and for notifying promptly the Secretary and the Landsat Program Management of such conditions.*

*(2) Appropriate Federal agencies are authorized and encouraged to provide remote sensing data, technology, and training to developing nations as a component of programs of international aid.*

*(3) The Secretary of State shall promptly report to the Secretary and Landsat Program Management any instances outside the United States of discriminatory distribution of Landsat data.*

*(c) STATUS REPORT.—The Landsat Program Management shall, as often as necessary, provide to the Congress complete and updated information about the status of ongoing operations of the Landsat system, including timely notification of decisions made with respect to the Landsat system in order to meet national security concerns and international obligations and policies of the United States Government.*

*(d) REIMBURSEMENTS.—If, as a result of technical modifications imposed on a land remote sensing system operator on the basis of national security concerns, the Secretary, in consultation with the Secretary of Defense or with other Federal agencies, determines that additional costs will be incurred by the land remote sensing system operator, or that past development costs (including the cost of capital) will not be recovered by the land remote sensing system operator, the Secretary may require the agency or agencies requesting such technical modifications to reimburse the land remote sensing system operator for such additional or development costs, but not for anticipated profits. Reimbursements may cover costs associated with required changes in system performance, but not costs ordinarily associated with doing business abroad.*

***SEC. 507. ENFORCEMENT.***

*(a) IN GENERAL.—In order to ensure that unenhanced data received solely for noncommercial purposes is not used for any commercial purpose, the Secretary (in collaboration with private sector entities responsible for the marketing and distribution of unenhanced data generated by land remote sensing systems of the United States Government) shall develop and implement a system for enforcing the pricing structure for such unenhanced data, in the event that unenhanced data is made available for noncommercial applications at a different price than the price at which it is made available for commercial applications.*

*(b) AUTHORITY OF SECRETARY.—Subject to subsection (d), the Secretary may impose any of the enforcement mechanisms described in subsection (c) against a person who—*

*(1) receives unenhanced data under this Act solely for noncommercial purposes (and at a different price than the price at which such data is made available for commercial applications); and*

*(2) uses such data for commercial purposes.*

*(c) ENFORCEMENT MECHANISMS.—Enforcement mechanisms referred to in subsection (b) may include civil penalties of not more than $10,000 per day per violation, denial of further unenhanced data purchasing privileges, and any other penalties or restrictions the Secretary considers necessary to ensure, to the greatest extent practicable, that unenhanced data acquired for noncommercial purposes is not used to unfairly compete in the commercial market against private sector entities not eligible for data at the cost of fulfilling user requests.*

*(d) PROCEDURES AND REGULATIONS.—The Secretary shall issue any regulations necessary to carry out this section and shall establish standards and procedures governing the imposition of enforcement mechanisms under subsection (b). The standards and procedures shall include a procedure for potentially aggrieved parties to file formal protests with the Secretary alleging instances where such unenhanced data has been, or is being, used for commercial purposes in violation of the terms of receipt of such data. The Secretary shall promptly act to investigate any such protest, and shall report annually to the Congress on instances of such violations.*

***TITLE VI—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES***

***SEC. 601. PROHIBITION.***

*Neither the President nor any other official of the United States Government shall make any effort to lease, sell, or transfer to the private sector, or commercialize, any portion of the weather satellite systems operated by the Department of Commerce or any successor agency.*

***SEC. 602. FUTURE CONSIDERATIONS.***

*Regardless of any change in circumstances subsequent to the date of enactment of this Act, even if such change makes it appear to be in the national interest to commercialize weather satellites, neither the President nor any official shall take any action prohibited by section 601 unless this title has first been repealed.*

AMENDMENT NO. 3416

(Purpose: To make an amendment in the nature of a substitute)

Mr. SIMPSON. Mr. President, in behalf of Mr. PRESSLER, I send an amendment to the desk in the nature of a substitute, and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. PRESSLER, proposes an amendment numbered 3416.

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

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

The amendment is as follows:

In lieu of the matter proposed to be inserted by the Committee amendment in the nature of a substitute, insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Land Remote Sensing Act of 1992".

**SEC. 2. FINDINGS.**

The Congress finds and declares the following:

(1) The continuous collection and utilization of land remote sensing data from space are of major benefit in studying and understanding human impacts on the global environment, in managing the Earth's natural resources, in carrying out national security functions, and in planning and conducting many other activities of scientific, economic, and social importance.

(2) The Federal Government's Landsat system established the United States as the world leader in land remote sensing technology.

(3) The national interest of the United States lies in maintaining international leadership in satellite land remote sensing and in broadly promoting the beneficial use of remote sensing data.

(4) The cost of Landsat data has impeded the use of such data for scientific purposes, such as for global environmental change research, as well as for other public sector applications.

(5) Given the importance of the Landsat program to the United States, urgent actions, including expedited procurement procedures, are required to ensure data continuity.

(6) Full commercialization of the Landsat program cannot be achieved within the foreseeable future, and thus should not serve as the near-term goal of national policy on land remote sensing; however, commercialization of land remote sensing should remain a long-term goal of United States policy.

(7) Despite the success and importance of the Landsat system, funding and organizational uncertainties over the past several years have placed its future in doubt and have jeopardized United States leadership in land remote sensing.

(8) Recognizing the importance of the Landsat program in helping to meet national and commercial objectives, the President approved, on February 11, 1992, a National Space Policy Directive which was developed by the National Space Council and commits the United States to ensuring the continuity of Landsat coverage into the 21st century.

(9) Because Landsat data are particularly important for national security purposes and global environmental change research, management responsibilities for the program should be transferred from the Department of Commerce to an integrated program management involving the Department of Defense and the National Aeronautics and Space Administration.

(10) Regardless of management responsibilities for the Landsat program, the Nation's

broad civilian, national security, commercial, and foreign policy interests in remote sensing will best be served by ensuring that Landsat remains an unclassified program that operates according to the principles of open skies and nondiscriminatory access.

(11) Technological advances aimed at reducing the size and weight of satellite systems hold the potential for dramatic reductions in the cost, and substantial improvements in the capabilities, of future land remote sensing systems, but such technological advances have not been demonstrated for land remote sensing and therefore cannot be relied upon as the sole means of achieving data continuity for the Landsat program.

(12) A technology demonstration program involving advanced remote sensing technologies could serve a vital role in determining the design of a follow-on spacecraft to Landsat 7, while also helping to determine whether such a spacecraft should be funded by the United States Government, by the private sector, or by an international consortium.

(13) To maximize the value of the Landsat program to the American public, unenhanced Landsat 4 through 6 data should be made available, at a minimum, to United States Government agencies, to global environmental change researchers, and to other researchers who are financially supported by the United States Government, at the cost of fulfilling user requests, and unenhanced Landsat 7 data should be made available to all users at the cost of fulfilling user requests.

(14) To stimulate development of the commercial market for unenhanced data and value-added services, the United States Government should adopt a data policy for Landsat 7 which allows "competition within the private sector for distribution of unenhanced data and value-added services.

(15) Development of the remote sensing market and the provision of commercial value-added services based on remote sensing data should remain exclusively the function of the private sector.

(16) It is the best interest of the United States to maintain a permanent, comprehensive Government archive of global Landsat and other land remote sensing data for long-term monitoring and study of the changing global environment.

**SEC. 3. DEFINITIONS.**

In this Act, the following definitions apply:

(1) The Term "Administrator" means the Administrator of the National Aeronautics and Space Administration.

(2) The term "cost of fulfilling user requests" means the incremental costs associated with providing product generation, reproduction, and distribution of unenhanced data in response to user requests and shall not include any acquisition, amortization, or depreciation of capital assets originally paid for by the United States Government or other costs not specifically attributable to fulfilling user requests.

(3) The term "data continuity" means the continued acquisition and availability of unenhanced data which are, from the point of view of the user—

(A) sufficiently consistent (in terms of acquisition geometry, coverage characteristics, and spectral characteristics) with previous Landsat data to allow comparisons for global and regional change detection and characterization; and

(B) compatible with such data and with methods used to receive and process such data.

(4) The term "data preprocessing" may include—

(A) rectification of system and sensor distortions in land remote sensing data as it is received directly from the satellite in preparation for delivery to a user;

(B) registration of such data with respect to features of the Earth; and

(C) calibration of spectral response with respect to such data, but does not include conclusions, manipulations, or calculations derived from such data, or a combination of such data with other data.

(5) The term "land remote sensing" means the collection of data which can be processed into imagery of surface features of the Earth from an unclassified satellite or satellites, other than an operational United States Government weather satellite.

(6) The term "Landsat Program Management" means the integrated program management structure—

(A) established by, and responsible to, the Administrator and the Secretary of Defense pursuant to section 101(a); and

(B) consisting of appropriate officers and employees of the National Aeronautics and Space Administration, the Department of Defense, and any other United States Government agencies the President designates as responsible for the Landsat program.

(7) The term "Landsat system" means Landsats 1, 2, 3, 4, 5, and 6, and any follow-on land remote sensing system operated and owned by the United States Government, along with any related ground equipment, systems, and facilities owned by the United States Government.

(8) The term "Landsat 6 contractor" means the private sector entity which was awarded the contract for spacecraft construction, operations, and data marketing rights for the Landsat 6 spacecraft.

(9) The term "Landsat 7" means the follow-on satellite to Landsat 6.

(10) The term "National Satellite Land Remote Sensing Data Archive" means the archive established by the Secretary of the Interior pursuant to the archival responsibilities defined in section 502.

(11) The term "noncommercial purposes" refers to those activities undertaken by individuals or entities on the condition, upon receipt of unenhanced data, that—

(A) such data shall not be used in connection with any bid for a commercial contract, development of a commercial product, or any other non-United States Government activity that is expected, or has the potential, to be profitmaking;

(B) the results of such activities are disclosed in a timely and complete fashion in the open technical literature or other method of public release, except when such disclosure by the United States Government or its contractors would adversely affect the national security or foreign policy of the United States or violate a provision of law or regulation; and

(C) such data shall not be distributed in competition with unenhanced data provided by the Landsat 6 contractor.

(12) The term "Secretary" means the Secretary of Commerce.

(13) The term "unenhanced data" means land remote sensing signals or imagery products that are unprocessed or subject only to data preprocessing.

(14) The term "United States Government and its affiliated users" means—

(A) United States Government agencies;

(B) researchers involved with the United States Global Change Research Program and its international counterpart programs; and

(C) other researchers and international entities that have signed with the United States Government a cooperative agreement involving the use of Landsat data for noncommercial purposes.

**SEC. 4. REPEAL OF LAND REMOTE-SENSING COMMERCIALIZATION ACT OF 1984.**

The Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.) is repealed.

TITLE I—LANDSAT

**SEC. 101. LANDSAT PROGRAM MANAGEMENT.**

(a) ESTABLISHMENT.—The Administrator and the Secretary of Defense shall be responsible for management of the Landsat program. Such responsibility shall be carried out by establishing an integrated program management structure for the Landsat system.

(b) MANAGEMENT PLAN.—The Administrator, the Secretary of Defense, and any other United States Government official the President designates as responsible for part of the Landsat program, shall establish, through a management plan, the roles, responsibilities, and funding expectations for the Landsat Program of the appropriate United States Government agencies. The management plan shall—

(1) specify that the fundamental goal of the Landsat Program Management is the continuity of unenhanced Landsat data through the acquisition and operation of a Landsat 7 satellite as quickly as practicable which is, at a minimum, functionally equivalent to the Landsat 6 satellite, with the addition of a tracking and data relay satellite communications capability;

(2) include a baseline funding profile that—

(A) is mutually acceptable to the National Aeronautics and Space Administration and the Department of Defense for the period covering the development and operation of Landsat 7; and

(B) provides for total funding responsibility of the National Aeronautics and Space Administration and the Department of Defense, respectively, to be approximately equal to the funding responsibility of the other as spread across the development and operational life of Landsat 7;

(3) specify that any improvements over the Landsat 6 functional equivalent capability for Landsat 7 will be funded by a specific sponsoring agency or agencies, in a manner agreed to by the Landsat Program Management, if the required funding exceeds the baseline funding profile required by paragraph (2), and that additional improvements will be sought only if the improvements will not jeopardize data continuity; and

(4) provide for a technology demonstration program whose objective shall be the demonstration of advanced land remote sensing technologies that may potentially yield a system which is less expensive to build and operate, and more responsive to data users, than is the current Landsat system.

(c) RESPONSIBILITIES.—The Landsat Program Management shall be responsible for—

(1) Landsat 7 procurement, launch, and operations;

(2) ensuring that the operation of the Landsat system is responsive to the broad interests of the civilian, national security, commercial, and foreign users of the Landsat system;

(3) ensuring that all unenhanced Landsat data remain unclassified and that, except as provided in section 506 (a) and (b), no restrictions are placed on the availability of unenhanced data;

(4) ensuring that land remote sensing data of high priority locations will be acquired by the Landsat 7 system as required to meet the

needs of the United States Global Change Research Program, as established in the Global Change Research Act of 1990, and to meet the needs of national security users;

(5) Landsat data responsibilities pursuant to this Act;

(6) oversight of Landsat contracts entered into under section 102 and 103;

(7) coordination of a technology demonstration program, pursuant to section 303; and

(8) ensuring that copies of data acquired by the Landsat system are provided to the National Satellite Land Remote Sensing Data Archive.

(d) AUTHORITY TO CONTRACT.—The Landsat Program Management may, subject to appropriations and only under the existing contract authority of the United States Government agencies that compose the Landsat Program Management, enter into contracts with the private sector for services such as, but not limited to, satellite operations and data preprocessing.

(e) LANDSAT ADVISORY PROCESS.—

(1) ESTABLISHMENT.—The Landsat Program Management shall seek impartial advice and comments regarding the status, effectiveness, and operation of the Landsat system, using existing advisory committees and other appropriate mechanisms. Such advice shall be sought from individuals who represent—

(A) a broad range of perspectives on basic and applied science and operational needs with respect to land remote sensing data;

(B) the full spectrum of users of Landsat data, including representatives from United States Government agencies, State and local government agencies, academic institutions, nonprofit organizations, value-added companies, the agricultural, mineral extraction, and other user industries, and the public; and

(C) a broad diversity of age groups, sexes, and races.

(2) REPORTS.—Within 1 year after the date of the enactment of this Act and biennially thereafter, the Landsat Program Management shall prepare and submit a report to the Congress which—

(A) reports the public comments received pursuant to paragraph (1); and

(B) includes—

(i) a response to the public comments received pursuant to paragraph (1);

(ii) information on the volume of use, by category, of data from the Landsat system; and

(iii) any recommendations for policy or programmatic changes to improve the utility and operation of the Landsat system.

**SEC. 102. PROCUREMENT OF LANDSAT 7.**

(a) CONTRACT NEGOTIATIONS.—The Landsat Program Management shall, subject to appropriations and only under the existing contract authority of the United States Government agencies that compose the Landsat Program Management, expeditiously contract with a United States private sector entity for the development and delivery of Landsat 7.

(b) DEVELOPMENT AND DELIVERY CONSIDERATIONS.—In negotiating a contract under this section for the development and delivery of Landsat 7, the Landsat Program Management shall—

(1) seek, as a fundamental objective, to have Landsat 7 operational by the expected end of the design life of Landsat 6;

(2) seek to ensure data continuity by the development and delivery of a satellite which is, at a minimum, functionally equivalent to the Landsat 6 satellite; and

(3) seek to incorporate in Landsat 7 any performance improvements required to meet United States Government needs that would not jeopardize data continuity.

(c) NOTIFICATION OF COST AND SCHEDULE CHANGES.—The Landsat Program Management shall promptly notify the Congress of any significant deviations from the expected cost, delivery date, and launch date of Landsat 7, that are specified by the Landsat Program Management upon award of the contract under this section.

(d) UNITED STATES PRIVATE SECTOR ENTITIES.—The Landsat Program Management shall, for purposes of this Act, define the term "United States private sector entities", taking into account the location of operations, assets, personnel, and other such factors.

**SEC. 103. DATA POLICY FOR LANDSAT 4 THROUGH 6.**

(A) CONTRACT NEGOTIATIONS.—Within 30 days after the date of enactment of this Act, the Landsat Program Management shall enter into negotiations with the Landsat 6 contractor to formalize an arrangement with respect to pricing, distribution, acquisition, archiving, and availability of unenhanced data for which the Landsat 6 contractor has responsibility under its contract. Such arrangement shall provide for a phased transition to a data policy consistent with the Landsat 7 data policy (developed pursuant to section 105) by the date of initial operation of Landsat 7. Conditions of the phased arrangement should require that the Landsat 6 contractor adopt provisions so that by the final phase of the transition period—

(1) such unenhanced data shall be provided, at a minimum, to the United States Government and its affiliated users at the cost of fulfilling user requests, on the condition that such unenhanced data are used solely for noncommercial purposes;

(2) instructional data sets, selected from the Landsat data archives, will be made available to educational institutions exclusively for noncommercial, educational purposes at the cost of fulfilling user requests;

(3) Landsat data users are able to acquire unenhanced data contained in the collective archives of foreign ground stations as easily and affordable as practicable;

(4) adequate data necessary to meet the needs of global environmental change researchers and national security users are acquired;

(5) the United States Government and its affiliated users shall not be prohibited from reproduction, or dissemination of unenhanced data to other agencies of the United States Government and other affiliated users, on the condition that such unenhanced data are used solely for noncommercial purposes;

(6) non-profit, public interest entities receive vouchers, data grants, or other such means of providing them with unenhanced data at the cost of fulfilling user requests, on the condition that such unenhanced data are used solely for noncommercial purposes.

(7) a viable role for the private sector in the promotion and development of the commercial market for value added and other services using unenhanced data from the Landsat system is preserved; and

(8) unenhanced data from the Landsat system are provided to the National Satellite Land Remote Sensing Data Archive at no more than the cost of fulfilling user requests.

(b) FAILURE TO REACH AGREEMENT.—If negotiations under subsection (a) have not, by September 30, 1993, resulted in an agreement that the Landsat Program Management determines generally achieves the goals stated in subsection (b)(1) through (8), the Administrator and the Secretary of Defense shall, within 30 days after the date of such determination, jointly certify and report such determination to the Congress. The report shall include a review of options and projected costs for achieving such goals, and shall include recommendations for achieving such goals. The options reviewed shall include—

(1) retaining the existing or modified contract with the Landsat 6 contractor;

(2) the termination of existing contracts for the exclusive right to market unenhanced Landsat data; and

(3) the establishment of an alternative private sector mechanism for the marketing and commercial distribution of such data.

**SEC. 104. TRANSFER OF LANDSAT 6 PROGRAM RESPONSIBILITIES.**

The responsibility of the Secretary with respect to Landsat 6 shall be transferred to the Landsat Program Management, as agreed to between the Secretary and the Landsat Program Management, pursuant to section 101.

**SEC. 105. DATA POLICY FOR LANDSAT 7.**

(a) LANDSAT 7 DATA POLICY.—The Landsat Program Management, in consultation with other appropriate United States Government agencies, shall develop a data policy for Landsat 7 which should—

(1) ensure that unenhanced data are available to all users at the cost of fulfilling user requests;

(2) ensure timely and dependable delivery of unenhanced data to the full spectrum of civilian, national security, commercial, and foreign users and the National Satellite Land Remote Sensing Data Archive;

(3) ensure that the United States retains ownership of all unenhanced data generated by Landsat 7;

(4) support the development of the commercial market for remote sensing data;

(5) ensure that the provision of commercial value-added services based on remote sensing data remains exclusively the function of the private sector; and

(6) to the extent possible, ensure that the data distribution system for Landsat 7 is compatible with the Earth Observing System Data and Information System.

(b) In addition, the data policy for Landsat 7 may provide for—

(1) United States private sector entities to operate ground receiving stations in the United States for Landsat 7 data;

(2) other means for direct access by private sector entities to unenhanced data from Landsat 7; and

(3) the United States Government to charge a per image fee, license fee, or other such fee to entities operating ground receiving stations or distributing Landsat 7 data.

(c) LANDSAT 7 DATA POLICY PLAN.—Not later than July 15, 1994, the Landsat Program Management shall develop and submit to Congress a report that contains a Landsat 7 Data Policy Plan. This plan shall define the roles and responsibilities of the various public and private sector entities that would be involved in the acquisition, processing, distribution, and archiving of Landsat 7 data and in operations of the Landsat 7 spacecraft.

(d) REPORTS.—Not later than 12 months after submission of the Landsat 7 Data Policy Plan, required by subsection (c), and annually thereafter until the launch of Landsat 7, the Landsat Program Management, in consultation with representatives of appropriate United States Government agencies, shall prepare and submit a report to the Congress which—

(1) provides justification for the Landsat 7 data policy in terms of the civilian, national security, commercial, and foreign policy needs of the United States; and

(2) provides justification for any elements of the Landsat 7 data policy which are not consistent with the provisions of subsection (a).

TITLE II—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS

**SEC. 201. GENERAL LICENSING AUTHORITY.**

(a) LICENSING AUTHORITY OF SECRETARY.—(1) In consultation with other appropriate United States Government agencies, the Secretary is authorized to license private sector parties to operate private remote sensing space systems for such period as the Secretary may specify and in accordance with the provisions of this title.

(2) In the case of a private space system that is used for remote sensing and other purposes, the authority of the Secretary under this title shall be limited only to the remote sensing operations of such space system.

(b) COMPLIANCE WITH THE LAW, REGULATIONS, INTERNATIONAL OBLIGATIONS, AND NATIONAL SECURITY.—No license shall be granted by the Secretary unless the Secretary determines in writing that the applicant will comply with the requirements of this Act, any regulations issued pursuant to this Act, and any applicable international obligations and national security concerns of the United States.

(c) DEADLINE FOR ACTION ON APPLICATION.—The Secretary shall review any application and make a determination thereon within 120 days of the receipt of such application. If final action has not occurred within such time, the Secretary shall inform the applicant of any pending issues and of actions required to resolve them.

(d) IMPROPER BASIS FOR DENIAL.—The Secretary shall not deny such license in order to protect any existing licensee from competition.

(e) REQUIREMENT TO PROVIDE UNENHANCED DATA.—(1) The Secretary, in consultation with other appropriate United States Government agencies and pursuant to paragraph (2), shall designate in a licensee issued pursuant to this title any unenhanced data required to be provided by the licensee under section 202(b)(3).

(2) The Secretary shall make a designation under paragraph (1) after determining that—

(A) such data are generated by a system for which all or a substantial part of the development, fabrication, launch, or operations costs have been or will be directly funded by the United States Government; or

(B) it is in the interest of the United States to require such data to be provided by the licensee consistent with section 202(b)(3), after considering the impact on the licensee and the importance of promoting widespread access to remote sensing data from United States and foreign systems.

(3) A designation made by the Secretary under paragraph (1) shall not be inconsistent with any contract or other arrangement entered into between a United States Government agency and the licensee.

**SEC. 202. CONDITIONS FOR OPERATION**

(a) LICENSE REQUIRED FOR OPERATION.—No person who is subject to the jurisdiction or control of the United States may, directly or through any subsidiary or affiliate, operate any private remote sensing space system without a license pursuant to section 201.

(b) LICENSING REQUIREMENTS.—Any license issued pursuant to this title shall specify that the licensee shall comply with all of the requirements of this Act and shall—

(1) operate the system in such manner as to preserve the national security of the United States and to observe the international obligations of the United States in accordance with section 506;

(2) make available to the government of any country (including the United States) unenhanced data collected by the system concerning the territory under the jurisdiction of such government as soon as such data are available and on reasonable terms and conditions;

(3) make unenhanced data designated by the Secretary in the license pursuant to section 201(e) available in accordance with section 501;

(4) upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President;

(5) furnish the Secretary with complete orbit and data collection characteristics of the system, and inform the Secretary immediately of any deviation; and

(6) notify the Secretary of any agreement the licensee intends to enter with a foreign nation, entity, or consortium involving foreign nations or entities.

(c) ADDITIONAL LICENSING REQUIREMENTS FOR LANDSAT 6 CONTRACTOR.—In addition to the requirements of paragraph (b), any license issued pursuant to this title to the Landsat 6 contractor shall specify that the Landsat 6 contractor shall—

(1) notify the Secretary of any value added activities (as defined by the Secretary by regulation) that will be conducted by the Landsat 6 contractor or by a subsidiary or affiliate; and

(2) if such activities are to be conducted, provide the Secretary with a plan for compliance with section 501 of this Act.

**SEC. 203. ADMINISTRATIVE AUTHORITY OF THE SECRETARY**

(a) FUNCTIONS.—In order to carry out the responsibilities specified in this title, the Secretary may—

(1) grant, condition, or transfer licenses under this Act;

(2) seek an order of injunction or similar judicial determination from a United States District Court with personal jurisdiction over the licensee to terminate, modify, or suspend licenses under this title and to terminate licensed operations on an immediate basis, if the Secretary determines that the licensee has substantially failed to comply with any provisions of this Act, with any terms, conditions, or restrictions of such license, or with any international obligations or national security concerns of the United States;

(3) provide penalties for noncompliance with the requirements of licenses or regulations issued under this title, including civil penalties not to exceed $10,000 (each day of operation in violation of such licenses or regulations constituting a separate violation);

(4) compromise, modify, or remit any such civil penalty;

(5) issue subpoenas for any materials, documents, or records, or for the attendance and testimony of witnesses for the purpose of conducting a hearing under this section;

(6) seize any object, record, or report pursuant to a warrant from a magistrate based on a showing of probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this Act or the requirements of a license or regulation issued thereunder; and

(7) make investigations and inquiries and administer to or take from any person an oath, affirmation, or affidavit concerning any matter relating to the enforcement of this Act.

(b) REVIEW OF AGENCY ACTION.—Any applicant or licensee who makes a timely request for review of an adverse action pursuant to subsection (a)(1), (a)(3), (a)(5), or (a)(6) shall be entitled to adjudication by the Secretary on the record after an opportunity for an agency hearing with respect to such adverse action. Any final action by the Secretary under this subsection shall be subject to judicial review under chapter 7 of title 5, United States Code.

**SEC. 204. REGULATORY AUTHORITY OF THE SECRETARY**

The Secretary may issue regulations to carry out this title. Such regulations shall be promulgated only after public notice and comment in accordance with the provisions of section 553 of title 5, United States Code.

**SEC. 205. AGENCY ACTIVITIES**

(a) LICENSE APPLICATION AND ISSUANCE.—A private sector party may apply for a license to operate a private remote sensing space system which utilizes, on a space-available basis, a civilian United States Government satellite or vehicle as a platform for such system. The Secretary, pursuant to this title, may license such system if it meets all conditions of this title and—

(1) the system operator agrees to reimburse the Government in a timely manner for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and

(2) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for such civilian platform.

(b) ASSISTANCE.—The Secretary may offer assistance to private sector parties in finding appropriate opportunities for such utilization.

(c) AGREEMENTS.—To the extent provided in advance by appropriation Acts, any United States Government agency may enter into agreements for such utilization if such agreements are consistent with such agency's mission and statutory authority, and if such remote sensing space system is licensed by the Secretary before commencing operation.

(d) APPLICABILITY.—This section does not apply to activities carried out under title III.

(e) EFFECT ON FCC AUTHORITY.—Nothing in this title shall affect the authority of the Federal Communications Commission pursuant to the Communications Act of 1934 (47 U.S.C. 151 et seq.).

TITLE III—RESEARCH, DEVELOPMENT, AND DEMONSTRATION

**SEC. 301. CONTINUED FEDERAL RESEARCH AND DEVELOPMENT.**

(a) ROLES OF NASA AND DEPARTMENT OF DEFENSE.—(1) The Administrator and the Secretary of Defense are directed to continue and to enhance programs of remote sensing research and development.

(2) The Administrator is authorized and encouraged to—

(A) conduct experimental space remote sensing programs (including applications demonstration programs and basic research at universities);

(B) develop remote sensing technologies and techniques, including those needed for monitoring the Earth and its environment; and

(C) conduct such research and development in cooperation with other United States Government agencies and with public and private research entities (including private in-

dustry, universities, non-profit organizations, State and local governments, foreign governments, and international organizations) and to enter into arrangements (including joint ventures) which will foster such cooperation.

"(b) ROLES OF DEPARTMENT OF AGRICULTURE AND DEPARTMENT OF INTERIOR.—

(1) In order to enhance the ability of the United States to manage and utilize its renewable and nonrenewable resources, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to conduct programs of research and development in the applications of remote sensing using funds appropriated for such purposes.

(2) Such programs may include basic research at universities, demonstrations of applications, and cooperative activities involving other Government agencies, private sector parties, and foreign and international organizations.

(c) ROLE OF OTHER FEDERAL AGENCIES.—Other United States Government agencies are authorized and encouraged to conduct research and development on the use of remote sensing in the fulfillment of their authorized missions, using funds appropriated for such purposes.

**SEC. 302. AVAILABILITY OF FEDERALLY GATHERED UNENHANCED DATA.**

(a) GENERAL RULE.—All unenhanced land remote sensing data gathered and owned by the United States Government, including unenhanced data gathered under the technology demonstration program carried out pursuant to section 303, shall be made available to users in a timely fashion.

(b) PROTECTION FOR COMMERCIAL DATA DISTRIBUTOR.—The President shall seek to ensure that unenhanced data gathered under the technology demonstration program carried out pursuant to section 303 shall, to the extent practicable, be made available on terms that would not adversely affect the commercial market for unenhanced data gathered by the Landsat 6 spacecraft.

**SEC. 303. TECHNOLOGY DEMONSTRATION PROGRAM.**

(a) ESTABLISHMENT.—As a fundamental component of a national land remote sensing strategy, the President shall establish, through appropriate United States Government agencies, a technology demonstration program. The goals of such program shall be to—

(1) seek to launch advanced land remote sensing system components within 5 years after the date of the enactment of this Act.

(2) demonstrate within such 5-year period advanced sensor capabilities suitable for use in the "anticipated land remote sensing program; and

(3) demonstrate within such 5-year period an advanced land remote sensing system design that could be less expensive to procure and operate than the Landsat system projected to be in operation through the year 2000, and that therefore holds greater potential for private sector investment and control.

(b) EXECUTION OF PROGRAM.—In executing the technology demonstration program, the President shall seek to apply technologies associated with United States National Technical Means of intelligence gathering, to the extent that such technologies are appropriate for the technology demonstration and can be declassified for such purposes without causing adverse harm to United States national security interests.

(c) BROAD APPLICATION.—To the greatest extent practicable, the technology demonstration program established under subsection (a) shall be designed to be responsive to the broad civilian, national security, commercial, and foreign policy needs of the United States.

(d) PRIVATE SECTOR FUNDING.—The technology demonstration program under this section may be carried out in part with private sector funding.

(e) LANDSAT PROGRAM MANAGEMENT COORDINATION.—The Landsat Program Management shall have a coordinating role in the technology demonstration program carried out under this section.

(f) REPORT TO CONGRESS.—The President shall assess the progress of the technology demonstration program under this section and, within 2 years after the date of enactment of this Act, submit a report to the Congress on such progress.

TITLE IV—ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM

**SEC. 401. ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM.**

(a) ASSESSMENT.—Within 5 years after the date of the enactment of this Act, the Landsat Program Management, in consultation with representatives of appropriate United States Government agencies, shall assess and report to the Congress on the options for a successor land remote sensing system to Landsat 7. The report shall include a full assessment of the advantages and disadvantages of—

(1) private sector funding and management of a successor land remote sensing system;

(2) establishing an international consortium for the funding and management of a successor land remote sensing system;

(3) funding and management of a successor land remote sensing system by the United States Government; and

(4) a cooperative effort between the United States Government and the private sector for the funding and management of a successor land remote sensing system.

(b) GOALS.—In carrying out subsection (a), the Landsat Program Management shall consider the ability of each of the options to—

(1) encourage the development, launch, and operation of a land remote sensing system that adequately serves the civilian, national security, commercial, and foreign policy interests of the United States;

(2) encourage the development, launch, and operation of a land remote sensing system that maintains data continuity with the Landsat system; and

(3) incorporate system enhancements, including any such enhancements developed under the technology demonstration program under section 303, which may potentially yield a system that is less expensive to build and operate, and more responsive to data users, than is the Landsat system projected to be in operation through the year 2000.

(c) PREFERENCE FOR PRIVATE SECTOR SYSTEM.—If a successor land remote sensing system to Landsat 7 can be funded and managed by the private sector while still achieving the goals stated in subsection (b) without jeopardizing the domestic, national security, and foreign policy interests of the United States, preference should be given to the development of such a system by the private sector without competition from the United States Government.

TITLE V—GENERAL PROVISIONS

**SEC. 501. NONDISCRIMINATORY DATA AVAILABILITY**

(a) GENERAL RULE.—Except as provided in subsection (b) of this section, any unenhanced data generated by the Landsat system or any other land remote sensing system funded and owned by the United States Government shall be made available to all users without preference, bias, or any other special arrangement (except on the basis of national security concerns pursuant to section 506) regarding delivery, format, pricing, or technical considerations which would favor one customer or class of customers over another.

(b) EXCEPTIONS.—Unenhanced data generated by the Landsat system or any other land remote sensing system funded and owned by the United States Government may be made available to the United States Government and its affiliated users at reduced prices, in accordance with this Act, on the condition that such unenhanced data are used solely for noncommercial purposes.

**SEC. 502. ARCHIVING OF DATA.**

(a) PUBLIC INTEREST.—It is in the public interest for the United States Government to—

(1) maintain an archive of land remote sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) control the content and scope of the archive; and

(3) assure the quality, integrity, and continuity of the archive.

(b) ARCHIVING PRACTICES.—The Secretary of Interior, in consultation with the Landsat Program Management, shall provide for long-term storage, maintenance, and upgrading of a basic, global, land remote sensing data set (hereinafter referred to as the "basic data set") and shall follow reasonable archival practices to assure proper storage and preservation of the basic data set and timely access for parties requesting data.

(c) DETERMINATION OF CONTENT OF BASIC DATA SET.—In determining the initial content of, or in upgrading, the basic data set, the Secretary of Interior shall—

(1) use as a baseline the data archived on the date of enactment of this Act;

(2) take into account future technical and scientific developments and needs, paying particular attention to the anticipated data requirements of global environmental change research;

(3) consult with and seek the advice of users and producers of remote sensing data and data products;

(4) consider the need for data which may be duplicative in terms of geographical coverage but which differ in terms of season, spectral bands, resolution, or other relevant factors;

(5) include, as the Secretary of Interior considers appropriate, unenhanced data generated either by the Landsat system, pursuant to title I, or by licensees under title II;

(6) include, as the Secretary of Interior considers appropriate, data collected by foreign ground stations or by foreign remote sensing space systems; and

(7) ensure that the content of the archive is developed in accordance with section 506.

(d) PUBLIC DOMAIN.—After the expiration of any exclusive right to sell, or after relinquishment of such right, the data provided to the National Satellite Land Remote Sensing Data Archive shall be in the public domain and shall be made available to requesting parties by the Secretary of the Interior at the cost of fulfilling user requests.

**SEC. 502. NONREPRODUCTION**

Unenhanced data distributed by any licensee under Title II of this Act may be sold on the condition that such data will not be reproduced or disseminated by the purchaser for commercial purposes.

**SEC. 503. REIMBURSEMENT FOR ASSISTANCE**

The Administrator, the Secretary of Defense, and the heads of other United States Government agencies may provide assistance to land remote sensing system operators under the provisions of this Act. Substantial assistance shall be reimbursed by the operator, except as otherwise provided by law.

**SEC. 504. ACQUISITION OF EQUIPMENT**

The Landsat Program Management may, by means of a competitive process, allow a licensee under title II or any other private party to buy, lease, or otherwise acquire the use of equipment from the Landsat system, when such equipment is no longer needed for the operation of such system or for the sale of data from such system. Officials of other United States Government civilian agencies are authorized and encouraged to cooperate with the Secretary in carrying out this section.

**SEC. 505. RADIO FREQUENCY ALLOCATION**

(a) APPLICATION TO FEDERAL COMMUNICATIONS COMMISSION.—To the extent required by the Communications Act of 1934 (47 U.S.C. 151 et seq.), an application shall be filed with the Federal Communications Commission for any radio facilities involved with commercial remote sensing space systems licensed under title II.

(b) DEADLINE FOR FCC ACTION.—It is the intent of Congress that the Federal Communications Commission complete the radio licensing process under the Communications Act of 1934 (47 U.S.C. 151 et seq.), upon the application of any private sector party or consortium operator of any commercial land remote sensing space system subject to this Act, within 120 days of the receipt of an application for such licensing. If final action has not occurred within 120 days of the receipt of such an application, the Federal Communications Commission shall inform the applicant of any pending issues and of actions required to resolve them.

(c) DEVELOPMENT AND CONSTRUCTION OF UNITED STATES SYSTEMS.—Authority shall not be required from the Federal Communications Commission for the development and construction of any United States land remote sensing space system (or component thereof), other than radio transmitting facilities or components, while any licensing determination is being made.

(d) CONSISTENCY WITH INTERNATIONAL OBLIGATIONS AND PUBLIC INTEREST.—Frequency allocations made pursuant to this section by the Federal Communications Commission shall be consistent with international obligations and with the public interest.

**SEC. 506. CONSULTATION**

(a) CONSULTATION WITH SECRETARY OF DEFENSE.—The Secretary and the Landsat Program Management shall consult with the Secretary of Defense on all matters under this Act affecting national security. The Secretary of Defense shall be responsible for determining those conditions, consistent with this Act, necessary to meet national security concerns of the United States and for notifying the Secretary and the Landsat Program Management promptly of such conditions.

(b) CONSULTATION WITH SECRETARY OF STATE.—(1) The Secretary and the Landsat Program Management shall consult with the Secretary of State on all matters under this Act affecting international obligations. The Secretary of State shall be responsible for determining those conditions, consistent with this Act, necessary to meet international obligations and policies of the United States and for notifying promptly the Secretary and the Landsat Program Management of such conditions.

(2) Appropriate United States Government agencies are authorized and encouraged to provide remote sensing data, technology, and training to developing nations as a component of programs of international aid.

(3) The Secretary of State shall promptly report to the Secretary and Landsat Program Management any instances outside the United States of discriminatory distribution of Landsat data.

(c) STATUS REPORT.—The Landsat Program Management shall, as often as necessary, provide to the Congress complete and updated information about the status of ongoing operations of the Landsat system, including timely notification of decisions made with respect to the Landsat system in order to meet national security concerns and international obligations and policies of the United States Government.

(d) REIMBURSEMENTS.—If, as a result of technical modifications imposed on a licensee under title II on the basis of national security concerns, the Secretary, in consultation with the Secretary of Defense or with other Federal agencies, determines that additional costs will be incurred by the licensee, or that past development costs (including the cost of capital) will not be recovered by the licensee, the Secretary may require the agency or agencies requesting such technical modifications to reimburse the licensee for such additional or development costs, but not for anticipated profits. Reimbursements may cover costs associated with required changes in system performance, but not costs ordinarily associated with doing business abroad.

**SEC. 507. ENFORCEMENT.**

(a) IN GENERAL.—In order to ensure that unenhanced data from the Landsat system received solely for noncommercial purposes are not used for any commercial purpose, the Secretary (in collaboration with private sector entities responsible for the marketing and distribution of unenhanced data generated by the Landsat system) shall develop and implement a system for enforcing this prohibition, in the event that unenhanced data from the Landsat system are made available for noncommercial purposes at a different price than such data are made available for other purposes.

(b) AUTHORITY OF SECRETARY.—Subject to subsection (d), the Secretary may impose any of the enforcement mechanisms described in subsection (c) against a person who—

(1) receives unenhanced data from the Landsat system under this Act solely for noncommercial purposes (and at a different price than the price at which such data are made available for other purposes); and

(2) uses such data for other than noncommercial purposes.

(c) ENFORCEMENT MECHANISMS.—Enforcement mechanisms referred to in subsection (b) may include civil penalties of not more than $10,000 (per day per violation), denial of further unenhanced data purchasing privileges, and any other penalties or restrictions the Secretary considers necessary to ensure, to the greatest extent practicable, that unenhanced data provided for noncommercial purposes are not used to unfairly compete in the commercial market against private sector entities not eligible for data at the cost of fulfilling user requests.

(d) PROCEDURES AND REGULATIONS.—The Secretary shall issue any regulations necessary to carry out this section and shall establish standards and procedures governing the imposition of enforcement mechanisms under subsection (b). The standards and procedures shall include a procedure for potentially aggrieved parties to file formal protests with the Secretary alleging instances where such unenhanced data has been, or is being, used for commercial purposes in violation of the terms of receipt of such data. The Secretary shall promptly act to investigate any such protest, and shall report annually to the Congress on instances of such violations.

TITLE VI—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

**SEC. 601. PROHIBITION.**

Neither the President nor any other official of the Government shall make any effort to lease, sell, or transfer to the private sector, or commercialize, any portion of the weather satellite systems operated by the Department of Commerce or any successor agency.

**SEC. 602. FUTURE CONSIDERATIONS.**

Regardless of any change in circumstances subsequent to the enactment of this Act, even if such change makes it appear to be in the national interest to commercialize weather satellites, neither the President nor any official shall take any action prohibited by section 601 unless this title has first been repealed.

THE LAND REMOTE SENSING ACT OF 1992

Mr. PRESSLER. Mr. President, for the past 2 years I have worked on the legislation we have before us today. In February of this year, after consultation with several Government agencies and numerous user groups I introduced S. 2297 the Land Remote Sensing Act of 1992. In May of this year, Senator GORE and I held hearings on this legislation in the Commerce, Science, and Transportation Subcommittee on Science, Technology, and Space. There are two primary purposes for this bill. First, the United State's has long needed the establishment of a new policy framework for civil land satellite remote sensing. Second, Congress has needed to act to ensure the continuity and availability of Landsat data into the next century.

The legislation accomplishes these two goals by assigning new roles and responsibilities for the Landsat program within the U.S. Government and by providing for the procurement of the Landsat 7 spacecraft and associated ground data processing components. The legislation also authorizes an advanced technology demonstration program and establishes data policy goals. Through these provisions, the bill seeks to maintain United States' leadership in land remote-sensing.

Mr. President, the first satellite in the Landsat series was launched 20 years ago on July 23, 1972. At that time, the system was called the Earth Resources Technology Satellite [ERTS]. ERTS-1 was launched specifically to gather data for the scientific community working in the area of terrestrial resources analysis and management. ERTS-1 was the first civil land remote-sensing satellite. Since this launch, four additional satellites have been put into orbit. The program was

renamed the Landsat Program in 1975. Landsat satellites collect multispectral images that are used by Government, private industry, nongovernmental organizations, and academia. Uses of these data currently include: crop identification and yield estimation; oil; gas and mineral exploration; urban and environmental planning and management; water resources modeling; map-making; and environmental hazards risk assessment.

Early Landsat satellites orbited the Earth at an altitude of approximately 900 km. Current Landsat satellites orbit the earth at an altitude of approximately 700 km, with the satellite passing over the same point on the earth every 16 days. Thematic mapper [TM] and multispectral scanner [MSS] data from Landsats 4 and 5 are either directly downlinked to ground receiving stations, or are transmitted via the Tracking and Data Relay Satellite [TDRSS] to a receiving station in the United States.

Both TM and MSS images cover an area 185 km by 185 km. MSS acquires 80-meter resolution data in four spectral bands while TM gathers 30-meter data in six spectral bands in the visible and near infrared and one band in the thermal infrared whose resolution is 120 meters. Because of the decay in the health of the transmission equipment on Landsats 4 and 5 because of old age, this TDRSS link must currently be used very sparingly. Landsat 6 will have only the direct downlink capability, augmented by on-board tape recorders which can be played back when the satellite passes over ground stations in the United States. There are data receiving stations located in 13 nations in addition to the United States.

A civil land remote sensing satellite program was initiated by the United States Geological Survey of the Department of the Interior as the earth resources observations systems [EROS] program in the mid-1960's. The ERTS/Landsat program was begun by the National Aeronautics and Space Administration [NASA] in 1969. Under NASA's management, Landsat was operated as an experimental satellite. In 1979, Landsat operations were transferred to the National Oceanic and Atmospheric Administration. In 1981 the Administration deleted from its budget initial funding for Landsats 4 and 5. In 1984, at the urging of the Reagan administration, Congress passed the Land Remote-Sensing Commercialization Act of 1984 (Public Law 98-365), which led to the selection of the Earth Observation Satellite Co. [EOSAT] as the Landsat contractor in 1985. Although the original contract was to have included funding for the construction of both Landsats 6 and 7, it was later modified to include only Landsat 6 after the U.S. Government failed to meet funding obligations. Landsat 6 is currently scheduled for launch in January, 1993. Erratic funding for the program, coupled with the high cost of data, $4,400 per scene, have resulted in restricted use of the data and caused concern—especially on the part of the scientific and academic communities—over the future of the program. This concern is shared by State and local government officials and environmental organizations.

Fortunately, Landsat 4 and 5 spacecraft have survived and continue to provide data despite the delays in the launch of Landsat 6. This situation will not continue indefinitely. This legislation is needed to provide adequate funding, and to establish a management infrastructure to build and launch Landsat 7. Most importantly, the continuation of the Landsat program will ensure that all users will be able to obtain Landsat data at reasonable prices.

In 1981, the Department of Commerce established the Civil Operational remote-Sensing Satellite Advisory Committee. This committee was formed by the Reagan administration to determine the best method of transferring the Landsat systems to the private sector. This committee issued a report, known as the "Halbouty Report", advising that Landsat commercialization be done gradually, starting with the ground distribution infrastructure. The consensus of three additional Government studies all urged caution in Landsat commercialization. I along with many others agreed that revenues from a commercial Landsat operation would not, in the short term, support the estimated costs of the Landsat program.

Ignoring these warnings, the Reagan administration continued down the path of commercialization. Originally, it was intended that weather satellites as well would be commercialized, with the revenues from the weather satellites making up the shortfall in the Landsat program. However, when Congress finally passed legislation (Public Law 98-365) in July 1984, whether satellites were specifically excluded from commercialization because of the fear on the part of Congress that commercialization of weather satellites might jeopardize the future of a system which was vital to the public safety.

A 1985 report by the U.S. National Academy of Sciences Space Applications Board termed the U.S. Civil Land Remote Sensing effort a Program in Crisis. The U.S. Congress, Office of Technology Assessment [OTA] said "In the next 5-10 years, the market is not likely to sustain commercial operations of the entire satellite land remote sensing system without substantial direct or indirect Government funding." In the spring of 1987, after 2 years of sporadic funding of the EOSAT contract, the contract was modified to include only one additional satellite, Landsat 6. The design parameters of Landsat 6 were modified to reduce cost, and to permit the satellite to be launched on a Titan II expendable launch vehicle rather than the Space Shuttle, as was the previous EOSAT plan.

In 1988, three independent studies were again conducted under contract to the Department of Commerce through NOAA. These studies, conducted independently by the Egan Group, Kodak Remote Sensing, and the Analytical Science Corp., reached essentially the same conclusion as the OTA study. The conclusion was that commercialization was not currently working, nor would it work in the foreseeable future. EOSAT was criticized in each of these reports for making no progress in developing the remote-sensing market as a commercial venture. During this entire period, the high cost of Landsat data inhibited its use by the scientific and academic communities. Later, a University of California at Santa Barbara survey of the academic community showed overwhelmingly that commercialization had a deleterious effect on uses of Landsat data in American colleges and research institutions. Eight-six percent said operation of the Landsat program should be conducted by the U.S. Government.

The number of Landsat scenes purchased by the academic community has fallen dramatically in the period from 1976 to 1990. Part of this decline in due, to doubt, to the fact that Landsat is no longer the novelty that it was in 1976. On the other hand, the high cost of data, coupled with the decreased tasking necessitated by the degraded state of the Landsat 4 and 5 spacecraft, make it less likely that a desired area will have been imaged at the time required for a specific research effort. Many times research projects cannot predict when images should be taken, because the event of interest has already occurred. Analysis of change is not possible if images were not taken of the desired area in the past because of a lack of commercial demand for the image.

For this reason, we included a provision in the legislation that stipulates all users will have access to Landsat 7 data at the "cost of fulfilling user requests" and the requirement for phasing down Landsats 4 through 6 data costs to reflect Landsat 7 data policy stated in section 105. I am pleased with the preliminary agreements reached between NASA and the Landsat 6 contractor so far, and understand that the price of Landsat 4 and 5 data for the U.S. Government and its affiliated users has already been agreed to at an average cost of $1,600 per scene. We expect the negotiations on a data purchase price to move forward in the required statutory phase down from this point in the negotiations with respect to Landsats 4 and 5. Additionally, since

the contractor has represented that the Landsat 6 system will be new and more efficiently run, we expect that the agreed price for Landsat 6 data for the U.S. Government and its affiliated users will in no case be higher than the $1,600 price already agreed to for Landsats 4 and 5 data. Due to this new found increase in efficiency, we also believe it is realistic that Landsat 6 data can be made available all users at marginal cost within 3 years of the passage of this legislation.

In section 105 we mandate a single tier pricing policy at marginal cost of fulfilling user requests by directing that the administration should adopt such policy. The Landsat Program Management office should know that Congress is committed to a marginal cost, single tier price for Landsats 6 and 7 data. We expect the administration will in fact, formulate in no uncertain terms a marginal cost, single price for Landsat 7 data from the inception of Landsat 7 policy. There can be no deviation from this policy without the strongest burden of proof. In defining "United States Government and its affiliated users," we recognize that ultimately all environmental and natural resources research is global change research. The aggregate of local environmental change—much of which is studied by State and local governments and non-profit organizations locally, regionally and internationally—is global environmental change. It is imperative that the U.S. global change research program share data with and receive data from, State, and to the extent applicable, local governments, as well as non-profit organizations engaged in local, regional and international environmental research. This is important both to maximize the benefits of U.S. taxpayer investment in Landsat, as well as to gain the greatest understanding possible of regional and local impacts on climate change. For this reason, we have included independent environmental research by State and local governments, universities, Indian tribes, and non-profit public interest organizations in the definitions of the U.S. global change research program. We expect that through the open sharing of research results, this data will be made part of the U.S. global change research program, and its international counterpart programs where applicable.

Section 103(a) does not relieve the Landsat 6 contractor from the responsibility, of carrying out substantial revisions of its data policy, including major reductions in cost of data for the U.S. Government and its affiliated users specified in section 103(a), during all earlier phases of the transition. Section 103(b) is not meant to preclude other options if such options appear to be more efficient or cost effective, such as the EROS Data Center. Section 501(b) reflects our intent that this requirement apply throughout the transition period.

The definition of noncommercial purposes in Section 3 is not intended to preclude the sharing of data between States, local governments, Indian Tribes or non-profit research organizations to the extent that this sharing furthers non-commercial research purposes. The definition of "data preprocessing" is intended to provide the option of ordering additional preprocessing functions, with the understanding that those data requesters who order such preprocessing by the Landsat 6 contractor will be charged a premium over and above the marginal cost of fulfilling users requests.

Mr. President, I would like to thank Science Subcommittee Chairman Senator GORE, for all his assistance in creating this legislation. I also would like to thank Chairman GEORGE BROWN of the House of Representatives for his tireless efforts in bringing this legislation together. This legislation is needed, and I urge my colleagues to support it.

The ACTING PRESIDENT pro tempore. Is there further debate on the substitute amendment?

Without objection, the substitute amendment (No. 3416) is agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the bill is considered read three times. The bill was deemed read the third time.

Mr. FORD. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 3614, the House companion; that the Senate proceed its immediate consideration; that all after the enacting clause be stricken and the text of S. 2297, as amended, be inserted in lieu thereof; that the bill be advanced to third reading, passed; and, the motion to reconsider laid upon the table.

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

So the bill (H.R. 3614), as amended, was passed.

Mr. SIMPSON. Mr. President, on behalf of Senator PRESSLER, I now send to a desk a title amendment, and ask unanimous consent that the amendment be agreed to.

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

The title was amended so as to read: "An act to secure United States leadership in land remote-sensing by providing data continuity for the Landsat program and by establishing a new national Landsat policy, and for other purposes."

## MEASURE RETURNED TO THE CALENDAR—S. 2297

Mr. FORD. Mr. President, I ask unanimous consent that S. 2297 be returned to the calendar.

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

## PERSIAN GULF VETERANS HEALTH

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3346, relating to Persian Gulf veterans health introduced earlier today by Senators CRANSTON, SPECTER, KENNEDY, NUNN, SIMPSON, and others; that the bill be deemed read a third time, and passed; that the motion to reconsider be laid upon the table, any statements relative to the passage of this item appear at the appropriate place in the RECORD.

So the bill (S. 3346) was deemed read the third time, and passed, as follows:

S. 3346

*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 "Persian Gulf War Veterans' Health Status Act".

**SEC. 2. PERSIAN GULF WAR VETERANS HEALTH REGISTRY.**

(a) ESTABLISHMENT OF REGISTRY.—The Secretary of Veterans Affairs shall establish and maintain a special record to be known as the "Persian Gulf War Veterans Health Registry" (in this section referred to as the "Registry").

(b) CONTENTS OF REGISTRY.—Except as provided in subsection (c), the Registry shall include the following information:

(1) A list containing the name of each individual who served as a member of the Armed Forces in the Persian Gulf theater of operations during the Persian Gulf War and who—

(A) applies for care or services from the Department of Veterans Affairs under chapter 17 of title 38, United States Code;

(B) files a claim for compensation under chapter 11 of such title on the basis of any disability which may be associated with such service;

(C) dies and is survived by a spouse, child, or parent who files a claim for dependency and indemnity compensation under chapter 13 of such title on the basis of such service;

(D) requests from the Department a health examination under section 3 of this Act; or

(E) receives from the Department of Defense a health examination similar to the health examination referred to in subparagraph (D) and requests inclusion in the Registry.

(2) Relevant medical data relating to the health status of, and other information that the Secretary considers relevant and appropriate with respect to, each individual described in paragraph (1) who—

(A) grants to the Secretary permission to include such information in the Registry; or

(B) at the time the individual is listed in the Registry, is deceased.

(c) INDIVIDUALS SUBMITTING CLAIMS OR MAKING REQUESTS BEFORE DATE OF ENACTMENT.—If in the case of an individual described in subsection (b)(1) the application, claim, or request referred to in such subsection was submitted, filed, or made, before the date of the enactment of this Act, the Secretary shall, to the extent feasible, include in the Registry such individual's name

and the data and information, if any, described in subsection (b)(2) relating to the individual.

(d) DEPARTMENT OF DEFENSE INFORMATION.—The Secretary of Defense shall furnish to the Secretary of Veterans Affairs such information maintained by the Department of Defense as the Secretary of Veterans Affairs considers necessary to establish and maintain the Registry.

(e) RELATION TO DEPARTMENT OF DEFENSE REGISTRY.—The Secretary of Veterans Affairs, in consultation with the Secretary of Defense, shall ensure that information is collected and maintained in the Registry in a manner that permits effective and efficient cross-reference between the Registry and the registry established under section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190; 105 Stat. 1411; 10 U.S.C. 1074 note), as amended by section 4 of this Act.

(f) ONGOING OUTREACH TO INDIVIDUALS LISTED IN REGISTRY.—The Secretary of Veterans Affairs shall, from time to time, notify individuals listed in the Registry of significant developments in research on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War.

**SEC. 3. HEALTH EXAMINATIONS AND COUNSELING FOR VETERANS ELIGIBLE FOR INCLUSION IN CERTAIN HEALTH-RELATED REGISTRIES.**

(a) IN GENERAL.—(1) The Secretary of Veterans Affairs—

(A) shall, upon the request of a veteran described in subsection (b)(1), provide the veteran with a health examination and consultation and counseling with respect to the results of the examination; and

(B) may, upon the request of a veteran described in subsection (b)(2), provide the veteran with such an examination and such consultation and counseling.

(2) The Secretary shall carry out appropriate outreach activities with respect to the provision of any health examinations and consultation and counseling services under paragraph (1).

(b) COVERED VETERANS.—(1) In accordance with subsection (a)(1)(A), the Secretary shall provide an examination, consultation, and counseling under that subsection to any veteran who is eligible for listing or inclusion in the Persian Gulf War Veterans Health Registry established by section 2 of this Act.

(2) In accordance with subsection (a)(1)(B), the Secretary may provide an examination, consultation, and counseling under that subsection to any veteran who is eligible for listing or inclusion in any other similar health-related registry administered by the Secretary.

**SEC. 4. EXPANSION OF COVERAGE OF PERSIAN GULF REGISTRY.**

Section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190; 105 Stat. 1411; 10 U.S.C. 1074 note) is amended—

(1) by amending subsections (a) and (b) to read as follows:

"(a) ESTABLISHMENT OF REGISTRY.—The Secretary of Defense shall establish and maintain a special record (in this section referred to as the 'Registry') relating to the following members of the Armed Forces:

"(1) Members who, as determined by the Secretary, were exposed to the fumes of burning oil in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

"(2) Any other members who served in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

"(b) CONTENTS OF REGISTRY.—(1) The Registry shall include—

"(A) with respect to each class of members referred to in each of paragraphs (1) and (2) of subsection (a)—

"(i) a list containing each such member's name and other relevant identifying information with respect to the member; and

"(ii) to the extent that data are available and inclusion of the data is feasible, a description of the circumstances of the member's service during the Persian Gulf conflict, including the locations in the Operation Desert Storm theater of operations in which such service occurred and the atmospheric and other environmental circumstances in such locations at the time of such service; and

"(B) with respect to the members referred to in subsection (a)(1), a description of the circumstances of each exposure of each such member to the fumes of burning oil as described in such subsection (a)(1), including the length of time of the exposure.

"(2) The Secretary shall establish the Registry with the advice of an independent scientific organization.";

(2) in subsection (c)(1), by striking out "subsection (a)" and inserting in lieu thereof "subsection (a)(1)"; and

(3) in subsection (d), by inserting "pursuant to subsection (a)(1)" after "Registry".

**SEC. 5. STUDY OF PERSIAN GULF REGISTRY AND PERSIAN GULF WAR VETERANS HEALTH REGISTRY.**

(a) STUDY.—The Director of the Office of Technology Assessment shall, in a manner consistent with the provisions of the Technology Assessment Act of 1972 (2 U.S.C. 471 et seq.), assess—

(1) the potential utility of each of the Persian Gulf Registry and the Persian Gulf War Veterans Health Registry for scientific study and assessment of the intermediate and long-term health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War;

(2) the extent to which each registry meets the requirements of the provisions of law under which the registry is established;

(3) the extent to which data contained in each registry—

(A) are maintained in a manner that ensures permanent preservation and facilitates the effective, efficient retrieval of information that is potentially relevant to the scientific study of the intermediate and long-term health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War; and

(B) would be useful for scientific study regarding such health consequences;

(4) the adequacy of any plans to update each of the registries;

(5) the extent to which the Department of Defense or the Department of Veterans Affairs, as the case may be, is assembling and maintaining information on the Persian Gulf theater of operations (including information on troop locations and atmospheric and weather conditions) in a manner that facilitates the usefulness of, maintenance of, and retrieval of information from, the applicable registry; and

(6) the adequacy and compatibility of protocols for the health examinations and counseling provided under section 3 and health examinations provided by the Department of Defense to members of the Armed Forces for the purpose of assessing the health status of members of the Armed Forces who served in the Persian Gulf theater of operations during the Persian Gulf War.

(b) ACCESS TO INFORMATION.—The Secretary of Veterans Affairs and the Secretary of Defense shall provide the Director with access to such records and information under the jurisdiction of each such secretary as the Director determines necessary to permit the Director to carry out the study required under this section.

(c) REPORTS.—The Director shall—

(1) not later than 270 days after the date of the enactment of this Act, submit to Congress a report on the results of the assessment carried out under this section of the Persian Gulf Registry and health-examination protocols; and

(2) not later than 15 months after such date, submit to Congress a report on the results of the assessment carried out under this section of the Persian Gulf War Veterans Health Registry.

(d) DEFINITIONS.—For the purposes of this section—

(1) The term "Persian Gulf Registry" means the registry established under section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190; 105 Stat. 1411; 10 U.S.C. 1074 note), as amended by section 4 of this Act.

(2) The term "Persian Gulf War Veterans Health Registry" means the Persian Gulf War Veterans Health Registry established under section 2 of this Act.

**SEC. 6. AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES FOR REVIEW OF HEALTH CONSEQUENCES OF SERVICE DURING THE PERSIAN GULF WAR.**

(a) AGREEMENT.—(1) The Secretary of Veterans Affairs and Secretary of Defense jointly shall seek to enter into an agreement with the National Academy of Sciences for the Medical Follow-Up Agency (MFUA) of the Institute of Medicine of the Academy to review existing scientific, medical, and other information on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War.

(2) The agreement shall require MFUA to provide members of veterans organizations and members of the scientific community (including the Director of the Office of Technology Assessment) with the opportunity to comment on the method or methods MFUA proposes to use in conducting the review.

(3) The agreement shall permit MFUA, in conducting the review, to examine and evaluate medical records of individuals who are included in the registries referred to in section 5(d) for purposes MFUA considers appropriate, including the purpose of identifying illnesses of such individuals.

(4) The Secretary of Veterans Affairs and the Secretary of Defense shall seek to enter into the agreement under this section not later than 180 days after the date of the enactment of this Act.

(b) REPORT.—(1) The agreement under this section shall require the National Academy of Sciences to submit to the committees and secretaries referred to in paragraph (2) a report on the results of the review carried out under the agreement. Such report shall contain the following:

(A) An assessment of the effectiveness of actions taken by the Secretary of Veterans Affairs and the Secretary of Defense to collect and maintain information that is potentially useful for assessing the health consequences of the military service referred to in subsection (a).

(B) Recommendations on means of improving the collection and maintenance of such information.

(C) Recommendations on whether there is a sound scientific basis for an epidemiological study or studies on the health consequences of such service, and if the rec-

ommendation is that there is a sound scientific basis for such a study or studies, the nature of the study or studies.

(2) The committees and secretaries referred to in paragraph (1) are the following:

(A) The Committees on Veterans' Affairs of the Senate and House of Representatives.

(B) The Committees on Armed Services of the Senate and House of Representatives.

(C) The Secretary of Veterans Affairs.

(D) The Secretary of Defense.

(c) FUNDING.—(1) The Secretary of Veterans Affairs and the Secretary of Defense shall make available up to a total of $500,000 in fiscal year 1993, from funds available to the Department of Veterans Affairs and the Department of Defense in that fiscal year, to carry out the review. Any amounts provided by the two departments referred to in the previous sentence shall be paid in equal portions by the two departments.

(2) If the Secretary of Veterans Affairs and the Secretary of Defense enter into an agreement under subsection (a) with the National Academy of Sciences—

(A) the Secretary of Veterans Affairs shall make available $250,000 in each of fiscal years 1994 through 2003, from amounts available to the Department of Veterans Affairs in each such fiscal year, to the National Academy of Sciences for the general purpose of conducting epidemiological research with respect to military and veterans populations; and

(B) the Secretary of Defense shall make available $250,000 in each of fiscal years 1994 through 2003, from amounts available to the Department of Defense in each such fiscal year, to the National Academy of Sciences for the purposes of carrying the research referred to in subparagraph (A).

**SEC. 7. COORDINATION OF GOVERNMENT ACTIVITIES ON HEALTH-RELATED RESEARCH ON THE PERSIAN GULF WAR.**

(a) DESIGNATION OF COORDINATING ORGANIZATION.—The President shall designate, and may redesignate from time to time, the head of an appropriate department or agency of the Federal Government to coordinate all research activities undertaken or funded by the Executive Branch of the Federal Government on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War.

(b) REPORT.—Not later than March 1 of each year after 1992, the head of the department or agency designated under subsection (a) shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the status and results of all such research activities undertaken or by the Executive Branch of the Federal Government during the previous year.

**SEC. 8. DEFINITION.**

For the purposes of this Act, the term "Persian Gulf War" has the meaning given such term in section 101(33) of title 38, United States Code.

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I today introduced a bill, S. 3346, to address concerns raised about the health of the courageous men and women who served in our Armed Forces in Operations Desert Shield and Desert Storm. I am very pleased to be joined in introducing this measure by the committee's ranking Republican member, Mr. SPECTER; the Senator from Massachusetts [Mr. KENNEDY]; the chairman of the Armed Services Committee, Mr. NUNN; the chairman of the Armed Services Committee's Subcommittee on Manpower and Personnel, Mr. GLENN; Veterans' Affairs Committee members DECONCINI, GRAHAM, ROCKEFELLER, AKAKA, DASCHLE, SIMPSON, THURMOND, MURKOWSKI, JEFFORDS, and Senator KOHL.

SUMMARY OF PROVISIONS

Mr. President, the proposed Persian Gulf War Veterans' Health Status Act contains freestanding provisions and amendments to Public Law 102-190 that would:

PERSIAN GULF WAR VETERANS HEALTH REGISTRY

First, require the Secretary of Veterans Affairs to establish and maintain a Persian Gulf war veterans health registry listing the name of each individual who served in the Persian Gulf war theater of operations during the war and who, first, applies for Department of Veterans' Affairs [VA] care or services; second, files a claim for VA compensation based on any disability that might be associated with this service; third, dies and is survived by a spouse, child, or parent who files a claim for dependency and indemnity compensation [DIC] based on this service; fourth, requests a health examination from VA, as authorized in section 3 of the bill, or fifth, receives from the Department of Defense [DOD] a health examination similar to the health examination given by VA to veterans under section 3 of the bill and requests inclusion in the registry. (Section 2(b)(1).)

Second, require that the registry include relevant medical data relating to the health status of, and other information that the Secretary considers relevant and appropriate with respect to, each individual listed in the registry who either grants permission to include this type of information in the Registry or is deceased at the time the individual is listed in the Registry. (Section 2(b)(2).)

Third, require the Secretary to include in the registry, to the extent feasible, similar information about such individuals who served in the Persian Gulf that is developed in connection with similar actions occurring prior to enactment of this legislation. (Section 2(c).)

Fourth, require the Secretary of Defense to provide to the Secretary of Veterans' Affairs any information the Secretary of Veterans' Affairs considers necessary to establish and maintain the Registry. (Section 2(d).)

Fifth, require the Secretary of Veterans' Affairs, in consultation with the Secretary of Defense, to ensure that information in the registry is collected and maintained in a manner that permits effective and efficient cross-reference between the registry and the Department of Defense [DOD] Persian Gulf registry, established under section 734 of the National Defense Authorization Act for fiscal years 1992 and 1993, Public Law 102-190, as modified by the proposed legislation (Section 2(e).)

Sixth, require VA, from time to time, to notify individuals listed in the registry of significant research developments regarding the health consequences of military service in the Persian Gulf war. (Section 2(f).)

HEALTH EXAMINATIONS AND COUNSELING FOR VETERANS ELIGIBLE FOR INCLUSION IN CERTAIN HEALTH-RELATED REGISTRIES

Seventh, require VA to provide, upon the request of a veteran, a health examination and consultation and counseling concerning the results of the examination to any veteran eligible for listing or inclusion in the VA Persian Gulf war veterans health registry and authorize these services for any veteran eligible for listing or inclusion in any other health-related registry established by VA who requests the services. (Section 3(a) and (b).)

Eighth, require VA to carry out appropriate outreach activities to inform veterans of the availability of the health examinations. (Section 3(a)(2).)

EXPANSION OF COVERAGE OF PERSIAN GULF WAR REGISTRY

Tenth, expand the DOD registry—established under section 734 of Public Law 102-190 for listing members of the Armed Forces who were exposed to the fumes of burning oil in the Operation Desert Storm theater of operations during the Persian Gulf conflict—to include any other member of the Armed Forces who served in the Operation Desert Storm theater of operations during the Persian Gulf conflict. (Section 4(1), adding proposed section 734(a)(2).)

Eleventh, expand the contents of the DOD registry to include, in addition to the name of listed members, other relevant identifying information and, to the extent that data are available and inclusion of the data is feasible, a description of the circumstances of the member's service during the war, including the locations in the theater of operations in which the member's service occurred and the atmospheric and other environmental circumstances in those locations at the time. (Section 4(1), adding section 734(b)(1)(A).)

Twelfth, recodify the requirement in current law that the DOD registry include, with respect to the listed members exposed to the fumes of burning oil, a description of the circumstances of each exposure of each such member to the fumes, including the length of time of the exposure. (Section 4(1), adding section 734(b)(1)(B).)

Thirteenth, recodify the requirement in current law that the Secretary establish the DOD registry with the advice of an independent scientific organization. (Section 4(1), adding proposed section 734(b)(2).)

STUDY OF PERSIAN GULF REGISTRY AND PERSIAN GULF WAR VETERANS HEALTH REGISTRY

Fourteenth, require the Director of the Office of Technology Assessment [OTA] to assess—

First, the potential utility of each of the VA and DOD registries for scientific study of the health consequences of military service in the Persian Gulf theater of operations;

Second, the extent to which each of the registries meets the requirements of the respective laws establishing that registry;

Third, the extent to which data in each registry, first, are maintained in a manner that ensures permanent preservation and allows effective, efficient retrieval of information potentially relevant to scientific study of the health consequences of military service in the Persian Gulf, and second, would be useful for scientific study regarding these health consequences;

Fourth, the adequacy of any plans to update each of the registries;

Fifth, the extent to which VA and DOD are gathering and maintaining information on the Persian Gulf theater of operations, including troop locations and environmental conditions, in a manner that facilitates the usefulness, maintenance, and retrieval of information from the respective registry; and

Sixth, the adequacy and compatibility VA and DOD's protocols for health examinations provided for the purpose of determining the health status of any member of the Armed Forces or any reserve component thereof who served in the Persian Gulf war. (Section 5(a).)

Fifteenth, require VA and DOD to give OTA access to the records and information under each department's jurisdiction that OTA determines is necessary to permit OTA to carry out the assessments. (Section 5(b).)

Sixteenth, require OTA to report to Congress on the assessments regarding the DOD registry and the compatibility of health-examination protocols within 270 days after enactment of the legislation and regarding the VA registry within 15 months after enactment. (Section 5(c).)

AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES FOR REVIEW OF HEALTH CONSEQUENCES OF SERVICE DURING THE PERSIAN GULF WAR

Seventeenth, require the Secretaries of Veterans' Affairs and of Defense, within 180 days after enactment, to seek to contract with the National Academy of Sciences [NAS] to have the NAS Medical Follow-up Agency [MFUA] review existing scientific, medical, and other information on the health consequences of in-theater service during the Persian Gulf war. (Section 6(a)(1) and (4).)

Eighteenth, provide that the agreement shall require MFUA to provide veterans organizations and the scientific community—including the Director of the Office of Technology Assessment—with an opportunity to comment on the method or methods that MFUA proposes to use to conduct the review. (Section 6(a)(2).)

Nineteenth, require that the agreement allow MFUA, in conducting the review, to examine and evaluate medical records of individuals included in the two registries for purposes MFUA considers appropriate, including the purpose of identifying illnesses of these individuals. (Section 65(a)(3).)

Twentieth, require MFUA to report the results of its review to the Senate and House Committees on Veterans' Affairs and on Armed Services and to the Secretaries of Veterans' Affairs and of Defense, including MFUA's, assessment of the effectiveness of actions by the two Secretaries to collect and maintain information potentially useful for assessing the health consequences of in-theater service; recommendations on how to improve collection and maintenance of this information; and recommendations on whether there is a sound scientific basis for an epidemiological study or studies of the health consequences of this service and, if so, the nature of any such study. (Section 6(b).)

Twenty-first, require the two Secretaries to make available, up to $500,000 in fiscal year 1993, from funds available to the two respective departments for that fiscal year, divided equally between the departments, to carry out the review. (Section 6(c)(1).)

Twenty-second, if VA and DOD contract with NAS for the MFUA study, require each department to provide $250,000 in each of fiscal years 1994 through 2003, from amounts available to each department in each of these fiscal years, to NAS for the general purpose of conducting epidemiological research with respect to military and veterans populations. (Section 6(c).)

COORDINATION OF GOVERNMENT ACTIVITIES ON HEALTH-RELATED RESEARCH ON THE PERSIAN GULF WAR

Twenty-third, required the President to designate the head of an appropriate Federal agency to coordinate all research activities undertaken or funded by the executive branch of the Federal Government on the health consequences of in-theater service during the Persian Gulf war. The coordinator would be required to report to the Committees on Veterans' Affairs by March 1 of each year after 1992 on the status and results of this research. (Section 7.)

Mr. President, since the need for this legislation is pressing and the time remaining in this Congress is very short, I am seeking unanimous consent for the Senate to proceed immediately to the bill and pass it. Following Senate passage of this measure, I will work with Members of the House of Representatives to seek prompt action on this legislation before adjournment so that it can be sent to the White House for signature this month.

Mr. President, my colleagues are well aware that some veterans and current active duty service members who served in the Persian Gulf war theater of operations are experiencing serious, unexplained health problems that some suspect are related to in-theater service before, during, or after the war. A small number also have experienced certain health problems that clearly are related to this service, such as leishmaniasis, which results from infection by a certain tropical parasite.

All of us have seen the press reports of what the articles refer to as mysterious illnesses in Persian Gulf veterans. Some of the 540,000 American troops who served in the Persian Gulf have reported lingering health problems, such as joint pain, chronic fatigue, hair loss, bleeding gums, and skin rashes. Some concern has focused on the effects of the burning oil from wells in Kuwait that were set afire by enemy troops. Scientists have not as yet, however, been able to establish a link between the undiagnosed symptoms and the oil fires. In fact, environmental scientists have advised our committee that the oil fires burned so hot that they emitted only soot and other particulate matter, with practically no detectable levels of volatile petrochemicals that might cause health problems.

Mr. President, military health authorities have reported that some of the symptoms could be related to the stresses of combat. Some have misinterpreted this as a denial of the observed medical problems. This is not the case. Our experience with posttraumatic stress disorder clearly shows that stress can create or aggravate real physical symptoms that require treatment. On this point, the Army physician in charge of the Office of Professional Services and Chief of Medical Corps Affairs of the Office of the Surgeon General, Brig. Gen. Ronald Blanck, readily acknowledges that "these people have a real disease."

Mr. President, Senators KOHL and DASCHLE and I coauthored an amendment to last year's defense authorization measure, Public Law 102-190, that established a Department of Defense registry of all service members who were exposed to the fumes of burning oil during service in the Persian Gulf. The registry is intended to preserve information about these troops that could prove vital in assessing the health impact of the oil fires.

The Senate adopted our amendment less than 6 months after Operation Desert Storm began. I believe that quick action in the Congress demonstrated how much we have learned from our experience with agent orange. One of the great difficulties in trying to resolve whether certain diseases are related to exposure to agent orange in Vietnam has been the effort to document who was exposed, using old and inadequate information about troop locations and other circumstances of veterans' service in Vietnam. Establishing a DOD registry was an attempt to compile and analyze this type of data about Persian Gulf veterans before the information is lost or hopelessly dispersed.

Mr. President, with the appearance of these newly recognized, unexplained medical problems in Persian Gulf veterans, it is clear that a DOD registry limited to servicemembers exposed to fumes, by itself, is not sufficient. The DOD registry must be expanded and we must require the Department of Veterans' Affairs to collect and preserve information about the health of these veterans.

Mr. President, I congratulate former Secretary of Veterans Affairs, Edward J. Derwinski and Deputy Secretary Anthony J. Principi, now the Acting Secretary, for VA's request for legislation to establish a VA health registry and authorize medical examinations for Persian Gulf veterans. Their leadership on this issue is an encouraging sign of how far our Government has come in recognizing its responsibilities to veterans exposed to environmental dangers during service. This is an especially welcome signal to those of us who have spent so many years seeking equitable compensation and medical treatment for veterans exposed to radiation or agent orange.

NEED FOR SCIENTIFIC APPROACH

Mr. President, while I applaud VA's proposal, I believe that it left out some important elements. Even VA was careful to point out that the registry it proposed, which would include a largely self-selected group of veterans, is not very useful scientifically. In announcing the proposed registry and health examinations, however, VA asserted that the registry and examinations would "reassure veterans that VA will keep ahead of the science and remain committed to long-term monitoring" of these veterans. The VA proposal itself, however, did not address the scientific issues involved in determining whether or not those who served in the Persian Gulf experience long-term adverse health consequences.

Mr. President, the legislation we are introducing today does address the need for valid, long-term scientific study of these reported medical problems—without reaching any conclusions at this time about specific conditions or mandating any particular studies. The best scientific advice available to us at this point indicates that such legislation would be premature.

Our legislation, in addition to creating a VA health registry and authorizing health examinations, would require VA and DOD to contract with the National Academy of Sciences' Medical Follow Up Agency [MFUA] to review the existing scientific, medical, and other information on the health consequences of military service in the Persian Gulf theater of operations. MFUA also would assess the effectiveness of VA's and DOD's efforts to collect and maintain information potentially useful for assessing these health consequences. Finally, MFUA would evaluate and recommend whether there is a scientific basis for VA and DOD to undertake an epidemiological study or studies, and, if so, what types of studies would be appropriate.

ADEQUACY OF VA AND DOD REGISTRY DATA

Mr. President, our bill also would direct the Office of Technology Assessment, an agency of the Congress, to evaluate the potential scientific usefulness of both the new VA registry and the existing DOD registry.

Mr. President, the DOD registry currently must include only those service members who were exposed to the fumes of burning oil during the war, as determined by the Secretary of Defense. Our bill would expand the DOD registry to include all others who served in the Persian Gulf war theater of operations. The expanded registry would be required to include information about the circumstances of the service of all service members who served in the Persian Gulf, such as troop-location data and atmospheric and environmental measurements for specific locations and times. I thank the distinguished chairman of the Armed Services Committee and cosponsor of this legislation, Mr. NUNN, for his leadership on the provisions expanding the DOD registry.

Mr. President, the VA registry in this legislation is modeled closely on the ionizing radiation registry created by the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, Public Law 99-576, which I coauthored in the Senate with the Senator from Wyoming [Mr. SIMPSON].

COORDINATION OF FEDERAL RESEARCH REGARDING HEALTH EFFECTS OF PERSIAN GULF SERVICE

Mr. President, a final part of the bill would require the President to designate a senior Government official to coordinate all research activities undertaken or funded by the executive branch on the health consequences of military service in the Persian Gulf. This provision is modeled on another law I coauthored, the Veterans Health Programs Extension and Improvement Act of 1979, Public Law 96-151, which required the President to ensure that agencies coordinate all Federal research on agent orange. The White House Domestic Policy Council currently has the responsibility for coordinating Federal research on agent orange, and I expect that an official at a similarly high-ranking level would be appointed to coordinate Federal research on Persian Gulf war health issues.

EXPEDITED CONSIDERATION

Mr. President, I am seeking expedited consideration of this measure for several reasons. One obvious reason is the extremely short time we have left in this Congress. There simply is not time to follow the regular legislative procedure for this bill and still have any chance of enacting it this year.

More important, however, is that every day we delay in setting in place the mechanism needed to address the health concerns of Persian Gulf veterans could result in the loss or dispersion of information that might prove essential for resolving existing health concerns—or concerns that might arise in the future—about service in the Persian Gulf. Each day, it may become more difficult to collect and authenticate necessary information. The positive actions taken by the Secretaries of Veterans' Affairs and Defense to date highlight the importance of taking immediate steps to preserve this information in usable forms; the additional actions this legislation would require will help to ensure that their is no undue delay of long-term scientific investigation of the health consequences of Persian Gulf service or any avoidable loss of data necessary for such inquiry.

Mr. President, this legislation has been developed in consultation with a wide range of interested and responsible parties, including various scientific experts; the Department of Veterans Affairs; the Department of Defense; Senator KENNEDY, who as chairman of the Committee on Labor and Human Resources, has vast experience regarding health research issues; the very able chairman of the Armed Services Committee, Senator NUNN; Senator KOHL, with whom I coauthored the provision creating DOD's Persian Gulf registry; the ranking majority member of our committee, Senator DECONCINI; Senator DASCHLE, a member of our committee with whom I coauthored the Agent Orange Act of 1991 and a coauthor of the provision creating the DOD registry; the ranking Republican member of our committee, Senator SPECTER; and the distinguished chairman and ranking minority Member of the House Committee on Veterans' Affairs, Mr. MONTGOMERY and Mr. STUMP.

Mr. President, this legislation has been through many drafts and I am pleased to report to the Senate that the bill I will introduce generally is acceptable to the leadership of the House Committee on Veterans' Affairs and that the House will act promptly on the bill.

Mr. President, this bill is an excellent demonstration of bipartisan cooperation. I believe it represents Government at its most responsive in the service of those who have given so much for the rest of us. I urge my colleagues to support the measure.

Mr. KENNEDY. Mr. President, as an original cosponsor of S. 3346, the proposed Persian Gulf War Veterans' Health Status Act, I congratulate my good friend, the chairman of the Committee on Veterans' Affairs, Senator CRANSTON for his excellent work on this legislation. I am extremely pleased that the Senate is considering this legislation that addresses the health concerns of Persian Gulf war veterans.

The bill we are considering today would authorize the Department of Veterans Affairs to provide a health examination, and counseling regarding the results of any exam, to any veteran who served in the Persian Gulf war theater of operations. The veterans' names would be placed on a VA registry of Persian Gulf war veterans along with data from their examinations if the veterans give permission.

Many Persian Gulf war veterans, even those with no present health problems, are concerned by media reports of mysterious illnesses among their colleagues. The health examinations that are provided in the bill will help to allay these concerns. Periodically, VA would be able to provide veterans listed on the registry with current information about the health consequences of military service in the Persian Gulf war.

The registry and health examinations that this legislation would authorize are very important to these veterans, and I want to be sure that Congress' intentions are clear.

As I understand it, under the proposal before us today, if the veteran seeking the exam has a current health problem, VA should make every reasonable effort to diagnose the condition. The diagnosis might require some necessary and reasonable medical tests. Nothing in the bill would prohibit VA from providing more than one health examination to veterans requesting additional examinations. Is my understanding on these points correct?

Mr. CRANSTON. Mr. President, the distinguished Senator from Massachusetts is correct.

The legislation we are considering today would authorize VA to provide health examinations to any veteran who served in the theater of operations of the Persian Gulf war. Nothing in the bill limits the number of examinations that VA may provide to a veteran. I expect that VA would provide as many additional examinations to eligible veterans as are necessary and reasonable. I have in mind particularly those cases in which the veteran has received an examination and later develops significant symptoms that are of concern to the veteran. Further, I intend that VA make necessary efforts to diagnose illnesses reported by a veteran, including conducting such diagnostic tests as are reasonable and appropriate in individual cases.

On this point, I note that VA has designated three medical centers as referral centers, where Persian Gulf war veterans with symptoms difficult to diagnose are being sent and observed by multidisciplinary teams of experts on environmental illnesses. The referral centers are at VA medical centers located in Washington, DC, Houston, TX, and Los Angeles, CA. I am pleased that VA appears to be committed to learning the cause or causes of these illnesses being reported by Persian Gulf war veterans.

Mr. KENNEDY. Mr. President, I thank my friend from California for his response.

I also note that the legislation will require VA and DOD to seek to contract with the National Academy of Sciences to have the medical followup agency conduct a review of scientific, medical, and other information on the health consequences of military service in the Persian Gulf war. The followup agency will also be required to assess the effectiveness of VA's and DOD's efforts to collect and maintain information potentially useful for assessing these conditions and to recommend whether VA and DOD should undertake epidemiological studies of Persian Gulf war veterans.

The legislation provides the followup agency with access to health records of individuals listed in the registry who have reported an illness. However, the legislation does not explicitly require that DOD and VA give the followup agency access to other information that might be necessary to conduct the review. As I understand it, Congress expects the followup agency to have full access to any data it considers necessary. VA and DOD must be totally forthcoming in sharing this information with the followup agency, and the followup agency must, as it has in the past, respect the confidential nature of this information.

Does the chairman of the Committee on Veterans' Affairs agree with my understanding on this point?

Mr. CRANSTON. Mr. President, the Senator from Massachusetts certainly is correct to expect that VA and DOD will provide MFUA with access to any data MFUA feels is necessary to complete a thorough review.

Since concerns first surfaced about possible health problems related to service in the Persian Gulf war, VA and DOD have been extremely forthcoming and cooperative. I believe the administration's actions to date indicate an appropriate attitude toward the health consequences of possible exposure to toxic environmental agents or other hazards during military service.

Mr. President, I thank my good friend, Senator KENNEDY, for his cooperation and assistance in developing this important legislation. Senator KENNEDY's work on this legislation, and other veterans issues, demonstrates his genuine concern for the welfare of our Nation's veterans.

Mr. KENNEDY. Mr. President, I thank the distinguished and able chairman of the Committee on Veterans' Affairs for his comments.

Mr. DASCHLE. Mr. President, I would like to take a moment to follow up on the discussions that have just taken place between the chairman of the Veterans' Affairs Committee and Senator KENNEDY in order to answer some additional questions that veterans and others may have about the bill.

The legislation before the Senate today is not complicated, and it is designed to establish by law the need for greater attention to and tracking of the health problems that may develop or have developed among Persian Gulf veterans. The legislation is intentionally broad, and I understand that this is necessary to allow us the flexibility to respond to a changing situation. However, because of the broad nature of the language and since we are moving this legislation without a committee report, I believe its very important to clarify some of the language, as Senator KENNEDY has done, now for the RECORD.

First, this legislation includes a requirement that the Secretary of Veterans Affairs provide veterans with health exams and counseling. Would the chairman of the Veterans' Affairs Committee agree that the words "health examination" would also include mental health exams? It is my concern that many veterans will suffer psychological stress as a result of their service, and I want to make certain that mental stress is recognized as a serious health problem for many veterans.

Mr. CRANSTON. Mr. President, I agree with Senator DASCHLE on that point. We chose the words "health examination" because they encompass the many different types of examinations that should be offered to veterans. It certainly is my intention that the examination be designed to look for signs of psychological stress and its effects and for mental disorders. Mental health definitely is integral to a person's overall health status.

Mr. DASCHLE. I thank the distinguished chairman.

Mr. President, I also wanted to clarify the amendment that section 4 of the bill would make in section 734(b)(1)(A)(ii) of Public Law 102–190. That amendment would expand the scope of the registry now being kept at the Department of Defense. If enacted, this provision would require the Secretary of Defense to include in the registry a description of the circumstances of the service member's service, including the location of such service and any atmospheric and other environmental circumstances in those locations, to the extent that information is available.

It is my understanding that the broad nature of this section would allow the Defense Department to include information in the registry that would track, for example, whether a service member was exposed to burning trash or possibly to viruses or parasites unique to the Persian Gulf region or part of it. In addition, for those service members who were given antichemical or biological weapons injections or

drugs based on the probability that service in a given location put them at risk of being exposed to such weapons, this section would also provide for the tracking of individuals who were given such drugs and the identification of those drugs. Would the Senator from California agree?

Mr. CRANSTON. Mr. President, I agree and add that there are many other possibilities for inclusion in the DOD and the VA registries. We felt that an attempt to limit the registries to particular information would be a mistake at this point. We have had a relatively short amount of time during which to evaluate the factors in the gulf that could have caused some of the health problems veterans are now experiencing and, thus, felt that including broad language would be the best approach at this point.

Mr. DASCHLE. I thank the chairman for that clarification. It is very important that Persian Gulf war veterans understand that this is a first step in what will undoubtedly be a long process of determining just which diseases or health ailments may be linked to service and which are only coincidental. It is important to know that we will continue to work to see that veterans who are afflicted with service-related problems receive the help and compensation they deserve.

Mr. President, I am pleased to be an original cosponsor of this legislation. It is an extremely important measure for veterans of the Persian Gulf war and will prove to be a very important basis for future legislative action. The Persian Gulf War Veterans' Health Status Act is designed to protect those veterans who may have been exposed to hazardous environmental conditions during their service by tracking those veterans as a group and by coordinating Federal research and study on the health status of those veterans. It is my hope that this legislation will ensure that any abnormal levels of disease or health disorders will be easily identified in the upcoming months or years, so that the VA is able to provide treatment, compensation, and other services immediately to those veterans, rather than waiting years and years and asking veterans to prove that their conditions are service connected.

Mr. President, for 13 years I have worked with Vietnam veterans, veterans organizations, and other Members of the House and Senate to ensure that those Vietnam veterans who were exposed to and harmed by agent orange receive the compensation they deserve. Part of the reason this has taken so many years is the many difficulties that arose when we attempted to conduct studies utilizing the agent orange registry established for Vietnam veterans. Had this registry been established properly, immediately following the end of the war, and had it been evaluated and updated on a regular basis, compensation for Vietnam veterans would have come much sooner. It is essential that we avoid the mistakes of the past and ensure that these Persian Gulf registries are established in a way that will facilitate both meaningful scientific research and outreach efforts.

Although Congress has to learn the hard way about the long-term consequences of military service, we can say today that this body has, in fact, learned its lesson. Today we will approve this legislation which will, I hope, help us to evaluate in the future what health effects, if any, there are for veterans who served downwind from oil fires. It will help us to see whether the veterans who have complained of fatigue, hair loss, or other problems, are in fact suffering from service-connected illnesses.

It is important to understand that authors and cosponsors of this legislation would have preferred to have more time to evaluate the situation and recommend comprehensive health studies, including a longitudinal study, since there is sufficient indication that such studies will be necessary. However, we are still in the early stages of this process, and we felt it was important to put a registry in place and get the process moving, so that we may have the time to evaluate the situation without losing the progress that could be gained in the meantime. Passage of this legislation will enable us to compile a complete registry and evaluate the evidence now available on this issue.

Thus, Mr. President, I urge my colleagues to support the Persian Gulf War Veterans' Health Status Act, and I look forward to working with my colleagues who have cosponsored this measure to ensure that the remaining issues are addressed in the 103d Congress. There is much work still to be done for our Nation's veterans who served in the Persian Gulf, but I wanted to take this opportunity to congratulate the chairman for his continued leadership on this issue, and on all veterans' issues.

While many of us are saddened by the chairman's decision to retire, the legislation we will approve today is a fitting reminder of the lasting legacy he leaves behind. I have enjoyed working with him on this measure and on the many veterans bills he has brought before this Chamber. There are many veterans who could attest to the difference his work has made in their lives and in their families' lives, and I join my colleagues in the Senate who will miss his dedication to, and leadership on behalf of, our Nation's veterans.

Mr. KENNEDY. I am pleased to be a sponsor of the Persian Gulf War Veterans' Health Status Act. This important legislation addresses the health needs of the large number of men and women who served in the Persian Gulf during Operation Desert Storm.

In recent weeks, many of us have become increasingly concerned by the growing number of instances of unexplained illnesses affecting those who served in the gulf. According to some reports, over 300 gulf war veterans have reported a wide assortment of unexplained ailments. They deserve assurances from their Government that their conditions are being taken seriously and the cause is being investigated. Recent hearings in Boston and Washington have highlighted the concerns of veterans with this gulf war syndrome.

We must move quickly to reassure our veterans and active members of the Armed Forces that any possible health effects from their service will be fully evaluated, and that appropriate care will be provided. They deserve to know what they were exposed to in the gulf and if their service has caused them to become sick. They deserve straight and complete answers. Swift passage of this bill by the Senate today and similar action in the House will demonstrate that Congress is committed to finding these answers.

For now, the cause of these mysterious symptoms remains unknown, but hundreds of young men and women who served in the gulf are sick and in pain, and we must make every reasonable attempt to make sure that their health needs are met.

The legislation which Senator CRANSTON and I are proposing today is an important step in meeting our Nation's commitment. It gives the Veterans' Administration the authority it needs to provide health examinations for returning veterans.

This legislation authorizes free medical evaluations for returning veterans and service personnel, and establishes a registry to track their health status and provide followup treatment. The legislation also mandates an independent review by the National Academy of Sciences of the adequacy of the steps being taken by the Department of Defense and the Department of Veterans' Affairs to answer these current concerns. Another independent review by the National Academy of Sciences will make recommendations on whether epidemiologic studies should be conducted.

In addition, the legislation asks the Congressional Office of Technology Assessment to review information being collected on troop locations and exposure to various environmental conditions in the gulf.

These independent reviews will provide the credibility needed to assure veterans that their concerns are being pursued in an efficient and effective manner. The approach taken in this legislation will provide solid answers to the many questions that exist about their health.

I commend Senator CRANSTON for his leadership in developing this needed measure. All of us hope we have learned the painful lesson of agent orange, and that the Federal Government will act in time, this time, to deal responsibly with these troubling reports.

(At the request of Mr. DOLE, the following statement was ordered to be printed in the RECORD:)

• Mr. SPECTER. Mr. President, as ranking Republican member of the Committee on Veterans' Affairs, and as an original cosponsor, I am pleased to support passage of S. 3346.

Hundreds of thousands of our courageous men and women won a great victory for our Nation in the Persian Gulf. Some, unfortunately, have paid a high price for that victory. The injuries and diseases of those brave men and women have been an issue of major concern to me and I am determined to see that they receive proper care and the benefits that they deserve from a grateful Nation. I have been honored to work closely with the survivors of the infamous Scud attack on the 14th Quartermaster Detachment from Greensburg, PA.

Recently, questions have been raised about other delayed effects of service in the Persian Gulf. In the wake of the environmental disasters triggered by the enemy, unexplained illnesses in Persian Gulf veterans have raised concerns and fears not unlike those raised by Vietnam veterans, and by those exposed to radiation and environmental hazards. Mr. President, these concerns are felt not only by veterans, but also by the Congress and the administration. In his letter of July 14, 1992, former Secretary of Veterans Affairs Derwinski urged the Congress to provide medical examinations to these veterans, and to establish a health registry similar to those provided to Vietnam veterans concerned about agent orange.

This bill would provide the authority for VA to embark on the important mission of investigating the health problems of the service members who served in the Persian Gulf, and would also ensure that the information, both regarding health and environmental factors, will be preserved in VA and DOD to provide for later study. It may be some time before we discover the nature and extent of the problems suffered by our Persian Gulf veterans. I hope that these problems prove to be neither extensive nor severe. Nevertheless, just as we owed answers to the veterans of prior wars, we owe to our Persian Gulf veterans answers concerning the health effects of their service. This bill is a necessary step in that direction.

I urge my colleagues to support this important measure.•

## EXECUTIVE SESSION

### U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar No. 48, the U.N. Framework Convention on Climate Change. I further ask unanimous consent that the treaty be considered as having been advanced to the various parliamentary stages, up to and including the presentation of the resolution of ratification; that no amendments provisos, understandings, reservations be in order; that any statements appear as if read in the RECORD; that the Senate vote on the resolution of ratification without intervening action or debate.

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

### THE GLOBAL CLIMATE CHANGE TREATY

Mr. CHAFEE. Mr. President, I rise in strong support of this historic treaty on global climate change and urge all of our colleagues to vote for it. On behalf of myself and many others, I want to thank and commend my colleague from Rhode Island, Senator PELL, the chairman of the Committee on Foreign Relations and the ranking member, Senator HELMS, for their diligence and prompt consideration of this matter.

This treaty represents a sound first step in response to the environmental threat of global climate change. This threat is frequently referred to as "the greenhouse effect".

Now, what is the greenhouse effect—is it really a serious environmental threat? Briefly, Mr. President, as a member of the Committee on Environment and Public Works and as the vice chair of the Senate delegation that went to the Rio Earth summit last June, I have spent more than 6 years examining this problem.

Is the problem real? The answer is yes. There is no doubt in my mind that the problem is real and we must act quickly to deal with the threat of massive, uncontrolled global climate change.

The skeptics like to point out that the greenhouse effect is natural and that, without a greenhouse effect—without an atmospheric thermal blanket consisting of carbon dioxide, methane and similar greenhouse gases—our planet could not support life as we know it. They also like to argue that there is no proof that pollution has already caused any climate change—that the current warming trend is within the range of natural variability. And they are right.

But the problem is not a greenhouse effect per se. It is the expected intensification of the greenhouse effect—an intensified effect caused by human pollution.

The problem is not a simple, gradual warming trend. It is the likelihood that there will be wild shifts in global climate patterns—changes in rainfall, more frequent hurricanes like the recently disastrous Hurricane Andrew, shifting ocean currents.

There is also the probability that these changes will not be gradual at all. Before we know it, we could reach the point of no return. Rather than experiencing a gradual change in climate, we may see a rapid, uncontrollable collapse of the climate system as we know it.

If we wait until all of the evidence is in and every last scientist is willing to say "yes, this is definitely a problem and we have hard evidence to prove it"—it will probably to too late to do anything about it. Each day of delay increases the cost and severity of the steps we will have to take to cope with this problem. This is not simply a matter of paying the piper now or later. If we do not pay now we may not be given the chance to pay later.

Mr. President, this treaty represents the classic case of the glass being half full or half empty. We have heard a great deal about the evil United States and the President's alleged efforts to weaken the treaty. In my view, those who complain about the final treaty are seizing defeat from the jaws of victory.

This treaty was not watered down by the United States. It was strengthened by the position of the United States. It was expanded to cover more greenhouse gases—at U.S. insistence it now covers methane as well as carbon dioxide. And it is now an action oriented document. Rather than relying on arbitrary, unenforceable targets and timetables, the United States insisted on inclusion of a provision that will force each nation to prepare concrete, specific action plans—plans that will lay out the steps each nation will take to reduce emissions of greenhouse gases.

This treaty is an historic document. It is the first time that the world's governments have jointly declared that the global environment is threatened by the greenhouse effect, that it is everyone's problem, and that we must act together to solve the problem. We no longer have to argue about the existence of the problem. That is now a given. The debate now is what do we do about it?

Those who complain about the lack of targets and timetables were pushing for a commitment to stabilize emissions at 1990 levels by the year 2000. That commitment is not included in the treaty but stabilization at 1990 levels by 2000 is the target—it is the standard that will be used to judge each nation's action plan. So, in effect, we do have a target and timetable.

Nevertheless, as I noted before, the treaty includes a formal recognition of the problem and, more importantly, it

includes a goal that is much tougher than stabilization of emissions. Article 2 of the treaty states, in relevant part, that:

The ultimate objective of this Convention * * * is to achieve * * * stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

It is important for everyone here to understand that stabilization of atmospheric concentrations will require significant reductions in emissions—not the simple stabilization of emissions that has received so much attention. This is a major provision of the treaty and it gives me hope for the future.

Mr. President, I see this glass as being half full. In 1986, I called upon then-President Reagan and the leaders of numerous other countries to negotiate a global climate treaty. With the help of several Senate colleagues, I continued to press for a treaty. Now, here we are 6 years later and my hope has become a reality. We have made great strides in this area and I am pleased to rise in support of this treaty.

This is by no means the last we will hear about the threat of global climate change. More work needs to be done. Thankfully, plans are already underway for additional international cooperation and for the development of the action plans that are required by the treaty.

This is a good treaty, it is an important treaty, it should be approved by the Senate, and I commend the President for his leadership on this critical environmental matter.

## FRAMEWORK CONVENTION ON CLIMATE CHANGE

Mr. McCONNELL. Mr. President, as the Senate takes up the Framework Convention on Climate Change, I want to make a few observations on this important treaty.

This document is viewed by all as the most far-reaching environmental agreement ever negotiated and concluded by 156 countries. I think it is important to once again point out that President Bush's commitment to cost effective policies to prevent climate change will preserve jobs as they protect our environment. The President was farsighted in his regard for real long-term prosperity and environmental protection. This convention prepares the Nations of the world to come up with a sober assessment of the climate change issue and calls for voluntary action plans to address the potential impacts of human activities.

I want to commend President Bush for his leadership at the U.N. Conference on Environment and Development [UNCED] in the face of outrageous criticism from those attempting to cloud our Nation's efforts to protect the environment. He braved a barrage of predictable rhetoric from the liberal media, the developing world, the developed world, and Congress.

Looking back at UNCED, there were several groups who delighted in bashing the administration, but whose true interests appear to be far from that of sustainable development.

Our European allies, appeasing their strong green lobbies back home, cynically cried alligator tears, with their pecuniary interests foremost in mind. Carbon dioxide targets and timetables would give these countries an enormous competitive advantage over the United States which relies on its natural endowment of coal. The representatives of Third World countries wanted more aid with fewer strings attached. The emotionally charged pleas of environmental groups trying to pump up their membership rolls make great direct mail, but poor environmental policy. And the politically driven diatribes of liberal politicians in the United States now appear to be their best bet at getting off the political endangered species list.

While most critics had agendas far removed from reasonable environmental protection, there were those critics with no hidden agendas: The apologists for U.S. policies who fail to recognize that no Nation has done more, or spent more, to protect the environment than the United States. A case in point was a news report that Fidel Castro received the largest round of applause of all the world leaders who spoke at the conference, while President Bush was only politely acknowledged. This reflects a world conference with a very warped view of our Nation's real, long-term commitment to the environment.

The President's firm stand against targets and timetables for greenhouse gases was not a fashionable position at UNCED. However, it was the only position supported by the facts. There is no conclusive evidence of significant long-term global warming. Our understanding of the Earth's climate is quite primitive and does not take into account the dynamic interaction of such factors as water vapor, sunspots, volcanic activity, variations in the Earth's orbit around the Sun, and the effect of oceans and ocean currents. While these forces have been at work for eons, some self-proclaimed environmental saviors can only cite the latest weather report, and prepare thirty second political ads.

According to a recent survey of the scientific community, 47 percent of scientists did not believe that current policies would lead to global warming. This is hardly a consensus on global climate change requiring us to limit economic growth for an amorphous fear that the sky is falling. Clearly, the potential for climate change is something that must be carefully watched. But based on our limited understanding of the atmosphere, we are not justified in pursuing drastic changes in our industrial policy.

I agree with many in the environmental community that measures must be taken to minimize the potential for climate change. But these measures should be the least cost alternatives in light of the many uncertainties. Many such alternatives have been incorporated into the President's national energy strategy.

The President led the way at UNCED by crafting a thoughtful, reasoned response in the face of shrill rhetoric. In the end, the President's initiative was adopted by the rest of the world. It requires Nations to submit action plans to monitor and limit greenhouse gas emissions. It provides for technology cooperation and commits funding.

The United States has pledged $50 million in contributions to the World Bank's global environmental facility to assist developing countries in reducing greenhouse emissions. President Bush has proposed over a billion dollars per year in funding for climate change research in fiscal year 1991 and 1992. And this year the President requested $1.37 billion.

Initially, I had reservations that the Framework Convention on Climate Change could be convoluted in a way that would devastate the U.S. economy and the economy of my State. I was concerned that it could be interpreted unilaterally by the executive branch to bind the United States to targets and timetables for greenhouse gas emissions. However, I am satisfied that we have clarified this issue in the Foreign Relations Committee.

In pressing for a unilateral interpretation to include targets and timetables, some draw a parallel to the experience we had with chlorofluorocarbons and the Montreal protocol: Once the United States signed the agreement, everyone else fell in line. However, there is no evidence, no experience, or no record to indicate that developing countries will be willing to similarly commit to meaningful and binding reductions in carbon dioxide emissions.

The negotiations leading up to the Rio summit demonstrated the reluctance of the developing world to join in a binding interpretation of this convention to limit carbon dioxide emissions without broad disclaimers that they not interfere with economic growth. The commitments of this convention simply to study and analyze greenhouse gas emissions are subject to overriding priorities of economic development. An interpretation by the executive branch that would recognize binding targets and timetables would

not be reciprocated by the developing world, and would do little to reduce atmospheric carbon dioxide levels.

A unilateral commitment to targets and timetables would be a tragic mistake. It would have a negligible effect in mitigating the potential for climate change, leave unchecked the burgeoning emissions from developing countries, and constrain our own economic growth.

Because of these concerns, I felt compelled to discuss the possibility of a unilateral interpretation with the chairman of the Foreign Relations Committee who has given me his public assurances that if this treaty is amended or interpreted by the executive branch to commit the United States to stabilize greenhouse gas emissions, that it would be subject to ratification by the Senate. The Foreign Relations Committee has included language to this effect in the committee report accompanying this treaty to make the record on this point absolutely clear.

The executive branch is precluded from interpreting this convention as a binding commitment to targets and timetables unless ratified by the Senate. Interpreting the aim of this convention in binding terms would amount to a material change in the treaty requiring the Senate's advice and consent.

With the chairman's assurances, I am pleased to support this fine agreement. I congratulate President Bush on his courageous leadership on the issue of global climate change.

In this year of sloganeering and poll watching, it may be an irresistible urge to gloss over the facts, and smear prudent policies in favor of environmental extremism. I am heartened that the one-sided coverage of the UNCED conference did not undermine the level-headed policies advanced by President Bush, and adopted by the rest of the world in this important treaty.

Mr. LOTT. Mr. President I shall vote in favor of ratification by the Senate of the U.N. Framework Convention on Climate Change.

I believe that the approach to the issue of potential global climate change in the convention is responsible and realistic, considering the uncertainties of the science and the risk of tremendous adverse economic impacts from ill-advised policies. It is clear that the convention does not obligate the United States or any other country to achieve any particular target or timetable for limitation of greenhouse gas emissions. The convention's statement of objective does not detract in any way from the fact that the commitments section contains no such requirement. To me, that is the correct and responsible approach and is the result which President Bush and his administration wisely negotiated and achieved.

We have a responsible approach to limiting the growth of greenhouse gas emissions. The U.S. national action strategy, outlined in the environmental documentation furnished by the Department of State to the Committee on Foreign Relations, is a bold strategy that fully meets U.S. obligations concerning greenhouse gas emissions. It contains initiatives in the areas of energy efficiency, transportation, energy supply, agriculture and natural resources, and technology research and development. Its estimated effects are to reduce otherwise projected emissions by the equivalent of 125 to 200 million metric tons of carbon in the year 2000, a 7- to 11-percent reduction from anticipated emissions levels.

Those results would mean that U.S. net greenhouse gas emissions in the year 2000 would be only 1.4 to 6 percent above 1990 levels. Some may say that is not sufficient. I say that such a result would be remarkable, given that greenhouse gas emissions typically bear some relationship to economic growth, and we all desire economic recovery that enables our gross national product to be substantially higher—far more than just 1.4 to 6 percent higher—in the year 2000 than it was a decade earlier. Even a meager 2 percent average annual growth in GNP during the decade would mean that our economy would be 20 percent larger in 2000 than it was in 1990. That economic growth would be more than 3 to 14 times greater than the projected increase in greenhouse gas emissions under the U.S. national action strategy, a very impressive result.

Growth of GNP is only one of several factors affecting the level of greenhouse gas emissions. Others include population growth, the resource mix in the energy sector, the penetration of energy efficiency technologies, reforestation programs, and efforts to constrain methane emissions from landfills and natural gas pipelines. Those important variables are extremely difficult to predict with confidence.

The Climate Change Convention wisely takes all these factors into account. It rejects the artificiality of rigid emissions levels, which no nation could be assured of meeting by prescribed deadlines. This was articulated by Mr. Jean Ripert, the chairman of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change. On May 4, 1992, in response to a reporter's question as to why the draft of the convention he supported did not contain targets and timetables, he replied: "No government is in the position to guarantee levels of emissions."

Some have suggested that carbon taxes could achieve specified emissions levels. I disagree. Carbon taxes could not give us that assurance if for no other reason than that we cannot know with confidence what the price elasticities of different types of energy supply and demand would be at any particular tax level. Nor would carbon dioxide emissions caps on major sources of emissions give us the assurance. This is because, unlike the case of sulfur dioxide emissions, carbon dioxide, not to mention other greenhouse gases, comes from so many different sources—including millions of homes, automobiles, trucks, and small businesses.

The Department of Commerce engaged DRI/McGraw-Hill to conduct a study on the impacts of carbon taxes. That study forecast that carbon taxes necessary to keep carbon dioxide emissions in the year 2000 at 1988 levels would deprive American workers of more than 560,000 jobs and reduce our GNP by $92 billion from what we otherwise would expect.

A newer study by the same firm, "Potential U.S. Regional and State Impacts of International Carbon Taxes," shows electricity prices in the year 2000 up 53 percent in the Pacific Northwest over the base case; and up more than 65 percent in the east north central region of Illinois, Indiana, Michigan, Ohio, and Wisconsin. As for manufacturing employment in the year 2000, almost 12,000 lost jobs in Missouri compared to the base case, more than 15,000 jobs lost in Florida, and more than 21,000 lost jobs in Texas. Nationally, this new study forecasts over 800,000 nonfarm jobs lost by the year 2000 as a result of carbon taxes.

As the new DRI study points out, "because manufacturing accounts for a high share of my own State of Mississippi's economic activity, the effects of the carbon tax on the State's economy would be significant." Personal income in the year 2000 would drop by 3 percent from the base-case forecast for that year; employment in electrical machinery manufacturing would decline by 4.6 percent from the base-case forecast; nonelectrical machinery manufacturing would suffer an employment loss of 5.2 percent; and lumber and wood products manufacturing would face a 3.7-percent job loss. The people of Mississippi cannot stand such impacts.

Some say that taxation or regulatory schemes to limit carbon dioxide emissions would not hurt the economy. This is based on some pretty amazing economic assumptions. For example, the assumption that there is perfect and instantaneous movement of both labor and capital from one industry to another. If that were true, policies could cause tens or even hundreds of thousands of coal miners and steelworkers to lose their jobs, but they instantly—without substantial retraining—could be reemployed as computer operators or insurance agents; and the huge investments in idled manufacturing plants would be turned overnight into investments in activities not as severely hurt by the taxes or regulations, such as video stores. As Raymond J.

Kopp, senior fellow and director of the Quality of the Environment Division of Resources for the Future, an environmental group, noted this year, "while environmental programs may be desirable, they are not free."

Unless and until we can develop at least a general consensus among economists as to what the most probable results would be of Federal schemes to achieve specific levels of greenhouse gas emissions, my view is that we simply cannot gamble with the economic future of American workers and consumers. Not with information before us such as I have described.

The need for deliberateness has been underscored by the Intergovernmental Panel on Climate Change, whose findings and recommendations are quoted so often by others. In its formal report, it cautioned:

The consideration of climate change response strategies presents formidable difficulties for policymakers. *The information available to make sound policy analyses is inadequate* because of (a) uncertainty with respect to how effective specific response options or groups of options would be in actually averting potential climate change; (b) uncertainty with respect to the costs, effects on economic growth, and other economic and social implications of specific options or groups of options. [Italic added].

We all should applaud those who understand how complex these issues are and who, therefore, negotiated a climate change convention that provides for flexibility, and rejects arbitrary rigidity, in light of the enormous economic, not to mention scientific, uncertainties that confront us.

I urge my colleagues to support ratification of this convention.

Mr. PELL. Mr. President, I am very pleased that the Senate is able to consider the U.N. Framework Convention on Climate Change, and I urge my colleagues to vote in favor of granting advice and consent to its ratification.

The Convention on Climate Change marks a significant advance in international efforts to address the threat of climate change caused by anthropogenic emissions of green house gases. However, it is only a first step, more is needed. In my view, the parties to the convention should begin now to negotiate a protocol to establish targets and timetables for reducing carbon dioxide emissions.

The administration has objected to the adoption of targets and timetables out of two principal concerns: First, that the uncertainty associated with projections of climate change precluded us from taking serious action; and second, that efforts to reduce greenhouse gas emissions will be extremely costly and harmful to the economy.

I disagree with both of these propositions, and will address each of them in turn. First, the issue of uncertainty. It is true that there is uncertainty about the timing, magnitude, and rate of climate change, and that this presents policymakers with difficult decisions, but uncertainty must not become an excuse for inaction. Indeed, Congress regularly makes decisions in the face of uncertainty. The budget resolution, for instance, depends heavily on uncertain projections of GNP growth.

In light of some of the misleading statements that have been made about our state of knowledge about climate change, I think is it useful to summarize the current best available scientific projections of climate change. At the fifth round of INC negotiations, the administration submitted a document entitled "U.S. Views on Global Climate Change" which presented a consensus view of scientists on climate change:

While scientists cannot yet establish that a human-induced warming has already occurred, best estimates indicate that increased concentrations of greenhouse gases are likely to increase atmospheric and ocean temperatures and alter their associated circulation and weather patterns. However, the magnitude, timing and regional details of these changes cannot be predicted with much certainty. Climate models predict changes in the average temperature of the globe's atmosphere as consequence of a doubling of atmospheric concentrations of carbon dioxide are unlikely to lie out the range of 1.5° to 4.5°C (2.7° to 8.1°F), with a best estimate, based on model results taking into account the observed climate record of 2.5°C (4.5°F). Associated sea-level rise has been estimated to range between a few tens of centimeters and approximately 1 meter (less than 1 foot to approximately three feet). In addition, observed warming in recent years is of the same magnitude as that predicted by the models but also of the same magnitude as natural variability. Thus, the observed increase could be due predominately to natural variability or could be part of a larger warming offset by other human factors.

Another way to look at the issue is that the current rates of increase in greenhouse gas concentrations are faster than at any time in the past 10,000 years and will result in a doubling of preindustrial atmospheric $CO_2$ equivalent concentrations by the middle of the next century. The rate of increase in $CO_2$ emissions is 30 to 100 times faster than the natural rate of fluctuation indicated by the climate record, the rate of increase of $CH_4$ is roughly 400 times that of natural fluctuations.

In its report "Changing by Degrees: Steps to Reduce Greenhouse Gases," the Office of Technology Assessment stated:

(W)e appear to be pushing the climate system beyond the limits of natural rates of change experienced by the Earth for hundreds of thousands and probably millions of years. The projected rate of climate change may outpace the ability of natural and human systems to adapt in some areas.

In my view, these facts suggest that we should begin now to examine limiting emissions of these greenhouse gases. My views are reinforced by the fact that, contrary to the claims of opponents of such measures, authoritative studies indicate that U.S. emissions of greenhouse gases could be stabilized at little or no cost or perhaps even a profit.

By the administration's own estimate, by adhering to existing measures, projected U.S. net emissions of greenhouse gases in the year 2000 will be 7 to 11 percent below emissions otherwise projected or 1 to 6 percent above 1990 levels. These projections depend in part upon GNP and population growth, the energy intensity of economy, and the rate of diffusion of energy efficiency technologies. These measures nearly stabilize emissions and are voluntary as well as profitable.

It is notable that in statements up to the release of this estimate, the administration had asserted that there were no programs beyond those in the national energy strategy, that could reduce greenhouse emissions without additional costs. The new estimate suggests that the original estimates were inadequate, and that indeed there may be even more opportunities in this area.

This view is reinforced by authoritative studies released by the National Academy of Sciences and the Office of Technology Assessment. In its study of climate change, the National Academy of Sciences concluded that:

The United States could reduce its greenhouse gas emissions by between 10 and 40 percent of the 1990 level at very low cost. Some reductions may even be at a net savings if the proper policies are implemented.

In testimony before the committee, Dr. John Gibbons, the Director of the Office of Technology Assessment stated that the United States could return to its 1990 level of carbon dioxide emissions "at little or no net cost until 2005 if we start now."

Dr. Gibbons went on to note that:

The longer we wait to make the commitment to stabilize or reduce greenhouse gases, the more difficult it becomes. The short term goal of emissions reductions becomes less attainable because more retrofits are required. The long term goal of concentration reductions fades into the more distant future because of a momentum similar to population momentum. We know that the delay between the time the gases are produced and the time when the climatic and ecological impacts are fully felt is considerable (many decades).

Early in this administration, then-Secretary of State Baker addressed the Intergovernmental Panel on Climate Change and articulated four principles to guide the international response to climate change.

They are: First, that we cannot afford to wait until all uncertainties have been resolved before we act; second, that while efforts to refine our knowledge are underway, we should focus immediately on prudent steps that are already justified on grounds other than climate change—this has come to be called the no regrets policy;

third, that actions taken to address global climate should be as specific and cost effective as possible; and fourth, that the solutions should reconcile the need for economic growth and environmental protection.

Unfortunately, the administration appears to have abandoned these principles. This despite strong evidence that controlling emissions of greenhouse gases will be essential in limiting the increase in atmospheric concentrations of greenhouse gases and thus in limiting climate change, and authoritative analysis which shows that such measures would not adversely affect the economy, and could in fact promote economic growth.

Indeed, as was noted at the committee's hearing, faithful implementation of the convention may be essential to future U.S. competitiveness in world markets. In his testimony, Dr. Gibbons noted that:

(A)nalysis underway at OTA and in other organizations reveals potential negative repercussions for the U.S. economy if we fail to adhere to commitments and objectives such as those established in the Convention. If other countries, for instance Germany and/or Japan, elect to engage in a more rigorous pursuit of emissions reductions, more efficient products and industrial processes, and nonfossil energy sources, their industries and products may become more competitive than ours.

In light of the key role energy efficiency will place in future U.S. economic competitiveness, I had hoped the administration would have pursued an aggressive program to increase energy efficiency and to reduce our reliance on fossil fuels. Unfortunately, this is not the case. The administration is pursuing policies that reinforce the status quo, or may in fact actually be making matters worse.

For example, the national energy strategy will continue our Nation's unfortunate reliance on imported oil and in fact is likely to increase them in the future. Further, the NES fails to pursue aggressive energy conservations policies; OTA and National Academy of Sciences analyses identify two to three times the low-cost energy conservation that the NES does. Moreover, the NES will actually reduce the percentage of electricity generated in the United States from renewable energy sources.

Mr. President, all of this points to the fact that the administration has simply not responded adequately to one of the most serious environmental and foreign policy issues facing our Nation today. The convention we have before us is an essential first step, but it is only that. The Senate should advise and consent to its ratification and then push for the initiation of a new round of negotiations on a protocol that would limit anthropogenic greenhouse gas emissions.

Mr. BAUCUS. The Framework Convention on Climate Change before the Senate is a first step toward addressing this Nation's need to curb its greenhouse gas emissions as part of a global effort. We are playing roulette with the planet by not taking more aggressive action to curb greenhouse gas emissions.

The President claims it costs jobs to protect the environment. This is an old-fashioned way of thinking that is simply not supported by the facts. In today's highly competitive, computerized marketplace, pollution itself is a sign of inefficiency. This inefficiency costs jobs when our competitors eliminate this inefficiency.

Japan has set up the International Center for Environmental Technology Transfer. You can be sure they are most interested in transferring Japanese technology to developing countries. America should be in the forefront of such efforts. Thirty-five percent of our exports go to developing countries. An international environmental agreement on greenhouse gas emissions would only increase the demand for U.S. environmental goods and services.

But the President's turns his back on these types of jobs. He wants to give workers in the 1990's jobs of the 1950's. Only we aren't building Studebakers anymore, Mr. President. We are building electrostatic precipitators, computerized monitors for a wide variety of air pollution, and a host of other technologies.

We need to provide Americans jobs with a future. These are high-paying, skilled jobs; not just flipping burgers at minimum wage.

The President seems blind to the opportunities he is missing. He cannot lead us forward, he can only turn toward the past.

I attended the Earth Summit and I was astonished at how out of step the administration's negotiating team was from the rest of the industrialized world.

Other nations—and business in those nations—recognize this rare opportunity to gain market share in a bull market. Other nations understand we can have greater prosperity and better environmental protection.

I was deeply disappointed in the failure of American leadership at the Earth Summit. I support the climate change treaty before us today, but only as a minimal first step. There is more we must do.

We must prepare an action agenda, to which we are committed by the terms of the treaty. We must have public comment on the agenda so that it can be a document we can all support.

Parties to the convention should meet soon to decide on the next step. We can start this process at the next meeting of the Intergovernmental Negotiating Committee.

We run the risk of losing an enormous trade and economic opportunity if we remain imprisoned by past ideas.

The administration needs to change its outlook on the environment and see the opportunity that exists. Jobs are created when we improve our environmental performance. I hope we are not the last nation to recognize this truth.

Mr. MITCHELL. I am pleased that the Senate today is prepared to consider the Framework Convention on Climate Change. This convention does not take the action I believe is necessary to adequately protect this planet from the risks associated with climate change. The Bush administration prevented a meaningful convention from being signed at the Earth summit last June.

The Bush administration resists agreements for meaningful reductions in greenhouse gases because it says that controlling emissions will harm the economy. This is false reasoning on two counts.

First, controlling pollution can create jobs and enhance our economic health. In fact, pollution may be the most tangible sign of economic inefficiency. Reducing pollution can create jobs by increasing efficiency and creating products in demand elsewhere. A global effort to protect the environment would create demand for environmental goods and services. Japan and Germany are already consciously targeting this market. We need to seize the opportunity if we are to compete successfully in this growing international market.

Second, the administration claims a need to wait for more scientific certainty. There is no certainty on every aspect of climate change, but there is consensus that greenhouse gas emissions from industrialized societies are placing the globe at risk. This was the conclusion of the Intergovernmental Panel on Climate Change. Waiting for absolute certainty as to every aspect of this risk is a delay we cannot afford.

The administration seems to assume that more science will justify their delay. But experience teaches us otherwise. In the case of ozone depletion, another, major international air pollution issue, science, showed us that the situation was worse, not better, then science first anticipated. We need not wait for more science to adopt a prudent course of action and reduce our greenhouse gas emissions.

Despite my great concerns about the shortcomings of the convention before the Senate, I recommend we ratify this convention as a first, small step.

The treaty calls for an action agenda on climate change by January 1993. We need to move quickly to act on this agenda. The public must be involved and able to comment on development of such a plan, and justification for the various provisions of the plan should be made public.

There should be a meeting of the parties to the convention to review progress and we should begin to take

action now to develop a protocol to the convention. That protocol should address the need to reduce greenhouse gas emissions, not merely count them. We have an opportunity to take the next step at the meeting of the Intergovernmental Negotiating Committee in December.

The IPCC must also continue its work. We need meaningful information, not a political analysis, about the science of climate change and what strategies can best counter the program.

It is within our power as a Nation to address this program. It only remains to see if the administration has the will to do so.

Mr. GORE. Mr. President, I rise today to urge my colleagues to join me in support of the Framework Convention on Climate Change that the president signed in June at the Earth summit in Rio de Janeiro. While I believe that this treaty falls far short of what is necessary effectively to address the serious threat of global climate change—and I think it is clear that the responsibility for the treaty's shortcomings rests squarely with President Bush—it is nevertheless an important step forward and a foundation upon which responsible policy can be built.

The process leading to the conclusion of the Climate Change Treaty was initiated—and driven—by the virtual unanimous opinion of the world scientific community that, by overloading the atmosphere with carbon dioxide and other greenhouse gases, we are risking disruptions in the climate system more severe than any in the past 10,000 years. More severe storm systems in some areas; intense bouts of drought in others; rising sea levels and flooding of coastal communities would be among the consequences. The imperative—to most of the world community—was clear; we need to take action now.

What became clear during the course of the discussions—again, to most of the world community—was that taking action to combat climate change is also an economic imperative. The fact is that cutting $CO_2$ emissions can most readily and effectively be achieved by improving efficiency in every sector of the economy. And improving efficiency means reducing waste; enhancing productivity and profits.

Apparently all of this was lost on President Bush. As we all are now all too well aware, the Bush administration was—throughout these negotiations—the single largest obstacle to progress. While our major industrialized trading partners and competitors called for decisive action to forestall this global threat, the United States alone refused. Germany, Japan, the United Kingdom—all of our G-7 partners—urged our President to join in a treaty with substance to its emissions limitations commitments. But we stonewalled the world and in the end, our intransigence meant that the final agreement is completely devoid of any legally binding commitments to action.

As I mentioned, we signed the convention at the Earth summit in Rio. The real meaning of the Earth summit was also lost on the President. This is a turning point in history. Leaders of nearly every nation on Earth gathered together in a profound awareness of the true nature and magnitude of the global environmental crisis we face.

Perhaps even more significantly, they realized that the alleviation of human suffering around the globe is inextricably intertwined with our efforts to relieve the building pressures on the environment. They understood that—to combat the poverty, suffering, and pain that afflicts so many in the world today—we have to pursue economic growth that is not destructive of the environment.

In addition, while clearly a milestone in terms of international diplomatic relations, the Earth summit was also a powerful coming together of concerned citizens from all parts of the world. They were parents who are concerned about the quality of life their children will enjoy; they were children who are determined to clean up the damage that has been done and move forward to a brighter future.

Citizens of the United States were there too, in strong numbers. Proud of the many positive steps we have taken in this country to clean our air and water, they wanted to demonstrate United States resolve to lead the world in confronting the larger, global challenges we now face.

They were disappointed. Together with a bipartisan delegation of Senators, I travelled to Rio hoping to amplify their voices. All of our voices were drowned out, however, by the firestone of protest against the United States. Rather than lead the world, President Bush had instructed our negotiators to block progress and drag the talks to a halt. This was nothing new, of course, it had been the President's tack throughout the negotiations. But the world community had had enough of his obstructionism and in Rio, the depth of their disdain and frustration became clear.

In response to the outcry, President Bush presses on the American public a false choice. He says that we can't take a lead on environmental issues if we want to have a strong economy. This just isn't so. The truth is that we won't be able to revitalize our economy unless we move aggressively forward—away from the polluting ways of the past and toward the cleaner more efficient means of production that are the way of the future.

Japan and Germany are sounding an economic wakeup call. Honda's new president, for example, made 99 speeches to his employees around the world on the imperative of environmentally sound production processes. Specifically with regard to increased fuel efficiency—a policy that President Bush has strongly opposed—he stated in an interview with Business Week that "If a car maker doesn't build more efficient cars, it can't survive."

Mr. Bush should know that taking action to protect the environment will also help our economy. Indeed, the reports of his own experts say just that. A recent report by the EPA, for example, concludes that effective policies to stem carbon dioxide emissions will increase economic growth.

The National Academy of Sciences, the Office of Technology Assessment, and other private analyses all point to the same conclusion: job creation; increased efficiency; enhanced productivity and competitiveness will come with progress in confronting global climate change.

The environmental and economic imperatives are therefore clear. It's time for us to move ahead.

While the climate change convention—at Mr. Bush's insistence—is a nonbinding and very weak document, it does lay an important foundation on which we can build.

We need to move quickly to ratify the convention and then to begin discussions with the conference of the parties to develop a protocol to the convention that would contain effective and binding commitments to action. We also should act quickly to develop a national dialogue on climate change and specifically, provide a forum for citizens groups, scientists, and industry to help craft and comment on our action strategy to stem greenhouse gas emissions.

The challenges that the threat of climate change poses are not too great for the world to meet—if there is strong U.S. commitment and leadership. I believe that our Nation can, and must, meet the challenge. Our industry is innovative and resourceful. In the past, as we have committed ourselves to achieving serious goals in solving environmental problems, our industries have risen to the occasion to meet—and not infrequently exceed—the mark. Our effort—and remarkable success—in phasing our ozone-destroying chemicals pursuant to the precise target and timetables laid out in the Montreal protocol is but one example of this. Let's ratify this convention and work with industry and with concerned citizens to regain the leadership position on the environment—and on the economy—that the United States has always proudly held.

Mr. SIMPSON. Mr. President, I trust that all of my colleagues will vote in favor of ratification of the U.N. Framework Convention on Climate Change, as I shall. The formal negotiations lasted almost 17 months and were dif-

ficult. Notwithstanding the many differences that existed among the parties before the final document was agreed upon, there was unanimous agreement, upon conclusion of the negotiations, as to what the convention meant in terms of the issue that had captured so much of the attention of the media and the public. President Bush deserves a great deal of credit for negotiating a realistic agreement.

Specifically, as we vote to ratify the convention, we do so with the confidence that all of the participants in the negotiation of the convention and many of the observers of that process understood and agreed that the wording of the convention was carefully chosen so as not to constitute or imply the commitment, binding or otherwise, of any country to a specific level of carbon dioxide or other greenhouse gas emissions at any time.

Instead, the convention provides for a flexible approach by which nations will develop action plans appropriate to the specific circumstances of the country. For example, industrialized nation's plans to limit greenhouse gas emissions may take into account important factors such as economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies, and other individual circumstances. The U.S. national action strategy fully meets our Nation's obligations concerning greenhouse gas emissions.

Some of the participants were pleased with the conventions's approach to commitments to limit emissions, and others were not. But, the important point for the Senate, Mr. President, is that, regardless of their policy preferences, they had a common understanding of what the convention did and did not prescribe. I would like the record to reflect some examples of this unanimous understanding, which was contemporaneous with the final negotiation of the convention text and the agreement to its provisions by the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, [INC] the international negotiating body that had been established by resolution of the U.N. General Assembly.

Mr. Jean Ripert, chairman of the INC, spoke with reporters concerning his proposed text of commitments by the industrialized countries to limit greenhouse gas emissions, which text subsequently was agreed upon by all the participating nations. The May 4, 1992 issue of the Bureau of National Affairs' Environment Reporter reported: "Explaining why his draft did not contain targets and timetables, Ripert said 'No government is in the position to guarantee levels of emissions.'"

On May 8, 1992, once the parties had agreed to the provisions concerning commitments regarding limitations on greenhouse gas emissions by the industrialized countries, as set forth in article 4, paragraph 2 of the convention, Clayton Yeutter, who then was Counselor to the President for Domestic Policy and who was coordinating the administration's negotiating policies and position, wrote to Chairman JOHN DINGELL of the House Committee on Energy and Commerce.

With reference to convention article 4, paragraph 2(a), which refers to "recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions * * * would contribute to * * * modification" of long-term emissions trends, Mr. Yeutter's letter stated: "But there is nothing in any of the language which constitutes a commitment to a specific level of emissions at any time." With reference to convention article 4, paragraph 2(b), which refers to reports of nations about their policies and measures, "with the aim of returning" greenhouse gas emissions to their 1990 levels, Mr. Yeutter stated: "The word 'aim' was carefully chosen, and it does not constitute a commitment, binding or otherwise. Nor does this sentence prescribe or imply any kind of timetable."

The Department of State has furnished the Committee on Foreign Relations with a comprehensive document, entitled "Environmental Documentation: United Nations Framework Convention on Climate Change," dated September 1992. Among other things, that document was intended to "provide a description of the obligations parties will undertake on ratifying the Convention and upon its entry into force." Included in its description of the goals sought to be achieved by the convention is "specifically avoiding the imposition of uniform, rigidly specified requirements—in favor of a more flexible approach enabling countries to develop strategies that best meet their individual situations, needs and capabilities."

The many environmental groups who had been active in the negotiations from the beginning also understood this. Their joint, formal policy statement, delivered to the plenary session of the INC on May 4, state: "And yet in front of you is a text which not only does not commit the developed countries to reducing carbon dioxide emissions, it does not even guarantee stabilization * * *".

There are many other illustrations that the governments which negotiated the Climate Change Convention, as well as the environmental and business organizations participating in those negotiations, were in total agreement, at the time the convention was agreed upon, as to what its provisions were intended to mean. I have set these matters forth, as part of the record of Senate ratification, so that, as we vote, we, too, have a clear understanding of the meaning and intent of these important provisions of the convention.

I want to add that I am pleased the United States stood up to certain interest groups and foreign governments and did not go along with pressure to turn political rhetoric into legally binding commitments.

My point, Mr. President, is that accusing the United States of having frustrated a more far-reaching convention, as some nations advocated, presupposes that it makes more sense to listen to rhetoric than to look at real plans. As demonstrated by the U.S. national action strategy, our country has a real plan, not an illusory one, to deal with the issue of potential global climate change.

I am glad we saw through the posturing of others and that we effectively resisted them. My hope is that we will continue to do so in the interest of the American people.

Mr. CRAIG. Mr. President, I will be voting in favor of Senate ratification of the U.N. Framework Convention on Climate Change.

At the same time, I strongly disagree with those who argue that the convention did not go far enough and that the United States should have agreed to legally binding targets and timetables for limitations on U.S. emissions of carbon dioxide and other greenhouse gases. Those who make such criticisms, in my opinion, fail to reckon with facts concerning the issue of potential global climate change.

Interestingly, one of the most important of those facts has been acknowledged by the junior Senator from Tennessee, our colleague AL GORE. On April 7, 1992, during Senate debate on comprehensive energy legislation, as reported in the CONGRESSIONAL RECORD at page S4890, the Senator stated:

> If the United States not only stabilizes emissions but reduces greenhouse gas emissions by 50 percent, and if every other industrial country also reduces greenhouse emission by 50 percent, and the developing countries continue on their current path, then worldwide greenhouse gas emissions will, by the year 2030, increase by 250 percent.

Senator GORE'S observation was confirmed by the Department of State's Environmental Documentation, which it submitted to the Committee on Foreign Relations. Commenting on the thinking of the nations that negotiated the Climate Change Convention, it noted:

> [T]here was awareness that the 'savings' achieved by the industrialized countries—the only countries to which binding limits would apply—could be eclipsed by increased emissions of developing countries.

The industrialized countries now account for around half of global greenhouse gas emissions. However, the relative contribution of different countries is shifting. Emissions from the developing countries are increasing rapidly, as their populations grow and they seek improved standards of living through economic development. Once the countries of the former U.S.S.R.

and of Eastern Europe make the transition to market economies, their economies will grow, rather than shrink, as has been the case during the last few years. That means more emissions from those nations. As a consequence of the increased greenhouse gas emissions from these other countries, it is estimated that, by 2025, the net carbon dioxide emissions from developing nations and from those with economies in transition will constitute two-thirds of the world total, and, when all greenhouse gases are considered, the emissions from these other nations jumps to as much as three-quarters of the world total.

The correct point made by Senator GORE and by the State Department is that the projected growth of developing countries' greenhouse gas emissions will more than offset—indeed, will dwarf—any amount of greenhouse gas emissions that would be avoided by the United States and other industrialized countries if they and we had agreed in the Climate Change Convention, or in the future would agree, to so-called stabilization of such emissions at 1990 levels by the year 2000.

What we have to remember, Mr. President, is that proponents of limiting carbon dioxide emissions of the industrialized countries in 2000 to their 1990 levels simply cannot tell us how much unacceptable, potential global climate change, if any, would be avoided during the next century as a result of such policies. Moreover, even if there were some *de minimis* avoidance of climate change, as a result of what industrialized nations did, there is no credible scientific evidence that it would last more than a very few years at most, because of the huge, ongoing increases in emissions from the developing nations in particular.

We also have to consider the economic cost of such proposals. There are studies by eminent economists that policies necessary to stabilize U.S. carbon dioxide emissions at 1990 levels by the year 2000 could cost American workers hundreds of thousands of their jobs and cost the economy more than $90 billion of gross national product. Whether those predictions are better than those which forecast less drastic consequences ignores the crucial point, which is this: Now is not the time to gamble recklessly with our Nation's economic future, especially when, as on this issue, nobody can tell us how we or the world would benefit from that gamble.

Unless and until we have persuasive evidence that binding emissions targets and timetables for the United States and other industrialized countries will actually avert any material amount of global climate change, there is no justification for our taxpayers and consumers to be asked to endure the economic burdens.

The Climate Change Convention, as written, goes quite far enough from the standpoint of U.S. obligations. We should only ratify it and talk about increasing the burdens on our citizens, if ever, when we have sound scientific reasons for doing so.

Mr. BIDEN. Mr. President, I have supported efforts to put global warming on the U.S. agenda and to create national and international strategies for lessening the threat posed by accumulating greenhouse gases. So it is with mixed emotions that I support ratification of the U.N. Framework Treaty on Climate Change that is only a faint call to global action.

I am encouraged by the participation of nearly every country in the world in the arduous task of negotiating the global responsibilities of nations. The countries of the world, the United State included, have recognized the magnitude of the dangers of the current emissions trends. One of the positive elements of the treaty is a call for a coordinated global research effort to further document the climate changes that are underway and understand their effect on our global environment.

However, I am disappointed in the short-sightedness of the agreement. The convention creates no targets or timetables to stem the documented increases in carbon dioxide, methane, chlorine and other greenhouse gases. Due to the administration's efforts, the treaty mandates only good intentions.

The climate convention declares a goal of restoring emissions of greenhouse gases to 1990 levels by the year 2000. But, participating countries are not bound by this goal. Section 4 of the document, which contains the binding elements of the agreement, commits the countries to inventory their emissions and issue progress reports on reduction efforts to a conference of the parties. This is much closer to the pledge and review approach, which was widely criticized for its inadequacy to the task at hand, than it is to a global response to this threat.

The Rio treaty was intended to couple worldwide recognition with an international commitment to reduce the threat of global warming. An obligation merely to assess emissions and report on efforts to reduce them does not create the depth of commitment many of us had envisioned. In an effort to block any commitment by the United States, the administration's negotiators deprived everyone of assurance of mutual commitments.

In 1988, President Bush used the White House effect to battle the greenhouse effect. But, in my quarters, the United States' role in the treaty negotiations has been assessed as a failure. In one respect, though, the final treaty is a testament to United States' influence and leadership, to the "White House effect."

At the outset, the United States stood almost alone in opposing targets and timetables, but the administration triumphed over the wishes of more than 150 countries to have its way. The White House effect was shown to be a truly powerful influence in international environmental affairs, although in exactly the opposite manner that the President had promised. The true judges of the success or failure of these efforts will be future generations who will live with the administration's results.

We need to take steps now to avoid the worst effects of global climate change. Contrary to the administration's predictions, these steps do not involve drastic lifestyle changes or economic ruin. We can admit the dangers of our current wasteful ways and we can take steps to change them.

The framework convention is not what we need or what we hope for to address emissions of greenhouse gases. But it is a foundation we can build upon in the years ahead. Although some may be tempted to eject this treaty for falling far short of its goal, truly we will be better off with the convention than without it, providing that we do build upon it and not allow it to languish. That will be one of our challenges for the years ahead.

Mr. FORD. Mr. President, I ask for consideration of the resolution before the Senate by a division vote.

The ACTING PRESIDENT pro tempore. A division vote is requested.

All of those in favor of the resolution of ratification will please stand and be counted.

Those opposed please stand and be counted.

On a division, two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to, as follows:

*Resolved (two-thirds of the Senators present concurring therein)*, That the Senate advise and consent to the ratification of the United Nations Framework Convention on Climate Change, adopted May 9, 1992, by the Resumed Fifth Session of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change ("Convention"), and signed on behalf of the United States at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro on June 12, 1992.

Mr. FORD. I ask unanimous consent that the motion to reconsider the vote be tabled, that the President be notified of the Senate's action, and that the Senate return to legislative session.

## LEGISLATIVE SESSION

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

The Senate will now return to legislative session.

AUTHORIZING CERTAIN ADDITIONAL USES OF THE LIBRARY OF CONGRESS SPECIAL FACILITIES CENTER

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5575, a bill to authorize certain additional uses of the Library of Congress special facilities center just received from the House; that the bill be deemed read the third time, passed, the motion to reconsider be laid upon the table, any statements relating to this measure be placed in the RECORD at the appropriate place.

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

So the bill (H.R. 5575) was deemed read the third time, and passed.

PRIVATE RELIEF FOR ANNA MASSARI

Mr. FORD. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from and that the Senate proceed to the immediate consideration of H.R. 5923, the private relief bill for an A.C. Massari; that the bill be deemed read the third time, passed, and that the motion to reconsider be laid upon the table.

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

So the bill (H.R. 5923) was deemed read the third time, and passed.

ENHANCING THE FINANCIAL SAFETY OF THE BANKS ASSOCIATION FARM CREDIT SYSTEM—H.R. 6125

PROVIDING FOR USE OF ELECTRONIC COTTON WAREHOUSE RECEIPTS—H.R. 6128

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration, en bloc, of the following bills just received in the House: H.R. 6125, a bill to enhance the financial safety and soundness of the Banks Association Farm Credit System, and H.R. 6128, a bill to provide for the use of electronic cotton warehouse receipts; that the bills be deemed read the third time, passed, the motions to reconsider laid upon the table, en bloc, and that any statements relative to these measures be placed in the RECORD at the appropriate place.

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

So the bills (H.R. 6125 and H.R. 6128) were deemed read the third time, and passed.

Mr. LEAHY. Mr. President, this recession has created huge increases in the demand for emergency food relief. This year food stamp participation is at record levels.

In cities and rural areas alike, hunger has returned with a vengeance. America's first line of defense against hunger has become TEFAP—The Emergency Food Assistance Program—and related food shelf and food bank programs.

These programs provide bags of groceries to those in need. They are particularly important to those whose unemployment benefits have run out or for those who have not yet received their first food stamp coupon.

As the recession stretches on—with no end in sight—our nutrition programs are pushed beyond their means. With so many in need, there is not enough food to go around.

In Vermont, and in many Northeastern States, nutrition programs are overburdened, forcing programs to reduce benefits or to cut food distribution from once a month to once every other month.

The administration refuses to see the magnitude of the problem.

I asked the Secretary of Agriculture to reconsider his recent position not to provide additional funding for TEFAP. I informed him of the results of the survey that the Committee on Agriculture, Nutrition, and Forestry conducted. More than 10 States advised me that they needed double the amount of TEFAP commodities to handle demand. One State needed six times as much food as it was slated to receive.

Those running Vermont's TEFAP Program estimate they require at least twice their current allocation of commodities to meet demand.

To help alleviate some of the Nation's hunger, I pushed to make TEFAP a permanent program in the 1990 farm bill, authorizing funding at $220 million for the current fiscal year. I also pushed for $50 million to help States and local agencies with the costs of distributing commodities.

Unfortunately, the administration proposed substantially less funding—only $120 million. This is 45 percent less.

I felt then, as I do now, that the President's request of $120 million and $45 million for distribution costs was inadequate, particularly during this recession. Unfortunately our worst fears have come true.

In Vermont alone, unemployment figures show a 130-percent increase in the number of those unemployed since January 1989. Food stamp participation has climbed 40 percent in the same period.

The shortfall in commodities coupled with the dismal economy has forced TEFAP distributors in Vermont to make a very difficult decision. They have concluded that the funding only allows distributions every other month. Vermont has decided that it is simply not cost efficient in terms of storage, transportation, and volunteer availability to make the allocations more often.

To help counter this shortfall, I have added a provision to a bill concerning the Farm Credit System that will provide more funds for TEFAP without costing taxpayers anything.

The bill will increase the amount of food provided by TEFAP by about 25 percent for each State. That is the equivalent of 3 months' worth of food in Vermont for fiscal year 1993.

I will continue to work for even greater levels of funding for TEFAP in the future.

I wish to thank several Vermonters who have been very helpful regarding TEFAP. Avram Patt, director of State Office of Economic Opportunity of Vermont, and Mary Carlson, food and nutrition programs coordinator, deserve a great deal of credit. They have been instrumental in getting me the information that I needed to keep the TEFAP Program going in 1988, to make TEFAP a permanent program in 1990, and to expand TEFAP funding with this bill

Also, I appreciate the efforts of Sue Weilbrenner, Dot Dennis, and Vicki Leszko, who have done a marvelous job regarding Vermont commodity distribution programs. I am very proud of these, and other Vermonters, who have done such a great job in providing emergency food assistance to those in need. Vicki supervised the program up until last May.

I also have to mention the great job the Vermont community action agencies have done. All Vermonters owe them, and their dedicated staffs, a great deal of thanks.

I want to thank the dedicated volunteers that provide TEFAP, food shelf, food bank, and soup kitchen foods to needy families. Vermont volunteers, and volunteers in every other State, have dedicated their time and efforts in aiding low-income hungry families. The area Agencies on Aging have done a great job donating time and vehicles and in getting additional volunteers. Most of the Vermont volunteers are senior citizens.

At the national level, the American Commodity Distribution Association deserves a lot of credit. My staff distributed questionnaires at their annual conference in Harrisburg, PA, so that I could obtain additional information about the need for TEFAP assistance throughout the Nation.

I want to single out three members for their recent efforts: Valerie Buechner, Wisconsin Department of Health and Social Services; Michael Levenson, of Washington State; and Foylen Bryant, food distribution office for Florida.

Foylen has had to put in countless additional hours recently to provide emergency assistance to south Florida. I commend her efforts in this regard.

ACDA members have been extremely helpful in getting information to me regarding the need for TEFAP increases. I would also like to thank:

Barry Shutt, director, Bureau of Government Donated Food of Pennsylvania; John Naylor, Commodity Distribution Program of Arkansas; and Maria Balakshin, Division of Child Nutrition and Food Distribution for California.

Many others deserve credit for all they have done over the years.

## AGRICULTURAL CREDIT, RURAL DEVELOPMENT, AND COMMODITY MARKETING IMPROVEMENTS ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1709.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 1709) entitled "An Act to amend the Farm Credit Act of 1971 to enhance the financial safety and soundness of the Farm Credit System, and for other purposes," do pass with the following amendments:

Strike out all after the enacting clause, and insert:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "Agricultural Credit, Rural Development, and Commodity Marketing Improvements Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:


Sec. 1. Short title; table of contents.

TITLE I—FARM CREDIT BANKS AND ASSOCIATIONS SAFETY AND SOUNDNESS ACT OF 1992

Sec. 1001. Short title.
Sec. 1002. References to the Farm Credit Act of 1971.

SUBTITLE A—FARM CREDIT SYSTEM INSURANCE CORPORATION

Sec. 1101. Statutory successor to Assistance Board agreements.

SUBTITLE B—REMOVAL OF HINDRANCE TO MERGERS

Sec. 1201. Sectional representation on boards of directors.

SUBTITLE C—CLARIFICATION OF OBLIGATION OF FARM CREDIT BANKS FOR REPAYMENT OF DEBT ISSUED BY FARM CREDIT SYSTEM ASSISTANCE CORPORATION

Sec. 1301. Capital preservation.
Sec. 1302. Preferred stock.
Sec. 1303. Systemwide repayment obligation.
Sec. 1304. Repayment of Treasury-paid interest.
Sec. 1305. Transfer of obligations from associations to banks, and other matters.
Sec. 1306. Defaults.
Sec. 1307. Authority of Financial Assistance Corporation.
Sec. 1308. Technical amendments.

SUBTITLE D—CLARIFICATION OF CERTAIN AUTHORITIES

Sec. 1401. Clarification of the status and powers of certain institutions of the Farm Credit System.

SUBTITLE E—DISCLOSURE REQUIREMENTS

Sec. 1501. Financial disclosure and conflict of interest reporting by directors, officers, and employees of Farm Credit System institutions.

TITLE II—AGRICULTURAL CREDIT IMPROVEMENT ACT OF 1992

Sec. 2001. Short title.

SUBTITLE A—AMENDMENTS TO THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

Sec. 2101. Beginning farmer and rancher program.
Sec. 2102. Processing of applications for farm operating loans.
Sec. 2103. Time period within which county committee is required to meet to consider applications for farm ownership and operating loans and guarantees and beginning farmer plans.
Sec. 2104. Debt service margin requirements; certified lender program.
Sec. 2105. Federal-State beginning farmer partnership.
Sec. 2106. Graduation of borrowers with operating loans or guarantees to private commercial credit.
Sec. 2107. Simplified application for guaranteed loans of $50,000 or less.
Sec. 2108. Targeting of loans to members of groups whose members have been subjected to gender prejudice.
Sec. 2109. Recordkeeping of loans by borrower's gender.
Sec. 2110. Increase in period during which county committee loan eligibility certification continues in effect.
Sec. 2111. Limitation on aggregate indebtedness.
Sec. 2112. Graduation of seasoned borrowers to the loan guarantee program.
Sec. 2113. Deadline for issuance of regulations.

SUBTITLE B—AMENDMENTS TO THE FARM CREDIT ACT OF 1971

Sec. 2201. Valuation of reserves of production credit associations.
Sec. 2202. Elimination of authority of Farm Credit System Insurance Corporation to appoint nonvoting member of Farm Credit System Funding Corporation Board.
Sec. 2203. Expansion of water and sewer lending authority of banks for cooperatives.
Sec. 2204. Equity voting for one director of each bank for cooperatives.
Sec. 2205. Per diem compensation of bank directors.
Sec. 2206. Frequency of examinations of system institutions.
Sec. 2207. Authority to examine system institutions.
Sec. 2208. Repeal of prohibition against guarantee of certain instruments of indebtedness.
Sec. 2209. Clarification of treatment of Farm Credit Administration operating expenses.
Sec. 2210. Approval of competitive charters.

SUBTITLE C—TECHNICAL CORRECTIONS

Sec. 2301. Technical corrections.

SUBTITLE D—EFFECTIVE DATE

Sec. 2401. Effective date.

TITLE III—RURAL ELECTRIFICATION ADMINISTRATION IMPROVEMENT ACT OF 1992

Sec. 3001. Short title.
Sec. 3002. Discounted loan prepayment.
Sec. 3003. Repeal of section 412.
Sec. 3004. Repeal of section 311.
Sec. 3005. Grants to enable providers of health care and educational services in rural areas to implement interactive telecommunications systems.
Sec. 3006. Increase in limitation on population of rural areas for purposes of telephone loans.
Sec. 3007. Sense of the Congress.
Sec. 3008. Regulations.

TITLE IV—PERISHABLE AGRICULTURAL COMMODITIES ACT TECHNICAL AMENDMENTS OF 1992

Sec. 4001. Short title.
Sec. 4002. Reaffirmation of findings.
Sec. 4003. Technical amendment.

TITLE V—EQUITABLE TREATMENT FOR SUGARCANE PRODUCERS

Sec. 5001. Equitable treatment for producers.
Sec. 5002. Adjustment after disaster.
Sec. 5003. Clarifying and conforming amendments.

TITLE VI—USE OF ELECTRONIC COTTON WAREHOUSE RECEIPTS

Sec. 6001. Use of electronic cotton warehouse receipts.


### TITLE I—FARM CREDIT BANKS AND ASSOCIATIONS SAFETY AND SOUNDNESS ACT OF 1992

**SEC. 1001. SHORT TITLE.**

(a) SHORT TITLE.—This title may be cited as the "Farm Credit Banks and Associations Safety and Soundness Act of 1992".

**SEC. 1002. REFERENCES TO THE FARM CREDIT ACT OF 1971.**

Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), except to the extent otherwise provided.

#### Subtitle A—Farm Credit System Insurance Corporation

**SEC. 1101. STATUTORY SUCCESSOR TO ASSISTANCE BOARD AGREEMENTS.**

(a) IN GENERAL.—Section 5.58(2) (12 U.S.C. 2277a-7(2)) is amended by adding at the end thereof the following: "The Corporation shall succeed to the rights of the Farm Credit System Assistance Board under agreements between the Farm Credit System Assistance Board and System institutions that certify such institutions as eligible to issue preferred stock pursuant to title VI on the termination of the Assistance Board on the date provided in section 6.12.".

(b) CONFORMING AMENDMENTS.—Section 5.35(4) (12 U.S.C. 2271(4)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) after December 31, 1992, mean any significant noncompliance by a System institution (as determined by the Farm Credit Administration, in consultation with the Farm Credit System Insurance Corporation) with any term or condition imposed on the institution by the Farm Credit System Assistance Board under section 6.6 or by the Farm Credit System Insurance Corporation under section 5.61.".

#### Subtitle B—Removal of Hindrance to Mergers

**SEC. 1201. SECTIONAL REPRESENTATION ON BOARDS OF DIRECTORS.**

Section 4.15 (12 U.S.C. 2203) is amended—

(1) by amending the section heading to read as follows:

"NOMINATION AND ELECTION OF BANK AND ASSOCIATION DIRECTORS.—";

(2) by inserting, before the text thereof, the following:

"(a) NOMINATION OF DIRECTORS.—"; and

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

"(b) SECTIONAL REPRESENTATION ON BANK AND ASSOCIATION BOARDS.—

"(1) IN GENERAL.—To ensure representation of geographical sections within the territory served by a bank or association of the Farm Credit System, each such bank (other than the National Bank for Cooperatives) or association may include in its bylaws governing the election of its board of directors provisions for the election of some or all of its members of the board to be elected by the stockholders:

"(A) at large;

"(B) from designated geographical sections of the territory served by the bank or association; or

"(C) as provided in both subparagraphs (A) and (B).

"(2) PROPORTIONALITY.—If members of the board of directors are elected by stockholders from designated geographical sections, the membership on the board elected from each section should reflect proportionately—

"(A) in the case of an association, the same number of stockholders; or

"(B) in the case of a bank, the same number of stockholder-borrowers of associations that accept, make, or otherwise provide loans in the designated sections of the bank's territory and that hold voting stock in the bank.

"(3) EXAMINATION OF SECTIONS.—The boundaries of the designated geographical sections shall be examined by the bank or association, as appropriate, at least once every three years and shall be readjusted, as necessary, to ensure such proportional representation of membership on the board.".

**Subtitle C—Clarification of Obligation of Farm Credit Banks for Repayment of Debt Issued by Farm Credit System Assistance Corporation.**

**SEC. 1301. CAPITAL PRESERVATION.**

Section 6.9(e)(3) (12 U.S.C. 2278a-9(e)(3)), is amended—

(1) by adding at the end of subparagraph (C) the following: "Any bank leaving the Farm Credit System pursuant to Section 7.10 of this Act shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of such future payment had the bank remained in the System. With respect to any bank undergoing liquidation under this Act, a liability to the Financial Assistance Corporation in said amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of such bank. The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply such recoveries, when received, and all earnings thereon, to reduce the other banks' payment obligations, or, to the extent such recoveries are received after the other banks have met their entire payment obligation, shall refund such recoveries, when received, to the other banks in proportion to the other banks' payments.";

(2) by redesignating subparagraph (D) as subparagraph (E);

(3) by adding a new subparagraph (D) as follows:

"(D)(i) In order to provide for the orderly funding and discharge over time of the obligation of each System bank to the Financial Assistance Corporation under subparagraph (C), each System bank shall enter into or continue in effect an agreement with the Financial Assistance Corporation under which the bank will make annual annuity-type payments to the Financial Assistance Corporation, beginning no later than December 1991 (except for any bank that did not meet its interim capital requirement on December 31, 1990, in which case such bank shall begin making such payments no later than December 31, 1993) in amounts designed to accumulate, in total, including earnings thereon, to 90% of the bank's ultimate obligation, and the Financial Assistance Corporation will partially discharge the bank from its obligation under subparagraph (C) to the extent of each such payment and the earnings thereon as earned.

"(ii) Such agreement shall not require payments to be made to the extent that making a particular payment or part thereof would cause the bank to fail to satisfy applicable regulatory permanent capital requirements, but shall provide for recalculation of subsequent payments accordingly.

"(iii) The funds received by the Financial Assistance Corporation pursuant to such agreements shall be invested in eligible investments as defined in Section 6.25(a)(1) of this Act, and such funds and the earnings thereon shall be available only for the payment of the principal of the bonds issued by the Financial Assistance Corporation under this subsection."; and

(4) by adding before the period at the end of subparagraph (E), as redesignated by paragraph (2) of this section, the following: ", nor shall the obligation to make future annuity payments to the Financial Assistance Corporation under subparagraph (D) be considered a liability of any System bank".

**SEC. 1302. PREFERRED STOCK.**

Section 6.26(d)(1)(B) (12 U.S.C. 2278b-6(d)(1)(B)), is amended by adding at the end thereof the following: "Each year beginning in 1992, as soon as practicable following the end of the prior year, each such institution (except institutions in receivership) shall appropriate from its earnings in the prior year to an appropriated unallocated surplus account with respect to preferred stock, the sum of—

"(i) the greater of—

"(I) such amount as the institution may be required to appropriate under any assistance agreement it has with the Farm Credit System Assistance Board or the Farm Credit System Insurance Corporation; or

"(II) the amount that, if appropriated to such account in equal amounts in each year thereafter until the maturity of the obligation referred to in subparagraph (A), would cause the amount in such account to equal the par value of the preferred stock issued by such institution with respect to such obligation; plus

"(ii) any amount that had been appropriated to said account in a previous year but had thereafter been offset by losses;

"*Provided, However*, that an annual appropriation shall not be made to the extent that it would exceed the institution's net income (as determined pursuant to generally accepted accounting principles) in that year or to the extent that it would cause the institution's preferred stock to be impaired. The amount in such appropriated unallocated surplus account shall be unavailable to pay dividends or other allocations or distributions to shareholders or holders of participation certificates, and said account shall be senior to all other unallocated surplus accounts but junior to all preferred and common stock for purposes of the application of operating losses. Such appropriations of surplus by an institution shall not affect the treatment of its preferred stock (and of the appropriated unallocated surplus) as equity for purposes of regulatory permanent capital requirements."

**SEC. 1303. SYSTEMWIDE REPAYMENT OBLIGATION.**

Section 6.26(d)(1)(C) (12 U.S.C. 2278b-6(d)(1)(C)), is amended by adding at the end thereof the following: "The annual increase in the present value of the estimated obligation of each bank to the Financial Assistance Corporation hereunder shall be recorded each year as an expense item, in accordance with generally accepted accounting principles, on the books of the bank. A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of such payment requirement to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding 15 years, but the bank shall remain primarily liable for such amount. Any bank leaving the Farm Credit System pursuant to Section 7.10 of this Act shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of such future payment had the bank remained in the System, and a liability to the Financial Assistance Corporation in said amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation. The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply such recoveries, when received, and all earnings thereon, to reduce the other banks' payment obligations, or, to the extent such recoveries are received after the other banks have met their entire payment obligation, shall refund such recoveries, when received, to the other banks in proportion to the other banks' payments. Any association leaving the Farm Credit System pursuant to Section 7.10 of this Act shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the present value of such future payment, and a liability to the bank in said amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation."

**SEC. 1304. REPAYMENT OF TREASURY-PAID INTEREST**

(a) CONFORMING AMENDMENT.—Section 6.26(c)(5) (12 U.S.C. 2278b-6(c)(5)), is amended to read as follows:

"(5) REPAYMENT OF TREASURY-PAID INTEREST.—

"(A) IN GENERAL.—On the maturity date of the last-maturing debt obligation issued under subsection (a) of this section, the Financial Assistance Corporation shall repay to the Secretary of the Treasury the total amount of any annual interest charges on such debt obligations that Farm Credit System institutions (other than the Financial Assistance Corporation) have not previously paid, and the Financial Assistance Corporation shall not be required to pay any additional interest charges on such payments.

(B) ASSESSMENT.—In order to provide for the orderly funding and discharge of the obligation of the Financial Assistance Corporation under subparagraph (A), each System bank shall enter into or continue in effect, and comply with, an agreement with the Financial Assistance Corporation under which the bank will make annual annuity-type payments to the Financial Assistance Corporation, beginning no later than December 31, 1992 (except for any bank that did not meet its interim capital requirement on December 31, 1990, in which case such bank shall begin making such payments no later than December 31, 1993) in amounts designed to accumulate, in total, including earnings thereon, to an amount equal to the bank's ultimate obligation, and the Financial Assistance Corporation will partially discharge the bank from its obligation under this subparagraph to the extent of each such payment and the earnings thereon as earned. Except in the last five years prior to the date the Financial Assistance Corporation is obligated to make such repayment, no annual payment may exceed .0006 times the bank's and its affiliated associations' average accruing retail loan volume for the preceding year.

"(C) INVESTMENT OF FUNDS.—The Financial Assistance Corporation shall invest funds derived from such investment in eligible investments as defined in section 6.25(a)(1) of this Act, and such funds and the earnings thereon shall be available only for the repayment to the Secretary of the Treasury provided for in subparagraph (A).

"(D) PASS THROUGH.—A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of such assessments to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding year, but the bank shall remain primarily liable for such amounts.

"(E) LIABILITY.—

"(i) BANKS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any bank terminating System status pursuant to Section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of all future such assessments against the bank had the bank remained in the System, and a liability to the Financial Assistance Corporation in such amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation.

"(ii) NO ANTICIPATORY REDUCTIONS IN OTHER OBLIGATIONS.—The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation.

"(iii) REFUND OF RECOVERIES.—The Financial Assistance Corporation shall apply such recoveries, when received, and all earnings thereon, to reduce the other banks' payment obligations, or, to the extent such recoveries are received after the other banks have met their entire payment obligation, shall refund such recoveries, when received, to the other banks in proportion to the other banks' payments.

"(F) ASSOCIATIONS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any association terminating System status pursuant to Section 7.10 of this Act shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the estimated present value of all future such assessments against the bank, and a liability to the bank in said amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation.

"(G) CAPITAL REQUIREMENTS.—

"(i) IN GENERAL.—Until the date that is five years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.

"(ii) DURING THE FINAL FIVE YEARS PRIOR TO REPAYMENT.—During the period beginning on the date that is—

"(I) five years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), sixty percent;

"(II) four years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), thirty percent; and

"(III) three years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), zero percent;

of all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and of any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.".

(b) CONFORMING AMENDMENT.—Section 6.28 of the Farm Credit Act of 1971 (12 U.S.C. 2278b-8) is amended by striking subsection (b) and redesignating subsection (c) as subsection (b).

**SEC. 1305. TRANSFER OF OBLIGATIONS FROM ASSOCIATIONS TO BANKS, AND OTHER MATTERS.**

Section 6.26 (12 U.S.C. 2278b-6), is amended—

(1) in subsection (c)—

(A) by striking "INSTITUTIONS" in the heading of paragraph (2)(B) and inserting "BANKS";

(B) by striking the word "institutions" each time it appears in paragraphs (2)(B), (3) and (4) and inserting in lieu thereof the word "banks";

(C) by amending paragraph (2)(C) to read as follows:

"(C) ALLOCATION.—During each year of the second 5-year period, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the interest due from System banks under this paragraph equal to—

"(i) the amount of the average accruing retail loan volume of the bank and its affiliated associations for the preceding year; divided by

"(ii) the total average accruing retail loan volume of all such banks and their affiliated associations for the preceding year."; and

(D) by striking paragraph (2)(D);

(2) in subsection (d)—

(A) in paragraph (1)(C)—

(i) by striking the word "institution" the first time it appears and inserting in lieu thereof the word "bank";

(ii) by striking "under section 6.7(a)" and inserting in lieu thereof "or the Financial Assistance Corporation under sections 6.7(a) and 6.24, respectively,";

(iii) by adding after "proportion" the following ", as calculated by the Financial Assistance Corporation,";

(iv) by amending clauses (i) and (ii) to read as follows:

"(i) the average accruing retail loan volume of the bank and its affiliated associations for the preceding 15 years; divided by

"(ii) the average accruing retail loan volume of all such banks and their affiliated associations for the same period.";

(B) by striking paragraph (1)(D); and

(C) by redesignating paragraph (1)(E) as paragraph (1)(D); and

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

"(e) ADMINISTRATION.—

"(1) DEFINITION OF RETAIL LOAN VOLUME.—As used in this section, the term 'retail loan volume' means all loans (as defined in accordance with generally accepted accounting principles) by a System bank or association, excluding loans by such a bank or association to another System institution.

"(2) CALCULATION OF AVERAGE ANNUAL LOAN VOLUMES.—For purposes of this section and section 6.9, average annual loan volumes shall be calculated using month-end balances.

"(3) EXCLUSION OF BANKS UNDERGOING LIQUIDATION.—For purposes of this section and section 6.9, the term 'bank' shall not include a bank that had entered liquidation prior to the enactment of this subsection.".

**SEC. 1306. DEFAULTS.**

Section 6.26(d) (12 U.S.C. 2278b-6(d)), is amended—

(1) by amending the heading of paragraph (3)(A) to read as follows: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(2) in paragraph (3)(A)(i)—

(A) by striking "subsection (a)," and inserting the following: "subsection (a) of this section, on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C) of this section, or on the payment of an assessment due under subsection (c)(5)(B) of this section,";

(B) by striking "of the interest" in the two places it appears; and

(C) by striking "institution" wherever it appears, and inserting in lieu thereof "bank";

(3) in paragraph (3)(A)(ii)—

(A) by striking "of interest";

(B) by striking "institution" and inserting in lieu thereof "bank"; and

(C) by striking "such uncollected interest", and inserting in lieu thereof "any uncollected amount";

(4) in paragraph (3)(A)(iii), by striking "added" and all that follows through the period at the end and inserting "allocated to other System banks in accordance with the allocation mechanism applicable under this Act to the particular defaulted obligation.";

(5) by amending the heading of subparagraph (B) of paragraph (3) to read as follows: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.—";

(6) in paragraph (3)(C)—

(A) by striking "INSTITUTIONS" in the heading to paragraph (3)(C) and inserting "BANKS";

(B) by striking "institution" and inserting "bank";

(C) by striking "institutions" both places it appears and inserting "banks"; and

(D) by striking "the amount of any interest", and inserting in lieu thereof "any amounts";

(7) in paragraph (4)(A), by adding after "subsection (a)" "of this section or section 6.9(e)(3)(A)";

(8) in paragraph (4)(B)(i)—

(A) by amending the clause heading to read as follows: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(B) by striking "subsection (c)," and inserting "subsection (c) of this section, on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C) of this subsection, or on the payment of an assessment due under subsection (c)(5)(B) of this section,"; and

(C) by striking "institution" wherever it appears, and inserting in lieu thereof "bank"; and

(9) in paragraph (4)(B)(ii), by amending the clause heading to read as follows: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.—".

**SEC. 1307. AUTHORITY OF FINANCIAL ASSISTANCE CORPORATION.**

(a) PURPOSE.—Section 6.21 (12 U.S.C. 2278b-1) is amended by adding before the period at the end thereof: "and to assist, pursuant to section 6.9(e) and subsections (c) through (g) of section 6.26, in the repayment by System institutions of those who provided funds in connection with such program".

(b) Section 6.31(a) (12 U.S.C. 2278b-11(a)) is amended by adding striking "terminate on" and inserting the following: "terminate on the complete discharge by the Financial Assistance Corporation of its responsibilities under Section 6.9(e) and subsections (c) through (g) of section 6.26 with regard to repayments by System institutions, but in no event later than two years following".

**SEC. 1308. TECHNICAL AMENDMENTS.**

(a) TECHNICAL AMENDMENT TO THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Section 204(3) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237; 105 Stat. 1855) is amended by striking "in section 1221(1)(D) (16 U.S.C. 3821(1)(D))" and inserting "in section 1221(a)(1)(D) (16 U.S.C. 3821(a)(1)(D))".

(b) TECHNICAL AMENDMENTS TO THE FARM CREDIT ACT OF 1971.—

(1) Section 8.11(a)(1)(B)(ii) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-11(a)(1)(B)(ii)) is amended by striking "the date of enactment of this section" and inserting "December 13, 1991".

(2) Section 8.32 of such Act (12 U.S.C. 2279bb-1) is amended—

(A) in each of subsections (a), (b)(1)(D), and (b)(2), by striking "the date of the enactment of this section" each place such term appears and inserting "December 13, 1991"; and

(B) in subsection (b)(1)(E), by striking "the date of the enactment of such Act" and inserting "December 13, 1991".

(3) Section 8.3(c)(13) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-3(c)(13)) is amended by striking "8.11(g)" and inserting "8.11(e)".

**Subtitle D—Clarification of Certain Authorities**

**SEC. 1401. CLARIFICATION OF THE STATUS AND POWERS OF CERTAIN INSTITUTIONS OF THE FARM CREDIT SYSTEM.**

(a) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—Section 410 of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note) is amended by adding at the end the following new subsection:

"(e) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—

"(1) BORROWER VOTE.—Notwithstanding any other provision of law, within 30 days after the date of the enactment of this subsection, the Farm Credit Administration shall conduct and compile the results of a referendum of the farmer-borrowers of the production credit associations that are stockholders in the Federal Intermediate Credit Bank of Jackson to determine whether the merger required under this subsection shall be completed in accordance with the provisions of paragraph (2) or paragraph (3) of this subsection. The Farm Credit Administration shall make available to such farmer-borrowers such information as it determines is appropriate under the circumstances to reasonably inform the farmer-borrowers of the anticipated benefits and potential disadvantages of each of the two merger completion options. Each such farmer-borrower shall be entitled to one vote. The Farm Credit Administration shall establish record dates and other procedures for conducting the referendum. The Federal Intermediate Credit Bank of Jackson and the production credit associations shall cooperate in the conduct of the referendum, as determined necessary by the Farm Credit Administration.

"(2) ARBITRATED MERGER.—

"(A) APPROVAL BY BORROWERS.—If at least fifty percent of the farmer-borrowers voting in the referendum under paragraph (1) vote to complete the merger required under this subsection under the provisions of this paragraph, then a merger of the Federal Intermediate Credit Bank of Jackson into the Farm Credit Bank of Texas shall be completed in accordance with the provisions of this paragraph not later than 1 year after the date of the enactment of this subsection.

"(B) ARBITRATOR.—

"(i) IN GENERAL.—If at least fifty percent of the farmer-borrowers voting in the referendum under paragraph (1) vote to complete the merger required under this subsection under the provisions of this paragraph, then, not later than 60 days after the date of the enactment of this subsection, an arbitrator (or panel of arbitrators) shall be named by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association toserve as the arbitrator referred to in this paragraph.

"(ii) DUTIES.—The arbitrator shall determine the terms and conditions of the merger required under this paragraph, such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders and borrowers of such associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. The arbitrator shall have the authority to hire staff and secure the services of consultants as necessary to discharge the duties of the arbitrator under this paragraph.

"(iii) EXPENSES.—Notwithstanding any other provision of law, the compensation and expenses of the arbitrator, the fees and expenses of the American Arbitration Association, and any expenses associated with the referendum required under subparagraph (C) shall be paid from the Farm Credit Assistance Fund established under section 6.25.

"(C) REFERENDUM ON ASSOCIATION STRUCTURE.—

"(i) IN GENERAL.—Within 120 days after the date of the enactment of this subsection, the American Arbitration Association shall conduct, and compile the results of, a vote of current farmer-borrowers of the production credit associations and the Federal land bank associations in the States of Alabama, Louisiana, and Mississippi in accordance with the Election Rules of the American Arbitration Association to determine whether the farmer-borrowers of each association prefer to have credit delivered—

"(I) in the case of production credit association farmer-borrowers, through a production credit association or through an agricultural credit association; and

"(II) in the case of Federal land bank association farmer-borrowers, through a Federal land bank association or through an agricultural credit association.

Each farmer-borrower shall be entitled to one vote. The arbitrator shall establish record dates and other procedures for conducting the referendum. The Federal Intermediate Credit Bank of Jackson and the production credit associations shall cooperate in the conduct of the referendum, as determined necessary by the Arbitrator.

"(ii) DISCLOSURE.—The arbitrator shall send to farmer-borrowers eligible to vote under this subparagraph, with their ballot, a statement describing the potential consequences to the farmer-borrowers, and to the associations from which they borrow, of the two alternatives presented in the ballots and setting forth factors that farmer-borrowers might consider relevant to the choice between the two alternatives. The arbitrator shall develop such disclosure materials in cooperation with the Farm Credit Administration and ensure that the materials are not inconsistent with applicable laws and regulations.

"(iii) TABULATION OF RESULTS.—The results of the vote under this subparagraph shall be compiled separately for production credit association farmer-borrowers and Federal land bank association farmer-borrowers in each of the following seven geographic areas:

"(I) The area served by the Federal Land Bank Association of South Mississippi.

"(II) The area served by the Federal Land Bank Association of North Mississippi.

"(II) The area served by the Federal Land Bank Association of North Mississippi.

"(III) The area served by the Federal Land Bank Association of South Alabama.

"(IV) The area served by the Federal Land Bank Association of North Alabama.

"(V) The area served by the Federal Land Bank Association of South Louisiana.

"(VI) The area served by both the Federal Land Bank Association of North Louisiana and the First South Production Credit Association.

"(VII) The area served by both the Federal Land Bank Association of North Louisiana and the Northwest Louisiana Production Credit Association.

"(iv) PUBLICATION OF RESULTS.—The results of the vote under this subparagraph, as tabulated by the American Arbitration Association, shall be made promptly available to the public in a manner determined appropriate by the Farm Credit Administration.

"(D) DEVELOPMENT OF MERGER PLANS.—

"(i) IN GENERAL.—Within 210 days after the date of the enactment of this subsection, the arbitrator shall develop a plan specifying the terms and conditions of the merger of the two banks (and any related association mergers) required under this paragraph, such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders or farmer-borrowers of such associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. In devising the plan the arbitrator shall, to the extent practicable, achieve the following objectives:

"(I) Implementation of the preference expressed by the majority vote of the farmer-borrowers voting under subparagraph (C) in accordance with subparagraph (D)(iv), and expressed by the affected and interested parties under clause (ii).

"(II) Valuation of assets fairly, equitably, and consistently for all parties involved.

"(III) Establishment of capitalization and funding terms in a manner that treats farmer-borrowers and stockholders in the two involved farm credit districts equitably and takes account of risk.

"(IV) Ensure the viability of the resulting Farm Credit Bank and associations of such bank and the ability of the resulting bank and associations of such bank to lend to eligible borrowers at reasonable and competitive rates of interest.

"(ii) SUBMISSION OF VIEWS AND INFORMATION.—The arbitrator shall receive from affected and interested parties written submissions, in accordance with fair and reasonable procedures established by the arbitrator, regarding the terms and conditions of an appropriate plan for the merger of the two banks (and any related association mergers) required under this paragraph. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations in the states of Alabama, Louisiana, and Mississippi, shall make available all books, records, financial information, and other material that the arbitrator determines is directly necessary to the development of the plan or the fulfillment of any other requirement under this paragraph. A copy of any submission or information provided to the arbitrator by any party under this paragraph shall be furnished to the Federal Intermediate Credit Bank of Jackson or the Farm Credit Bank of Texas upon the written request of such bank and at such bank's expense. The arbitrator shall provide both banks with a reasonable opportunity to review and respond to any submission or information provided by any party.

"(iii) CONTENT OF PLAN.—In accordance with the standards in clause (i) and giving due consideration to the views and information submitted or made available under clause (ii), the arbitrator shall develop and submit to the Farm Credit Administration for certification a merger plan that shall include provisions regarding the following matters:

"(I) The initial composition, following the merger, of the board of directors of the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the provisions of the Farm Credit Act of 1971 and any applicable regulations).

"(II) The initial association structure following the merger, as required under clause (iv), in the States of Alabama, Louisiana, and Mississippi (which shall be subject to change thereafter in accordance with the provisions of the Farm Credit Act of 1971 and any applicable regulations).

"(III) The initial composition, following the merger, of the board of directors of any association whose chartered territory or lending authority is altered under the plan (which shall be subject to change thereafter in accordance with the provisions of the Farm Credit Act of 1971 and any applicable regulations).

"(IV) The valuation, for purposes of the merger, of the assets and liabilities of the merging banks and any merging associations. The arbitrator shall consult with the Farm Credit System Insurance Corporation regarding the valuation of such assets and liabilities in accordance with clause (v).

"(V) The terms and conditions upon which the shares of capital stock of the Federal Intermediate Credit Bank of Jackson, and of any associations that may merge under the plan, will be converted into shares of the Farm Credit Bank of Texas, and shares of the resulting associations, respectively.

"(VI) The capital structure and capitalization levels of the resulting Farm Credit Bank, the associations described in subclause (III), and such other associations in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which shall be subject to change thereafter in accordance with the provisions of the Farm Credit Act of 1971 and any applicable regulations).

"(VII) The terms of financing agreements between any production credit associations or associations described in subclause (III), and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the provisions of the Farm Credit Act of 1971 and any applicable regulations).

"(VIII) Any other terms and conditions or other matters that the arbitrator considers necessary.

"(iv) CONTENT OF PLAN; AGRICULTURAL CREDIT ASSOCIATIONS.—The plan shall—

"(I) in any of the geographic areas described in subparagraph (C)(iii) where a majority of the farmer-borrowers of both the production credit association and the Federal land bank association voted under subparagraph (C)(i) that they preferred to have credit delivered through an agricultural credit association, provide for the delivery of credit through an agricultural credit association in such territory; and

"(II) in any of the geographic areas described in subparagraph (C)(iii) where a majority of the farmer-borrowers of the production credit association or the Federal land bank association voted that they preferred to have credit delivered through a production credit association or a Federal land bank association, as appropriate, not provide for the delivery of credit through an agricultural credit association, or otherwise alter the existing association structure.

"(v) CONSULTATION WITH INSURANCE CORPORATION.—The arbitrator shall consult with the Farm Credit System Insurance Corporation regarding the valuation of the assets and liabilities under the plan of merger, the capitalization of the Farm Credit System institutions resulting under the plan, and any other matters relevant to the assistance to be provided by the Insurance Corporation under subparagraph (H).

"(E) CERTIFICATION OF PLAN.—Within 45 days after the receipt of the plan developed by the arbitrator, the Farm Credit Administration shall—

"(i) certify; or

"(ii) recommend to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify,

that the resulting bank and associations are organized in such a fashion such that they will, upon implementation of the plan, operate in compliance with applicable laws and regulations. The arbitrator and the Farm Credit Administration shall work cooperatively to ensure the expeditious issuance of the certification. If the Farm Credit Administration recommends to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify the plan, the arbitrator shall, within 15 days of receipt of such recommended revisions, incorporate such revisions into the plan as the arbitrator deems appropriate to secure such certification.

"(F) REVIEW.—Actions and determinations of the arbitrator or the Farm Credit Administration pursuant to this paragraph shall not be subject to judicial review, and the actions and determinations of the arbitrator shall not be subject to the requirements of the Administrative Procedures Act.

"(G) IMPLEMENTATION.—Within 90 days after the date of the receipt of the plan under subparagraph (E), the Farm Credit Administration shall issue such charters or charter amendments and take any such other regulatory actions as may be necessary to implement the merger or mergers as provided for under the certified plan.

"(H) Facilitation.—

"(i) Beginning on the date of the enactment of this subsection, the Farm Credit System Insurance Corporation shall expend amounts in the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed in the plan. Assistance shall be on such terms and conditions as the Farm Credit System Insurance Corporation deems appropriate.

"(ii) Until the expiration of five years from the effective date of a merger authorized by this subsection, or the final resolution of any litigation against the Federal Intermediate Credit Bank of Jackson or any of its stockholders pending on the date of the enactment of this subsection, whichever is later, the Insurance Corporation shall guarantee prompt payment of any loss experienced by the merged bank, which loss is caused by the failure of any association-stockholder of the merged bank that was a stockholder of the Federal Intermediate Credit Bank of Jackson immediately prior to such merger, or any successor to such association, to pay when due any obligation of principal or interest owed by such association or its successor to the resulting bank.

"(I) DEFINITIONS.—As used in this paragraph—

"(i) the term 'agricultural credit association' means an association having the same authorities, attributes and obligations as, and for all purposes an agricultural credit association resulting from the implementation of the plan under this paragraph shall be deemed to be, an association resulting from the merger of a production credit association and a Federal land bank association under section 7.8; and

"(ii) the term 'farmer-borrower' means a borrower from a Farm Credit System association or bank in the states of Alabama, Louisiana, or Mississippi who is an individual and who holds voting stock, or is eligible to hold voting stock, in such institution.

"(3) NEGOTIATED OR REGULATORY MERGER.—

"(A) APPROVAL BY BORROWERS.—If a majority of the farmer-borrowers voting in the referendum under paragraph (1) vote to complete the merger required under this sub-

section under the provisions of this paragraph, then a merger of the Federal Intermediate Credit Bank of Jackson shall be completed in accordance with the provisions of this paragraph not later than 1 year after the date of the enactment of this subsection.

"(B) MERGER AUTHORITY.—

"(i) EFFECTIVE DATES.—If a majority of the farmer-borrowers voting in the referendum under paragraph (1) vote to complete the merger required under this subsection in accordance with the provisions of this paragraph, then the provisions of clause (ii) shall take effect as if such clause had become law at the time the amendment referred to in such clause (ii) took effect, and shall remain in effect until 1 year after the date of enactment of this subsection.

"(ii) AUTHORITY.—Effective only as provided in clause (i), the Federal Intermediate Credit Bank of Jackson may operate subject to such provisions of part A of title II of the Farm Credit Act of 1971 (as in effect immediately before the amendment made by section 401 of the Agricultural Credit Act of 1987 took effect) and such provisions of the Farm Credit Act of 1971 (as in effect after the amendment), as the Farm Credit Administration may deem appropriate to carry out the purposes of this subsection and such Act.

"(C) REQUIREMENT.—Within 11 months after the date of enactment of this subsection, the Federal Intermediate Credit Bank of Jackson shall merge with a Farm Credit Bank pursuant to the procedures prescribed by section 7.12 of the Farm Credit Act of 1971.

"(D) EFFECT OF FAILURE TO MERGE.—If the Federal Intermediate Credit Bank of Jackson fails to comply with subparagraph (C), the Farm Credit Administration shall, within 30 days after the end of the 11 month period described in subparagraph (C), order the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank which is willing to merge with the Federal Intermediate Credit Bank of Jackson pursuant to a plan of merger prescribed by the Farm Credit Administration, after consultation with the Farm Credit System Insurance Corporation with respect to the assistance to be provided by the Insurance Corporation under subparagraph (F). The order provided for in this paragraph shall specify the effective date of the merger, which shall be in the sole discretion of the Farm Credit Administration.

"(E) REVIEW.—Actions and determinations of the Farm Credit Administration pursuant to subparagraph (D) shall not be subject to judicial review.

"(F) FACILITATION.—

"(i) If a merger under this paragraph is ordered pursuant to subparagraph (D), then beginning on the date of such order the Farm Credit System Insurance Corporation shall expend amounts in the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed in the order.

"(ii) Until the expiration of five years from the effective date of the order under subparagraph (D), or the final resolution of any litigation against the Federal Intermediate Credit Bank of Jackson or any of its stockholders pending on the date of the enactment of this subsection, whichever is later, the Insurance Corporation shall guarantee prompt payment of any loss experienced by the merged bank, which loss is caused by the failure of any association-stockholder of the merged bank that was a stockholder of the Federal Intermediate Credit Bank of Jackson immediately prior to such merger, or any successor to such association, to pay when due any obligation of principal or interest owed by such association or its successor to the resulting bank.".

(b) LONG-TERM LENDING AUTHORITY OF THE FARM CREDIT BANK OF TEXAS WITH RESPECT TO THE STATES OF ALABAMA, LOUISIANA, AND MISSISSIPPI.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Farm Credit Bank of Texas may act in accordance with the exclusive charter of the bank, as amended by the Farm Credit Administration on February 7, 1989, and effective February 9, 1989 (except to the extent that such charter may be further amended by the Farm Credit Administration).

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect as if such paragraph had become law on February 7, 1989.

(c) DENIAL OF COMPETITIVE CHARTERS.—Section 5.17(a)(2) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)(2)) is amended by adding at the end the following: "The Farm Credit Administration shall not issue a charter to, or approve an amendment to the charter of, any institution of the Farm Credit System to operate in the states of Alabama, Louisiana, or Mississippi under title I or II which would authorize the institution to exercise lending authority, whether directly or indirectly as an agent of a Farm Credit Bank, in a territory in which the charter of another such institution authorizes such other institution to exercise like authority, whether directly or indirectly as an agent of a Farm Credit Bank, except with the approval of—

(A) in a case affecting only the charter of an association—

((i) a majority of the shareholders (present and voting or voting by proxy) of each of the associations that would have like lending authority (whether directly or indirectly as an agent of a Farm Credit Bank) in any of that territory if such charter action were taken; and

(ii) the board of directors of the Farm Credit Bank with which the affected associations are affiliated; or

(B) in a case affecting the charter of a bank—

(i) a majority of the shareholders (present and voting or voting by proxy) of the affiliated associations of each of the banks that would have like lending authority in any of that territory if such charter action were taken; and

(ii) a majority of the shareholders (present and voting or voting by proxy) of each of the banks that would have like lending authority in any of that territory if such charter were taken."

### Subtitle E—Disclosure Requirements

**SEC. 1501. FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST REPORTING BY DIRECTORS, OFFICERS, AND EMPLOYEES OF FARM CREDIT SYSTEM INSTITUTIONS.**

(a) FINDINGS.—The Congress finds that—

(1) the disclosure of the compensation paid to, loans made to, and transactions made with a Farm Credit System institution by, directors and senior officers of such institution provides the stockholders of such institutions with information necessary to better manage such institutions, provides the Farm Credit Administration with information necessary to efficiently and effectively regulate such institutions, and enhances the financial integrity of the Farm Credit System by making such information available to potential investors;

(2) the reporting of potential conflicts of interest by directors, officers, and employees of institutions of the Farm Credit System benefits the stockholders of such institutions, helps to ensure the financial viability of such institutions, provides information valuable to the Farm Credit Administration in periodic examinations of such institutions, and therefor enhances the safety and soundness of the Farm Credit System; and

(3) the directors, officers, or employees of some Farm Credit System institutions may not be subject to the regulations of the Farm Credit Administration requiring the disclosure of such financial information and the reporting of such potential conflicts of interest.

(b) PURPOSE.—It is the purpose of this section to ensure that the information reported by the directors, officers, and employees of Farm Credit System institutions under regulations of the Farm Credit Administration requiring the disclosure of financial information and the reporting of potential conflicts of interest—

(1) provides the stockholders of all Farm Credit System institutions with information to assist such stockholders in making informed decisions regarding the operation of such institutions,

(2) provides investors and potential investors with information necessary to assist them in making investment decisions regarding Farm Credit System obligations or institutions; and

(3) provides the Farm Credit Administration with information necessary to allow the Farm Credit Administration to effectively and efficiently examine and regulate all Farm Credit System institutions and thus enhance the safety and soundness of the Farm Credit System.

(c) REVIEW.—Not later than 120 days after the date of enactment of this section, the Farm Credit Administration shall complete a review of the current regulations of the Farm Credit Administration regarding the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of Farm Credit System institutions. Consistent with the purpose of this section as provided in subsection (b), such review shall address whether the regulations—

(1) are adequate to fulfill the purpose of this section and such other purposes as the Farm Credit Administration determines to be consistent with the Farm Credit Act of 1971, and other applicable law, and to be otherwise necessary or appropriate;

(2) currently require the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of all Farm Credit System institutions; and

(3) currently require the disclosure or reporting of such information by all of the appropriate directors, officers, or employees of Farm Credit System institutions.

(d) IMPLEMENTATION.—Not later than 360 days after the date of enactment of this section, the Farm Credit Administration shall amend its current financial disclosure and conflict of interest regulations as it determines necessary to carry out the purpose of this section and to address any deficiencies in such regulations that the Farm Credit Administration determines necessary pursuant to the review conducted under subsection (c).

## TITLE II—AGRICULTURAL CREDIT IMPROVEMENT ACT OF 1992

**SEC. 2001. SHORT TITLE.**

This title may be cited as the "Agricultural Credit Improvement Act of 1992".

**Subtitle A—Amendments to the Consolidated Farm and Rural Development Act**

**SEC. 2101. BEGINNING FARMER AND RANCHER PROGRAM.**

(a) OPERATING LOANS; GUARANTEES OF OPERATING LOANS.—Subtitle B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1941-1947) is amended by adding at the end the following:

**"SEC. 318. ASSISTANCE TO BEGINNING FARMERS AND RANCHERS.**

"(a) IN GENERAL.—The Secretary shall provide assistance in accordance with this section to enable individuals to conduct viable farming or ranching operations. For purposes of this section, the term 'individual' means a natural person or an entity (other than a corporation) (1) all of whose owners or members are related by blood or marriage, and (2) none of whose owners or members has operated a farm or ranch for more than 5 years.

"(b) SUBMISSION OF PLAN OF FARM OPERATION.—An individual may seek assistance under this section for a proposed or ongoing farming or ranching operation by submitting to the county committee of the county in which the operation is (or is to be) located, not later than 60 days before such assistance is to be first provided, a plan which—

"(1) describes, for each of the first 5 years for which assistance under this section is sought for the operation—

"(A) how the operation is to be conducted;

"(B) the types and amounts of commodities to be produced by the operation;

"(C) the production methods and practices to be employed by the operation;

"(D) the conservation measures to be taken in the operation;

"(E) the equipment needed to conduct the operation (including any expected replacements therefor) and, with respect to each item of needed equipment, whether the individual owns, leases, or otherwise has access to the item, or proposes to purchase, lease, or otherwise gain access to the item;

"(F) the expected income and expenses of the operation;

"(G) the expected credit needs of the operation, including the types and amounts of assistance to be sought under this section; and

"(H) the site or sites at which the operation is (or is to be) located; and

"(2) projects the financial status of the operation after assistance under this section has been provided for such period, not exceeding 10 years, as is necessary for the operation to become financially viable without further assistance from the Secretary.

"(c) DETERMINATIONS BY THE COUNTY COMMITTEE; APPROVAL OF PLAN.—The county committee shall approve a plan submitted by an individual in accordance with subsection (b) if the county committee determines that—

"(1) the individual has not operated a farm or ranch, or has operated a farm or ranch for not more than 5 years;

"(2) during the 5-year period ending with the submission of the plan, the individual has had sufficient education and experience to indicate that the individual is able to conduct a successful farming or ranching operation, as the case may be;

"(3) the individual owns, leases, or has a commitment to have leased to the individual the site or sites of the operation;

"(4) there is, or will be, available to the individual equipment sufficient to conduct the operation in accordance with the plan;

"(5) the individual agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require; and

"(6) the individual, or in the case of an entity, each owner or member of the entity meets the requirements of paragraphs (1) and (3) of section 311(a).

"(d) DETERMINATION BY THE SECRETARY; APPROVAL OF APPLICATION FOR ASSISTANCE.—The Secretary shall approve an application for assistance under this section for an operation described in a plan approved by a county committee under subsection (c) if the Secretary determines that—

"(1) the operation (taking into account the types of agricultural commodities produced, and the average size of similar operations, in the area in which the operation is, or is to be, located) would generate income sufficient to cover the expenses of the operation, debt service, and adequate family living expenses of the individual, to the extent that other income would not cover such living expenses, if the operation received assistance under this section as provided for in the plan; and

"(2) not later than 10 years after first receiving assistance under this section, the operation will be financially viable without further assistance from the Secretary.

"(e) PROVISION OF ASSISTANCE.—

"(1) DETERMINATION OF COMMITMENT PERIOD.—

"(A) INITIAL DETERMINATION.—Upon approval of an application under subsection (d), the Secretary shall, subject to subparagraph (C) of this paragraph, determine the period during which assistance under this section is to be provided for the operation described in the application (in this subsection referred to as the 'commitment period').

"(B) AUTHORITY TO EXTEND PERIOD; NO AUTHORITY TO REDUCE PERIOD.—At any time, the Secretary may, subject to subparagraph (C) of this paragraph and subsections (f) and (g), extend the duration of the commitment period. The Secretary may not reduce the duration of the commitment period.

"(C) LIMITATION.—The duration of any commitment period (including any extensions thereof) shall not exceed 10 years.

"(2) OPERATING LOANS; LOAN GUARANTEES.—

"(A) IN GENERAL.—To the extent that an applicant whose application is approved under subsection (d) is unable to obtain sufficient credit from commercial or cooperative lenders to finance the operation described in the application at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time), the Secretary shall, subject to the availability of funds therefor and subject to subsections (f) and (g), make a commitment to the applicant—

"(i) for each of the 1st, 2nd, 3rd, and 4th years of the commitment period—

"(I) to make a loan under this subtitle to the applicant at the interest rate charged to low income, limited resource borrowers under this subtitle, in the amount specified in the plan contained in the application; or

"(II) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application)—

"(aa) a guarantee under section 309(h) for the repayment of 90 percent of the loan principal and interest; and

"(bb) if the Secretary determines that, despite the provision of the guarantee referred to in item (aa), the applicant will not qualify for such a loan, an interest subsidy payment sufficient to ensure that the effective rate of interest payable by the applicant on the loan equals the rate of interest charged to low income, limited resource borrowers on insured operating loans under this subtitle of comparable size and maturity;

"(ii) for each of the 5th, 6th, 7th, and 8th years of the commitment period—

"(I) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of 90 percent of the loan principal and interest; and

"(II) if the Secretary determines that, despite the provision of the guarantee referred to in subclause (I), the applicant will not qualify for such a loan, then—

"(aa) to offer the lender an interest subsidy payment in the amount necessary to ensure that the applicant qualifies for such a loan but not more than the amount necessary to ensure that the effective rate of interest on the loan equals the rate of interest charged to low income, limited resource borrowers on insured operating loans under this subtitle of comparable size and maturity; or

"(bb) if funds are not available for the interest subsidy payment described in item (aa), to provide to the applicant a loan under this subtitle that is comparable to one for which a person not receiving assistance under this section (but otherwise in the same situation as the applicant) would be eligible; and

"(iii) for each of the 9th and 10th years of the commitment period, to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of not more than 90 percent of the loan principal and interest.

"(B) SPECIAL RULE.—In the case of an application approved under subsection (d) with respect to which the commitment period is less than 10 years, the Secretary shall make the commitments described in subparagraph (A) for such portions of the commitment period as the Secretary deems appropriate.

"(3) LOANS OR GUARANTEES FOR NEW OR IMPROVED EQUIPMENT.—The Secretary shall make a commitment to any applicant whose application is approved under subsection (d) of this section to provide the applicant with loans under this subtitle or loan guarantees under section 309(h) to finance the acquisition, improvement, or repair of equipment needed in the operation described in the application if the plan contained in the application provides for the commitment, to the extent that the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for such purposes at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time).

"(4) PRIORITY IN PURCHASE OF INVENTORY EQUIPMENT; LOANS OR GUARANTEES FOR SUCH PURCHASES IN CERTAIN CASES.—During the commitment period, the Secretary shall—

"(A) accord the applicant whose application is approved under subsection (d) priority in the purchase of equipment in the inventory of the Farmers Home Administration necessary for the success of the operation described in the application; and

"(B) provide the applicant with loans under this subtitle or loan guarantees under section 309(h) to finance such purchases if the plan contained in the application provides for such assistance, to the extent that

the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for such purpose at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time).

"(5) OTHER KINDS OF ASSISTANCE.—During the commitment period, the Farmers Home Administration, the Agricultural Extension Service, the Soil Conservation Service, and the other entities of the Department of Agriculture shall provide the applicant with such other assistance and information as may be needed in developing and implementing the operation described in the application.

"(6) NO LOAN GUARANTEE FEES.—The Secretary may not charge a fee to any lender in connection with any loan guarantee provided in accordance with this subsection.

"(f) ANNUAL PLAN REVISIONS REQUIRED AS CONDITION OF CONTINUED ASSISTANCE.—The Secretary shall not provide assistance under this section for an operation for any particular year after the first year for which such assistance is provided, unless—

"(1) not later than 60 days before such assistance is to be first provided for the particular year, the applicant has revised the plan describing the operation, based on the experience of the year preceding the particular year, to provide the information required by subsection (b) for the 5-year period beginning with the particular year (or, if shorter, the period beginning with the particular year and ending with the year in which the plan projects the operation as becoming financially viable); and

"(2) the county committee has approved the revised plan.

"(g) EFFECTS OF AVOIDABLE FAILURE TO ACHIEVE GOALS.—

"(1) TERMINATION OF COMMITMENTS.—The Secretary shall revoke any commitment for assistance made to an applicant under this section if the applicant's operation fails, for 2 consecutive years, to meet the goals specified in the plan, unless the failure is due to circumstances beyond the control of the applicant and has not materially reduced the likelihood of the operation becoming financially viable.

"(2) SUSPENSION OF ELIGIBILITY FOR ASSISTANCE.—During the 3-year period that begins with the date the commitments made to an applicant are revoked under paragraph (1), the applicant shall not be eligible for assistance under this section.".

(b) DOWN PAYMENT LOAN PROGRAM.—Subtitle A of such Act (7 U.S.C. 1922–1934) is amended by adding at the end the following:

**"SEC. 310E. DOWN PAYMENT LOAN PROGRAM.**

"(a) IN GENERAL.—Notwithstanding any other section of this subtitle, the Secretary shall establish within the farm ownership loan program under this subtitle a program under which loans are made under this section to eligible beginning farmers and ranchers for down payments on farm ownership loans.

"(b) LOAN TERMS.—

"(1) PRINCIPAL.—Each loan made under this section shall be of an amount equal to 30 percent of the price of the farm or ranch to be acquired, unless the borrower requests a lesser amount.

"(2) INTEREST RATE.—The interest rate on any loan made under this section shall not exceed the minimum interest rate at which loans are made under subtitle C.

"(3) DURATION.—Each loan under this section shall be made for a period of 10 years, or less, at the option of the borrower.

"(4) REPAYMENT.—Each borrower of a loan under this section shall repay the loan to the Secretary in equal annual installments.

"(5) NATURE OF RETAINED SECURITY INTEREST.—The Secretary shall retain an interest in each farm or ranch acquired with a loan made under this section, which shall—

"(A) be secured by the farm or ranch;

"(B) be junior only to such interests in the farm or ranch as may be conveyed at the time of acquisition to the person from whom the borrower obtained a loan used to acquire the farm or ranch; and

"(C) require the borrower to obtain the permission of the Secretary before the borrower may grant an additional security interest in the farm or ranch.

"(c) LIMITATIONS.—

"(1) BORROWERS REQUIRED TO MAKE MINIMUM DOWN PAYMENT.—The Secretary shall not make a loan under this section to any borrower with respect to a farm or ranch if the contribution of the borrower to the down payment on the farm or ranch will be less than 10 percent of the price of the farm or ranch.

"(2) MAXIMUM PRICE OF PROPERTY TO BE ACQUIRED.—The Secretary shall not make a loan under this section with respect to a farm or ranch the price of which exceeds $250,000.

"(3) PROHIBITED TYPES OF FINANCING.—The Secretary shall not make a loan under this section with respect to a farm or ranch if the farm or ranch is to be acquired with other financing which contains any of the following conditions:

"(A) The financing, other than that provided by the Secretary under this section, is to be amortized over a period of less than 30 years.

"(B) A balloon payment will be due on the financing during the 10-year period beginning on the date the loan is to be made by the Secretary.

"(d) ADMINISTRATION.—The Secretary shall, to the maximum extent practicable—

"(1) facilitate the transfer of farms and ranches from retiring farmers and ranchers to persons eligible for insured loans under this subtitle;

"(2) make efforts to widely publicize the availability of loans under this section among—

"(A) potentially eligible recipients of such loans;

"(B) retiring farmers and ranchers; and

"(C) applicants for farm ownership loans under this subtitle;

"(3) encourage retiring farmers and ranchers to assist in the sale of their farms and ranches to eligible beginning farmers or ranchers by providing seller financing; and

"(4) coordinate the loan program established by this section with State programs that provide farm ownership or operating loans for beginning farmers.

"(e) ELIGIBLE BEGINNING FARMER OR RANCHER DEFINED.—As used in this section, the term 'eligible beginning farmer or rancher' means an individual—

"(1) who is eligible for assistance under this subtitle;

"(2) who has operated a farm or ranch for not less than 5 nor more than 10 years;

"(3)(A) in the case of an owner or operator of a farm or ranch, who, individually or with the immediate family of the owner or operator—

"(i) materially and substantially participates in the farm or ranch; and

"(ii) provides substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located; and

"(B) in the case of an individual seeking to own or operate a farm or ranch, who, individually or with the immediate family of the individual, will—

"(i) materially and substantially participate in the farm or ranch; and

"(ii) provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located;

"(4) who agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require;

"(5) who—

"(A) does not own land; or

"(B) directly or through interests in family farm corporations, owns land the aggregate acreage of which does not exceed 15 percent of the median acreage of the farms or ranches, as the case may be, in the county in which the individual is to obtain land is located, as reported in the most recent census of agriculture taken under section 142 of title 13, United States Code;

"(6) who demonstrates that the available resources of the individual and the spouse (if any) of the individual are not sufficient to enable the individual to continue farming or ranching on a viable scale; and

"(7) in the case of an individual whose application for assistance under section 318 has been approved by the Secretary, the individual meets the requirements of section 310F(b)(1).".

(c) AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN BEGINNING FARMERS AND RANCHERS.—Subtitle A of such Act (7 U.S.C. 1922–1934) is amended by adding after the section added by subsection (b) of this section the following:

**"SEC. 310F. AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN BEGINNING FARMERS AND RANCHERS.**

"(a) ASSISTANCE PROHIBITED FOR A LIMITED PERIOD.—Except as otherwise provided in this section, if the Secretary approves the application of an individual for assistance under section 318, the Secretary may not make a loan under this subtitle to the individual or provide a guarantee under section 309(h) with respect to any farm real estate loan made to the individual.

"(b) AVAILABILITY OF DOWN PAYMENT LOANS.—After the applicable period, the Secretary may make an insured loan under this subtitle, or a down payment loan under section 310E, to an individual referred to in subsection (a) of this section if—

"(1) throughout the applicable period, the individual conducted an operation for which assistance is provided under section 318 in accordance with the plan contained in the application for such assistance;

"(2) the plan provides for such a loan; and

"(3) the individual is otherwise eligible for the loan.

"(c) AVAILABILITY OF LOAN GUARANTEES.—After the applicable period, the Secretary may guarantee under section 309(h) the repayment of a commercial or cooperative loan made to an individual referred to in subsection (a) of this section if—

"(1) throughout the applicable period, the individual conducted the operation for which assistance is provided under section 318 in accordance with the plan contained in the application for such assistance;

"(2) the plan provides for such a loan guarantee; and

"(3) the individual is otherwise eligible for the loan guarantee.

"(d) APPLICABLE PERIOD DEFINED.—As used in this section, the term 'applicable period' means—

"(1) in the case of an individual who, at the time the application referred to in this section was approved, had not operated a farm for more than 3 years, the first 5 years for which the individual is provided assistance under section 318; or

"(2) in any other case, the first 3 years for which the individual is provided assistance under section 318.".

(d) TARGETING OF FUNDS.—

(1) FARM OPERATING LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b) of such Act (7 U.S.C. 1994(b)) is amended by adding at the end the following:

"(5) In expending the following percentages of the funds available for insured operating loans under subtitle B for any fiscal year beginning after September 30, 1993, the Secretary shall, to the maximum extent practicable, give priority to making such loans under section 318:

"(A) Not less than 20 percent, for the first 6 months of fiscal year 1994.

"(B) Not less than 30 percent, for the first 6 months of each of fiscal years 1995 and 1996.

"(C) Not less than 40 percent, for the first 6 months of each of fiscal years 1997 and 1998.

"(D) Not less than 50 percent, for first 6 months of each of the succeeding fiscal years.".

(2) FARM OWNERSHIP LOANS.—

(A) PERCENTAGE OF INSURED FARM OWNERSHIP LOAN FUNDS RESERVED FOR BEGINNING FARMERS OR RANCHERS.—Section 346(b)(3) of such Act (7 U.S.C. 1994(b)(3)) is amended by adding at the end the following:

"(D)(i) To the extent not inconsistent with an exercise of authority under section 355, not less than the applicable percentage of the amounts available for insured farm ownership loans for any fiscal year shall be for such loans to beginning farmers or ranchers.

"(ii) For purposes of clause (i), the term 'applicable percentage' means—

"(I) 50 percent, for the first 6 months of each of the fiscal years 1994 and 1995; and

"(II) 80 percent, for the first 6 months of each succeeding fiscal year.".

(B) FUNDS RESERVED FOR DOWNPAYMENT LOAN PROGRAM.—Section 346(b)(3) of such Act (7 U.S.C. 1994(b)(3)) is amended by adding after the subparagraph added by subparagraph (A) of this paragraph the following:

"(E)(i) To the extent not inconsistent with an exercise of authority under section 355, not less than the applicable percentage of the amounts reserved for beginning farmers or ranchers under subparagraph (D) for any fiscal year shall be for downpayment loans under section 310E.

"(ii) For purposes of clause (i), the term 'applicable percentage' means—

"(I) 50 percent, for the first 6 months of each of the fiscal years 1994 and 1995; and

"(II) 80 percent, for the first 6 months of each succeeding fiscal year.".

(C) CERTAIN UNOBLIGATED DOWNPAYMENT LOAN PROGRAM FUNDS AVAILABLE FOR ANY TYPE OF INSURED FARM OWNERSHIP LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b)(3) of such Act (7 U.S.C. 1994(b)(3)) is amended by adding after the subparagraph added by subparagraph (B) of this paragraph the following:

"(F) To the extent not inconsistent with an exercise of authority under section 355, any funds reserved for downpayment loans under section 310E for a fiscal year by reason of subparagraph (E) of this paragraph that are not obligated by the end of the 2nd quarter of the fiscal year shall be available throughout the remainder of the fiscal year for any type of insured farm ownership loans, with priority to be given to beginning farmers and ranchers.".

(3) PORTIONS OF FARM OWNERSHIP LOAN GUARANTEE FUNDS TARGETED TO BEGINNING FARMERS OR RANCHERS.—Section 346(b)(2) of such Act (7 U.S.C. 1994(b)(2)) is amended by adding at the end the following:

"Not less than 25 percent of the amounts appropriated for guarantees of farm ownership loans for each of the fiscal years 1994, 1995, 1996, and 1997 shall be available during the first 6 months of the respective fiscal year for guarantees of farm ownership loans to beginning farmers or ranchers.".

(4) INTEREST RATE ASSISTANCE PROGRAM.—Section 346(b)(3) of such Act (7 U.S.C. 1994(b)(3)) is amended by adding after the subparagraphs added by paragraph (2) of this subsection the following:

"(G) Not less than 40 percent of the amounts available for the interest rate reduction program under section 351 shall be reserved for the first 6 months of each fiscal year for assistance to beginning farmers or ranchers.".

**SEC. 2102. PROCESSING OF APPLICATIONS FOR FARM OPERATING LOANS.**

Section 333A(a)(2) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983a(a)(2)) is amended—

(1) by inserting "(A)" after "(2)";

(2) by inserting "(other than under subtitle B)" after "under this title"; and

(3) by adding after and below the end the following new subparagraph:

"(B)(i) Within 10 calendar days after the Secretary receives an application for an operating loan or loan guarantee under subtitle B, the Secretary shall notify the applicant of any information required before a decision may be made on the application. Upon receipt of such an application, the Secretary shall request from other parties such information as may be needed in connection with the application.

"(ii) Within 15 calendar days after the date an agency of the Department of Agriculture receives a request for information made pursuant to clause (i), the agency shall provide the Farmers Home Administration with the requested information.

"(iii) If, within 20 calendar days after the date a request is made pursuant to clause (i) with respect to an application, the Farmers Home Administration has not received the information requested, the Farmers Home Administration county office shall notify the applicant, in writing, as to the outstanding information.

"(iv) A county office shall notify the district office of the Farmers Home Administration of each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 calendar days after receipt by the Secretary, and the reasons therefor.

"(v) A district office that receives a notice provided under clause (iv) with respect to an application shall immediately take steps to ensure that final action is taken on the application within 15 calendar days after the date of the receipt of the notice.

"(vi) The district office shall notify the State office of the Farmers Home Administration of each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 calendar days after receipt by the Secretary, and the reasons therefor.

"(vii) Each month, the Secretary shall notify the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, on a State-by-State basis, as to each application for an operating loan or loan guarantee under subtitle B on which final action had not been taken within 60 calendar days after receipt by the Secretary, and the reasons therefor.".

**SEC. 2103. TIME PERIOD WITHIN WHICH COUNTY COMMITTEE IS REQUIRED TO MEET TO CONSIDER APPLICATIONS FOR FARM OWNERSHIP AND OPERATING LOANS AND GUARANTEES AND BEGINNING FARMER PLANS.**

Section 332 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1982) is amended—

(1) in subsection (c), by striking "The committee" and inserting "Subject to subsection (e), the committee"; and

(2) by adding at the end the following:

"(e) The county committee shall meet to consider approval of an application received by the committee for a farm ownership or farm operating loan under this title, a guarantee under section 309(h), or a plan of farm operation under section 318, within—

"(1) 5 calendar days after receipt if at the time of the receipt there is at least 1 other such application or plan pending; or

"(2) 15 calendar days after receipt if at the time of the receipt there are no other such applications or plans pending.".

**SEC. 2104. DEBT SERVICE MARGIN REQUIREMENTS; CERTIFIED LENDER PROGRAM.**

Section 339 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989) is amended—

(1) by inserting "(a)" before "The Secretary"; and

(2) by adding at the end the following:

"(b) Notwithstanding subsection (a), in providing farmer program loan guarantees under this title, the Secretary shall consider the income of the borrower adequate if the income is equal to or greater than the income necessary—

"(1) to make principal and interest payments on all debt obligations of the borrower, in a timely manner;

"(2) to cover the necessary family living expenses; and

"(3) to pay all other obligations and expenses of the borrower not financed through debt obligations referred to in paragraph (1), including expenses of replacing capital items (determined after taking into account depreciation of such items).

"(c) CERTIFIED LENDER PROGRAM.—

"(1) IN GENERAL.—The Secretary shall establish a program under which the Secretary shall guarantee loans (other than loans with respect to which a guarantee is provided under section 318) for any purpose specified in subtitle B that are made by lending institutions certified by the Secretary.

"(2) CERTIFICATION REQUIREMENTS.—The Secretary shall certify any lending institution that meets such criteria as the Secretary may prescribe in regulations, including the ability of the institution to properly make, service, and liquidate its loans.

"(3) CONDITION OF CERTIFICATION.—As a condition of such certification, the Secretary shall require the institution to undertake to service the loans guaranteed by the Secretary under this subsection using generally accepted banking standards concerning loan servicing employed by prudent commercial or cooperative lenders. The Secretary shall, at least annually, monitor the performance of each certified lender to ensure that the conditions of such certification are being met.

"(4) EFFECT OF CERTIFICATION.—Notwithstanding any other provision of law, the Secretary shall—

"(A) guarantee 80 percent of an approved loan made by a certified lending institution as described in paragraph (1), subject to county committee certification that the borrower meets the eligibility requirements or such other criteria as may be applicable to loans guaranteed by the Secretary under other provisions of this title;

"(B) permit certified lending institutions to make all decisions, with respect to loans to be guaranteed by the Secretary under this subsection, relating to creditworthiness and loan closing, and to accept appropriate certifications, as provided by regulations issued by the Secretary, that the borrower is in compliance with all requirements of law or regulations promulgated by the Secretary; and

"(C) be deemed to have guaranteed 80 percent of a loan made by a certified lending institution as described in paragraph (1), if the Secretary fails to approve or reject the application within 14 calendar days after the date that the lending institution presented the application to the Secretary. If the Secretary rejects the application within the 14-day period, the Secretary shall state, in writing, the reasons the application was rejected.".

**SEC. 2105. FEDERAL-STATE BEGINNING FARMER PARTNERSHIP.**

(a) COORDINATION OF ASSISTANCE FOR ELIGIBLE BEGINNING FARMERS AND RANCHERS.—Section 309 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929) is amended by adding at the end the following:

"(i)(1) Within 60 days after any State expresses to the Secretary, in writing, a desire to coordinate the provision of financial assistance to eligible beginning farmers and ranchers in the State, the Secretary and the State shall conclude a joint memorandum of understanding which shall govern how the Secretary and the State are to do so.

"(2) The memorandum of understanding shall provide that if a State beginning farmer program makes a commitment to provide an eligible beginning farmer or rancher (as defined in section 310E(e)) with financing to establish or maintain a viable farming or ranching operation, the Secretary shall, subject to applicable law, normal loan approval criteria, and the availability of funds, provide the farmer or rancher with—

"(A) a downpayment loan under section 310E;

"(B) a guarantee of the financing provided by the State program; or

"(C) such a loan and such a guarantee.

"(3) The Secretary may not charge any person any fee with respect to the provision of any guarantee under this subsection.

"(4) As used in paragraph (1), the term 'State beginning farmer program' means any program which is—

"(A) carried out by, or under contract with, a State; and

"(B) designed to assist persons in obtaining the financial assistance necessary to enter agriculture and establish viable farming or ranching operations.".

(b) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT; PURPOSE.—Within 18 months after the date of the enactment of this section, the Secretary of Agriculture shall establish an advisory committee, to be known as the "Advisory Committee on Beginning Farmers and Ranchers", which shall provide advice to the Secretary on—

(A) the development of the program of coordinated assistance to eligible beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act;

(B) ways to maximize the number of new farming and ranching opportunities created through such program;

(C) ways to encourage States to participate in such program;

(D) the administration of such program; and

(E) other methods of creating new farming or ranching opportunities.

(2) MEMBERSHIP.—The Secretary shall appoint the members of the Advisory Committee which shall include representatives from the following:

(A) The Farmers Home Administration.

(B) State beginning farmer programs (as defined in section 309(i)(3) of the Consolidated Farm and Rural Development Act).

(C) Commercial lenders.

(D) Private nonprofit organizations with active beginning farmer or rancher programs.

(E) The Cooperative Extension Service.

(F) Community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers.

(G) Other specialists in lending or technical assistance for beginning farmers and ranchers.

**SEC. 2106. GRADUATION OF BORROWERS WITH OPERATING LOANS OR GUARANTEES TO PRIVATE COMMERCIAL CREDIT.**

Subtitle B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1941–1947) is amended by adding after the section added by section 2101(a) of this Act the following:

**"SEC. 319. GRADUATION OF BORROWERS ASSISTED UNDER THIS SUBTITLE TO PRIVATE COMMERCIAL CREDIT.**

"(a) GRADUATION PLAN.—The Secretary shall establish a plan, in coordination with activities under sections 359, 360, 361, and 362, to encourage each borrower with an outstanding loan under this subtitle or with respect to whom there is an outstanding guarantee under this subtitle to graduate to private commercial or other sources of credit.

"(b) LIMITATION ON PERIOD FOR WHICH BORROWERS ARE ELIGIBLE FOR ASSISTANCE UNDER THIS SUBTITLE.—Notwithstanding any other provision of this subtitle:

"(1) GENERAL RULE.—Except as provided in paragraph (2), the Secretary may not—

"(A) make a loan to a borrower under this subtitle for any year after the 10th year for which such a loan is made to the borrower; or

"(B) guarantee for any year a loan made to the borrower for a purpose specified in this subtitle, after the 15th year for which loans under this subtitle are made to, or such a guarantee is provided with respect to, the borrower.

"(2) TRANSITION RULE.—If, as of the date of the enactment of this section, the Secretary has made loans to a borrower under this subtitle for 5 or more years, or has provided guarantees for 10 or more years with respect to 1 or more loans made to the borrower for a purpose specified in this subtitle, the Secretary may not make a loan to the borrower under this subtitle, or provide such a guarantee with respect to a loan made to the borrower for a purpose specified in this subtitle, after the 5th year occurring after such date of enactment for which a loan is made under this subtitle to, or such a guarantee is provided with respect to, the borrower.".

**SEC. 2107. SIMPLIFIED APPLICATION FOR GUARANTEED LOANS OF $50,000 OR LESS.**

Section 333A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983a) is amended by adding at the end the following:

"(f)(1) The Secretary shall provide to lenders a short, simplified application form for guarantees under this title of loans the principal amount of which is $50,000 or less.

"(2) In developing the application, the Secretary shall—

"(A) consult with commercial and cooperative lenders; and

"(B) ensure that—

"(i) the form can be completed manually or electronically, at the option of the lender;

"(ii) the form minimizes the documentation required to accompany the form;

"(iii) the cost of completing and processing the form is minimal; and

"(iv) the form can be completed and processed in an expeditious manner.".

**SEC. 2108. TARGETING OF LOANS TO MEMBERS OF GROUPS WHOSE MEMBERS HAVE BEEN SUBJECTED TO GENDER PREJUDICE.**

Section 355(e)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)(1)) is amended by striking "or ethnic" and inserting ", ethnic, or gender".

**SEC. 2109. RECORDKEEPING OF LOANS BY BORROWER'S GENDER.**

Subtitle D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981–2008c) is amended by adding at the end the following:

**"SEC. 369. RECORDKEEPING OF LOANS BY BORROWER'S GENDER.**

"The Secretary shall classify, by gender, records of applicants for loans and guarantees under this title.".

**SEC. 2110. INCREASE IN PERIOD DURING WHICH COUNTY COMMITTEE LOAN ELIGIBILITY CERTIFICATION CONTINUES IN EFFECT.**

Section 333(2)(A)(iii) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983(2)(A)(iii)) is amended by striking "2 years" and inserting "5 years".

**SEC. 2111. LIMITATION ON AGGREGATE INDEBTEDNESS.**

Section 305 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1925) is amended by striking "and 310D of this title" and inserting "310D, and 310E".

**SEC. 2112. GRADUATION OF SEASONED BORROWERS TO THE LOAN GUARANTEE PROGRAM.**

Section 333A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983a) is amended by adding after the subsection added by section 2007 of this Act the following:

"(g) GRADUATION OF SEASONED BORROWERS TO THE LOAN GUARANTEE PROGRAM.—

"(1) IN GENERAL.—The Secretary shall annually review the operating loans made under section 312 to each seasoned borrower, and if, based on the review, the Secretary determines that the borrower is able to obtain a loan, guaranteed by the Secretary, from commercial or cooperative lenders at reasonable rates and terms, and for purposes and periods of time similar to those for which the operating loan was made to the borrower, then the borrower shall be ineligible to receive a new operating loan under section 312 for similar purposes, unless the borrower demonstrates to the Secretary that the borrower is unable to obtain such a guaranteed loan.

"(2) LISTING OF SEASONED BORROWERS.—Within 180 days after the date of the enactment of the Agricultural Credit Improve-

ment Act of 1992, and annually thereafter, the Secretary may direct all county offices to make available to qualified lenders a listing of all seasoned borrowers, as provided in regulations issued by the Secretary.

"(3) QUALIFIED LENDERS.—Upon request and upon application for a guaranteed loan to a qualified lender, by a seasoned borrower, the Farmers Home Administration shall provide the lender with all current and past documentation relating to the approval and the continued compliance with the terms of the direct operating loan then held by the borrower.

"(4) INTEREST RATE.—To the extent necessary for the borrower to obtain a loan, guaranteed by the Secretary, from a commercial or cooperative lender, the Secretary shall provide interest rate reductions under section 351.

"(5) DEFINITIONS.—As used in this subsection:

"(A) SEASONED BORROWER.—The term 'seasoned borrower' means a borrower—

"(i) to whom a loan has been made under section 312; and

"(ii) who has maintained a satisfactory borrowing relationship with the Farmers Home Administration for at least 24 consecutive months.

"(B) QUALIFIED LENDER.—The term 'qualified lender' means a lender approved by the Secretary under—

"(i) the approved lender program established by exhibit A to subpart B of part 1980 of title 7, Code of Federal Regulations, January 1, 1991, edition;

"(ii) the certified lender program established under section 339(c); or

"(iii) any program that is a successor to either of such programs.".

**SEC. 2113. DEADLINE FOR ISSUANCE OF REGULATIONS.**

Not later than September 30, 1993, the Secretary of Agriculture shall issue interim final regulations to implement the amendments made by this subtitle.

## Subtitle B—Amendments to the Farm Credit Act of 1971

**SEC. 2201. VALUATION OF RESERVES OF PRODUCTION CREDIT ASSOCIATIONS.**

Section 2.3(b) of the Farm Credit Act of 1971 (12 U.S.C. 2074(b)) is amended to read as follows:

"(b) APPLICATION OF EARNINGS.—At the end of each fiscal year, each production credit association shall apply the amount of the earnings of the association for the fiscal year in excess of the operating expenses of the association (including provision for valuation of reserves against loan assets in accordance with generally accepted accounting principles)—

"(1) first to the restoration of the impairment (if any) of capital; and

"(2) second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Farm Credit Bank.".

**SEC. 2202. ELIMINATION OF AUTHORITY OF FARM CREDIT SYSTEM INSURANCE CORPORATION TO APPOINT NONVOTING MEMBER OF FARM CREDIT SYSTEM FUNDING CORPORATION BOARD.**

Section 4.9(d)(2) of the Farm Credit Act of 1971 (12 U.S.C. 2160(d)(2)) is amended—

(1) in the paragraph heading, by striking "REPRESENTATIVES" and inserting "REPRESENTATIVE";

(2) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B); and

(3) in subparagraph (B), as so redesignated, by striking "persons" and all that follows through "Insurance Corporation" and inserting "person so designated".

**SEC. 2203. EXPANSION OF WATER AND SEWER LENDING AUTHORITY OF BANKS FOR COOPERATIVES.**

Section 3.7(f) of the Farm Credit Act of 1971 (12 U.S.C. 2128(f)) is amended—

(1) by striking "the installation, expansion, or improvement of" and inserting "installing, maintaining, expanding, improving, or operating"; and

(2) by striking "to extend" and inserting "extending".

**SEC. 2204. EQUITY VOTING FOR ONE DIRECTOR OF EACH BANK FOR COOPERATIVES.**

Section 3.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2123(a)) is amended by inserting ", and, notwithstanding section 3.3(d), the bylaws may provide for 1 director to be elected on the basis of 1 vote for each share of voting stock of the bank" before the period.

**SEC. 2205. PER DIEM COMPENSATION OF BANK DIRECTORS.**

(a) IN GENERAL.—Section 4.21 of the Farm Credit Act of 1971 (12 U.S.C. 2209) is amended to read as follows:

**"SEC. 4.21. COMPENSATION OF DIRECTORS.**

"Each member of the board of directors of a System bank may receive compensation only for days during the year in which engaged in the performance of duties of such a director, and in an amount not exceeding $300 for each such day, adjusted annually to reflect any increase in the cost of living since the end of 1991, as determined under regulations prescribed by the Farm Credit Administration.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1993.

**SEC. 2206. FREQUENCY OF EXAMINATIONS OF SYSTEM INSTITUTIONS.**

Section 5.19(a) of the Farm Credit Act of 1971 (12 U.S.C. 2254(a)) is amended by striking the 1st and 2nd sentences and inserting "Not less frequently than once every 3 years, Farm Credit Administration examiners shall examine each institution of the Farm Credit System at such times as the Farm Credit Administration Board may determine.".

**SEC. 2207. AUTHORITY TO EXAMINE SYSTEM INSTITUTIONS.**

(a) AUTHORITY OF FARM CREDIT SYSTEM INSURANCE CORPORATION.—Section 5.59(b) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-8(b)) is amended to read as follows:

"(b) EXAMINATION OF SYSTEM INSTITUTIONS.—

"(1) EXAMINATION AUTHORITY.—

"(A) IN GENERAL.—If the Board of Directors deems it necessary to examine an insured System bank, a production credit association, an association making direct loans under the authority provided under section 7.6, or any System institution in receivership, the Board may, using Farm Credit Administration examiners, conduct the examination using reports and other information on the System institution prepared or held by the Farm Credit Administration.

"(B) REQUEST FOR ADDITIONAL EXAMINATION OR OTHER INFORMATION.—If the Board determines that such reports or information are not adequate to enable the Corporation to carry out the duties of the Corporation under this part, the Board shall request the Farm Credit Administration to examine or to obtain other information from or about the System institution and provide to the Corporation the resulting examination report or such other information.

"(2) APPOINTMENT OF EXAMINERS.—If the Farm Credit Administration informs the Corporation that the Farm Credit Administration is unable to comply with a request made under paragraph (1)(B) with respect to a System institution, the Board may appoint examiners to examine the institution.

"(3) POWERS AND REPORT.—Each examiner appointed under paragraph (2) shall make such examination of the affairs of the System institution as the Board may direct, and shall make a full and detailed report of the examination to the Corporation.

"(4) APPOINTMENT OF CLAIM AGENTS.—The Board of Directors of the Corporation shall appoint claim agents who may investigate and examine all claims for insured obligations.".

(b) DUTIES OF THE FARM CREDIT ADMINISTRATION.—Section 5.19 of such Act (12 U.S.C. 2254) is amended by adding at the end the following:

"(d) Upon receipt of a request made under section 5.59(b)(1)(B) with respect to a System institution, the Farm Credit Administration shall—

"(1) furnish for the confidential use of the Corporation reports of examination of the institution and other reports or information on the institution; and

"(2)(A) examine, or obtain other information on, the institution and furnish for the confidential use of the Corporation the report of the examination and such other information, or

"(B) if the Farm Credit Administration Board determines that compliance with the request would substantially impair the ability of the Farm Credit Administration to carry out the other duties and responsibilities of the Farm Credit Administration under this Act, notify the Board of Directors of the Farm Credit System Insurance Corporation that the Farm Credit Administration will be unable to comply with the request.".

**SEC. 2208. REPEAL OF PROHIBITION AGAINST GUARANTEE OF CERTAIN INSTRUMENTS OF INDEBTEDNESS.**

Section 4.16 of the Farm Credit Act of 1971 (12 U.S.C. 2204) is hereby repealed.

**SEC. 2209. CLARIFICATION OF TREATMENT OF FARM CREDIT ADMINISTRATION OPERATING EXPENSES.**

Section 5.15(b)(1) of the Farm Credit Act of 1971 (12 U.S.C. 2250(b)(1)) is amended—

(1) by inserting ", for purposes of sequestration," after "regard"; and

(2) by striking "or any other law".

**SEC. 2210. APPROVAL OF COMPETITIVE CHARTERS.**

Section 5.17(a) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)) is amended by adding at the end the following:

"(13)(A) Subject to subparagraph (B), the Farm Credit Administration may approve an amendment to the charter of any institution of the Farm Credit System operating under title I or II, which would authorize the institution to exercise lending authority in any territory—

"(i) in the geographic area served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (where such geographic area was a part of the association's territory as of the date of such reassignment); and

"(ii) in which the charter of an institution that is not seeking the charter amendment authorizes such institution to exercise the type of lending authority that is the subject of the charter request.

"(B) The Farm Credit Administration may approve a charter amendment under subparagraph (A) only upon the approval of—

"(i) the respective boards of directors of the associations that, if the charter request

is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

"(ii) a majority of the stockholders of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholders' meeting; and

"(iii) the respective boards of directors of the Farm Credit Banks which, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).

"(14)(A) Subject to subparagraph (B), the Farm Credit Administration may approve a request to charter an association of the Farm Credit System to operate under title II where the proposed charter—

"(i) will include any of the geographic area included in the territory served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (where such geographic area was a part of the association's territory as of the date of such reassignment); and

"(ii) will authorize the association to exercise lending authority in any territory in such geographic area in which the charter of an association that is not requesting the charter authorizes such association to exercise the type of lending authority that is the subject of the charter request.

"(B) The Farm Credit Administration may approve a charter request under subparagraph (A) only upon the approval of—

"(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

"(ii) a majority vote of the stockholders (if any) of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholder's meeting; and

"(iii) the respective boards of directors of the Farm Credit Banks which, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).".

### Subtitle C—Technical Corrections

**SEC. 2301. TECHNICAL CORRECTIONS.**

(a) CORRECTION OF REFERENCE TO SECTION 1236 OF THE FOOD SECURITY ACT OF 1985.—Title I of the Department of the Interior and Related Agencies Appropriations Act, 1991 is amended, in the item designated "CONSTRUCTION AND ANADRONOMOUS FISH" under the heading "UNITED STATES FISH AND WILDLIFE SERVICE", by striking "title 16 U.S.C. section 3832(a)(6)" and inserting "section 1232(a)(6) of the Food Security Act of 1985 (16 U.S.C. 3832(a)(6))".

(b) SECTION 1245(b) OF THE FOOD SECURITY ACT OF 1985.—

(1) CORRECTION.—Section 1245(b) of the Food Security Act of 1985 (16 U.S.C. 3845(b)) is amended by striking "(A) through (G)" and inserting "A through G".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) of this subsection shall take effect immediately after section 1443 of the Food, Agriculture, Conservation, and Trade Act of 1990 took effect.

(c) SECTION 307(a)(6)(B) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTION.—Section 307(a)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1927(a)(6)(B)) is amended by striking clause (ii), and by redesignating clauses (iii) through (viii) as clauses (ii) through (vii), respectively.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by subsection (a) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 took effect.

(d) SECTION 310D(a) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTION.—Section 310D(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1934(a)) is amended by striking "304(d)(1)" and inserting "304(a)(1)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by subsection (a) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 took effect.

(e) SECTION 312(a) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) REPLACEMENT OF UNEXECUTABLE AMENDMENT MADE BY THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT OF 1990.—

(A) CORRECTION.—Section 1818(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624; 104 Stat. 3830) is amended to read as follows:

"(b) OPERATING LOAN PURPOSES.—The first sentence of section 312(a) (7 U.S.C. 1942(a)) is amended—

"(1) by striking 'and' at the end of clause (11); and

"(2) by inserting ', and (13) borrower training under section 359' before the period at the end.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the Food, Agriculture, Conservation, and Trade Act of 1990 at the time such Act became law.

(2) REPEAL OF UNEXECUTABLE AMENDMENT MADE BY THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Subsection (b) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237; 105 Stat. 1866) is hereby repealed, and the Consolidated Farm and Rural Development Act shall be applied and administered as if such subsection had never become law.

(f) AMENDMENTS TO SECTION 331E OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTION.—Section 331E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981e) is amended—

(A) in subsection (a), by striking "Disaster Relief Act of 1974" and inserting "the Robert T. Stafford Disaster Relief and Emergency Assistance Act"; and

(B) in subsection (b), by inserting "Robert T. Stafford" before "Disaster Relief".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) of this subsection shall take effect immediately after subsection (d) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 took effect.

(g) SECTION 335(e)(1)(A)(i) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTIONS TO AMENDMENT MADE BY THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Paragraph (1) of section 501(f) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237; 105 Stat. 1867) is amended—

(A) by inserting "the 1st place such term appears" before "and all that follows"; and

(B) by striking "borrower-owner (as defined in subparagraph (F)" and inserting "the borrower-owner (as defined in subparagraph (F))".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) of this subsection shall take effect immediately after subsection (f) of section 501 of the Food, Agriculture, Conservation, and Trade Act of 1990 took effect.

(h) SECTION 352(a) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—Section 352(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000(a)) is amended by redesignating the second paragraph (4) as paragraph (5).

(i) SECTION 352(b)(2) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTION.—Section 352(b)(2) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000(b)(2)) is amended by striking "borrower's" and inserting "borrower-owner's".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by subsection (f) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 took effect.

(j) SECTION 702(h)(2) OF THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Section 702(h)(2) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237; 105 Stat. 1881) is amended by inserting "section" before "2388(h)(3)".

(k) SECTION 306C(b)(1) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—Section 306C(b)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c(b)(1)) is amended by striking "or connecting such systems to the residences of such individuals" and inserting ", connecting such systems to the residences of such individuals, or installing plumbing and fixtures within the residences of such individuals to facilitate the use of the water supply and waste disposal systems".

(l) SECTION 306C OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c) is amended by adding at the end the following:

"(f) Within 30 days after the date of the enactment of this subsection, the Secretary shall issue interim final regulations, with a request for public comments, implementing this section.".

### Subtitle D—Effective Date

**SEC. 2401. EFFECTIVE DATE.**

Except as otherwise provided in this title, the amendments and repeal made by this title shall take effect on the date of the enactment of this Act.

## TITLE III—RURAL ELECTRIFICATION ADMINISTRATION IMPROVEMENT ACT OF 1992

**SEC. 3001. SHORT TITLE.**

This title may be cited as the "Rural Electrification Administration Improvement Act of 1992".

**SEC. 3002. DISCOUNTED LOAN PREPAYMENT.**

(a) IN GENERAL.—Subsection (a) of section 306B of the Rural Electrification Act of 1936 (7 U.S.C. 936b(a)) is amended to read as follows:

"(a) DISCOUNTED PREPAYMENT BY BORROWERS OF ELECTRIC LOANS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a direct or insured loan made under this Act shall not be sold or prepaid at a value that is less than the outstanding principal balance on the loan.

"(2) EXCEPTION.—On request of the borrower, an electric loan made under this Act, or a portion thereof, that was advanced before May 1, 1992, or has been advanced for not less than 2 years, shall be sold to or prepaid by the borrower at the lesser of—

"(A) the outstanding principal balance on the loan; or

"(B) the loan's present value discounted from the face value at maturity at the rate established by the Administrator.

"(3) DISCOUNT RATE.—The discount rate applicable to the prepayment under this subsection of a loan or loan advance shall be the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the remaining term of the loan.

"(4) TAX EXEMPT FINANCING.—If a borrower prepays a loan under this subsection using tax exempt financing, the discount shall be adjusted to ensure that the borrower receives a benefit that is equal to the benefit the borrower would receive if the borrower used fully taxable financing. The borrower shall certify in writing whether the financing will be tax exempt and shall comply with such other terms and conditions as the Administrator may establish that are reasonable and necessary to carry out this subsection.

"(5) ELIGIBILITY.—

"(A) IN GENERAL.—A borrower that has prepaid an insured or direct loan shall remain eligible for assistance under this Act in the same manner as other borrowers, except that—

"(i) a borrower that has prepaid a loan, either before or after the date of the enactment of this subsection, at a discount rate as provided by paragraph (3), shall not be eligible, except at the discretion of the Administrator, to apply for or receive direct or insured loans under this Act for 60 months after the prepayment; and

"(ii) a borrower that prepaid a loan before such date of enactment at a discount rate greater than that provided by paragraph (3), shall not be eligible—

"(I) except at the discretion of the Administrator, to apply for or receive such direct or insured loans until 120 months after the date of the prepayment; or

"(II) to apply for or receive such direct or insured loans until the borrower has repaid to the Federal Government the sum of—

"(aa) the amount (if any) by which the discount the borrower received by reason of the prepayment exceeds the discount the borrower would have received had the discount been based on the cost of funds to the Department of the Treasury at the time of the prepayment; and

"(bb) interest on the amount described in item (aa), for the period beginning on the date of the prepayment and ending on the date of the repayment, at a rate equal to the average annual cost of borrowing by the Department of the Treasury.

In cases where a borrower and the Administrator have entered into an agreement with respect to a prepayment occurring before such date of enactment, this paragraph shall supersede any provision in the agreement relating to the restoration of eligibility for loans under this Act.

"(B) DISTRIBUTION BORROWERS.—A distribution borrower not in default on the repayment of loans made or insured under this Act shall be eligible for discounted prepayment as provided in this subsection.For the purpose of determining eligibility for discounted prepayment under this subsection or eligibility for assistance under this Act, a default by a borrower from which a distribution borrower purchases wholesale power shall not be considered a default by the distribution borrower.

"(6) DEFINITIONS.—As used in this subsection:

"(A) DIRECT LOAN.—The term 'direct loan' means a loan made under section 4.

"(B) INSURED LOAN.—The term 'insured loan' means a loan made under section 305.".

(b) CONFORMING AMENDMENT.—Section 306B(b) of such Act (7 U.S.C. 936b(b)) is amended by striking "(b) Notwithstanding" and inserting the following:

"(b) MERGERS OF ELECTRIC BORROWERS.—Notwithstanding".

**SEC. 3003. REPEAL OF SECTION 412.**

Section 412 of the Rural Electrification Act of 1936 (7 U.S.C. 950b) is hereby repealed.

**SEC. 3004. REPEAL OF SECTION 311.**

Section 311 of the Rural Electrification Act of 1936 (7 U.S.C. 940a) is hereby repealed.

**SEC. 3005. GRANTS TO ENABLE PROVIDERS OF HEALTH CARE AND EDUCATIONAL SERVICES IN RURAL AREAS TO IMPLEMENT INTERACTIVE TELECOMMUNICATIONS SYSTEMS.**

(a) FINDINGS.—The Congress finds that—

(1) interactive telecommunications systems hold the potential to alleviate many of the problems rural Americans face in obtaining access to adequate health care and expanded educational services; and

(2) access to such systems by providers of health care services and educational institutions in rural areas would greatly increase their ability to provide more comprehensive health care and education to rural, underserved populations.

(b) GRANT PROGRAM.—Subtitle D of title XXIII of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended by adding at the end the following:

"CHAPTER 3—IMPROVEMENT OF HEALTH CARE SERVICES AND EDUCATIONAL SERVICES THROUGH TELECOMMUNICATIONS

**"SEC. 2338. GRANT PROGRAM.**

"(a) ESTABLISHMENT.—The Administrator of the Rural Electrification Administration (in this chapter referred to as the 'Administrator') shall establish a program for providing grants to any qualified consortium to assist the consortium in obtaining access to modern interactive telecommunications systems through the public switched network.

"(b) DEFINITIONS.—

"(1) QUALIFIED CONSORTIUM.—As used in this chapter, the term 'qualified consortium' means a consortium which—

"(A) provides health care services or educational services in a rural area of a qualified State; and

"(B) is composed of—

"(i) a tertiary care facility, rural referral center, or medical teaching institution, or an educational institution accredited by the State;

"(ii) any number of institutions that provide health care services or educational services; and

"(iii)(I) in the case of a consortium seeking a grant under this chapter to improve health care services, not less than 3 rural hospitals, clinics, community health centers, migrant health centers, local health departments, or similar facilities; or

"(II) in the case of a consortium seeking a grant under this chapter to improve educational services, not less than 3 educational institutions accredited by the State.

"(2) QUALIFIED STATE.—The term 'qualified State' means a State which has adopted, within 1 year after the date final regulations are prescribed to carry out this chapter, a plan for the upgrading and modernization of the rural telecommunications infrastructure of the State which, among other things—

"(A) provides for the elimination of party line service in rural areas of the State;

"(B) encourages and improves the use of telecommunications, computer networks, and related advanced technologies to provide educational and medical benefits to people in rural areas of the State;

"(C) provides for an enhancement in the quality and availability of educational opportunities for students in rural areas of the State;

"(D) provides for improvement in the quality of medical care provided, and access to medical care afforded, to people in rural areas of the State;

"(E) provides incentives for local telephone exchange carriers to improve the quality of telephone service and access to advanced telecommunications services for subscribers in rural areas of the State, including facsimile document transmission, multifrequency tone signaling services, interactive audio and video transmissions, voicemail services, and other telecommunications services;

"(F) provides for the full participation of rural areas in the modernization of the telecommunications network through the implementation of joint coordinated network planning, design, and cooperative implementation among all local telephone exchange carriers in the provision of public switched network infrastructure and services;

"(G) provides for the achievement, preservation, and enhancement of universal service by bringing reasonably priced, high-quality, advanced telecommunications network capabilities to the people of the rural areas of the State, including through the sharing of public switched network infrastructure and functionality by local telephone exchange carriers at the request of local telephone exchange carriers lacking economies of scale or scope to provide such infrastructure or functionality on their own;

"(H) provides for the achievement of such goals within 10 years after the adoption of the plan; and

"(I) does not alter the boundaries of any local telephone exchange company franchised service area designated or recognized by the State, or the equivalent in the State.

"(3) RURAL AREA.—The term 'rural area' has the meaning given such term in section 203(b) of the Rural Electrification Act of 1936.

"(4) TELEPHONE SERVICE.—The term 'telephone service' has the meaning given such term in section 203(a) of the Rural Electrification Act of 1936.

"(c) SELECTION OF GRANT RECIPIENTS.—

"(1) APPLICATION REQUIREMENT.—

"(A) IN GENERAL.—Any qualified consortium that provides services in a State and desires to obtain a grant under this chapter shall submit to a State agency designated by the Governor of the State an application in such form, containing such information and assurance, and at such time, as the Administrator may require.

"(B) CONTENTS OF APPLICATION.—The application shall contain or be accompanied by—

"(i) a copy of the State plan described in subsection (b)(2);

"(ii) the plan of the applicant, for obtaining access to interactive telecommunications systems, which—

"(I) specifies, consistent with subsection (f), the uses to be made of such systems;

"(II) demonstrates that the systems will be capable of being readily connected to the established public switched network; and

"(III) is compatible with the State plan; and

"(iii) a commitment by the State to make a grant to the applicant in an amount equal

to 20 percent of the funds required to carry out the plan of the applicant, conditional upon a commitment by the Administrator to make 1 or more grants to the applicant under this chapter in an amount equal to 80 percent of the funds required to carry out the plan of the applicant.

"(2) REVIEW AND COMMENT.—The State agency shall review the application and the applicant's plan and, after any revisions made by the applicant are incorporated, transmit to the Administrator the application and plans, and the comments of the State agency.

"(3) SELECTION OF GRANTEES.—The Administrator shall—

"(A) review the applications and plans transmitted pursuant to paragraph (2);

"(B) consider the comments of the State agency with respect to the application; and

"(C) make grants in accordance with paragraph (4) to each applicant therefor that complies with the requirements of this chapter and the regulations prescribed by the Administrator to carry out this chapter.

"(4) PRIORITIES.—Priority for grants under this chapter shall—

"(A) be accorded to applicants whose applications demonstrate—

"(i) the greatest likelihood of successfully and efficiently carrying out the activities described in subsection (f)(1);

"(ii) the participation of the local telephone exchange carrier in providing and operating the telecommunications transmission facilities required by the plan; and

"(iii) unconditional financial support from the local community; and

"(B) so as to ensure, to the extent possible, that various regions of the United States benefit from the use of the grants.

"(d) MAXIMUM AMOUNT OF GRANT.—The amount of each grant under this chapter shall not exceed $1,500,000.

"(e) DISTRIBUTION OF GRANTS.—Grants to any qualified consortium under this chapter shall be disbursed over a period of not more than 3 years.

"(f) USE OF FUNDS.—

"(1) IN GENERAL.—Grants under this chapter may be used to support the costs of activities involving the sending and receiving of information to improve health care services or educational services in rural areas, including—

"(A) in the case of grants to improve health care services—

"(i) consultations between health care providers;

"(ii) transmitting and analyzing x-rays, lab slides, and other images;

"(iii) developing and evaluating automated claims processing, and transmitting automated patient records; and

"(iv) developing innovative health professions education programs;

"(B) in the case of grants to improve educational services—

"(i) developing innovative education programs and expanding curriculum offerings;

"(ii) providing continuing education to all members of the community;

"(iii) providing the means for libraries of educational institutions or public libraries to share resources;

"(iv) providing the public with access to State and national data bases;

"(v) conducting town meetings; and

"(vi) covering meetings of agencies of State government; and

"(C) in all cases—

"(i) transmitting financial information; and

"(ii) such other related activities as the Administrator deems to be consistent with the purposes of this chapter.

"(2) LIMITATION ON ACQUISITION OF INTERACTIVE TELECOMMUNICATIONS EQUIPMENT.—Not more than 40 percent of the amount of any grant made under this chapter may be used to acquire interactive telecommunications end user equipment.

"(3) LIMITATION ON USE OF CONSULTANTS.—Not more than 5 percent of the amount of any grant made under this chapter may be used to employ or contract with any consultant or similar person.

"(4) PROHIBITIONS.—Grants made under this chapter may not be used, in whole or in part, to establish or operate a telecommunications network or to provide any telecommunications service for hire.

"(g) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—

"(1) GRANTS TO IMPROVE RURAL HEALTH CARE SERVICES.—For grants under this chapter to improve health care services, there are authorized to be appropriated to the Administrator not to exceed $30,000,000 for each fiscal year.

"(2) GRANTS TO IMPROVE RURAL EDUCATIONAL SERVICES.—For grants under this chapter to improve educational services, there are authorized to be appropriated to the Administrator not to exceed $20,000,000 for each fiscal year.

"(3) AVAILABILITY OF FUNDS.—Sums appropriated pursuant to this subsection are authorized to remain available until expended.".

(c) ELIMINATION OF PREFERENCE FOR RURAL TELEPHONE BANK LOANS FOR BORROWERS LOCATED IN STATES WITH PLANS FOR UPGRADING RURAL TELECOMMUNICATIONS INFRASTRUCTURE.—Section 408(b)(2) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)(2)) is amended by inserting "which is not located in a qualified State (as defined in section 2338(b)(2) of the Food, Agriculture, Conservation, and Trade Act of 1990)" after "any borrower".

**SEC. 3006. INCREASE IN LIMITATION ON POPULATION OF RURAL AREAS FOR PURPOSES OF TELEPHONE LOANS.**

(a) IN GENERAL.—Section 203(b) of the Rural Electrification Act of 1936 (7 U.S.C. 924(b)) is amended by striking "one thousand five hundred" and inserting "10,000".

(b) CONFORMING AMENDMENT.—Section 13 of such Act (7 U.S.C. 913) is amended by inserting "(except in title II)" before "shall be deemed to mean any area".

**SEC. 3007. SENSE OF THE CONGRESS.**

It is the sense of the Congress that persons who are eligible for telephone loans under the Rural Electrification Act of 1936 and are interested in upgrading telecommunications in rural areas should obtain financial assistance under such Act through a subsidiary in order to limit the assets subject to the lien requirements of such Act.

**SEC. 3008. REGULATIONS.**

Within 180 days after the date of the enactment of this Act, the Administrator of the Rural Electrification Administration and the Governor of the Rural Telephone Bank shall prescribe such regulations as may be necessary to carry out the amendments made by this title.

## TITLE IV—PERISHABLE AGRICULTURAL COMMODITIES ACT TECHNICAL AMENDMENTS OF 1992

**SEC. 4001. SHORT TITLE.**

This title may be cited as the "Perishable Agricultural Commodities Act Technical Amendments of 1992".

**SEC. 4002. REAFFIRMATION OF FINDINGS.**

Congress hereby reaffirms the findings of section 5(c)(1) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499(c)(1)) that a burden on commerce in perishable agricultural commodities is caused by financing arrangements under which commission merchants, dealers, or brokers, who have not made payment for perishable agricultural commodities purchased, contracted to be purchased, or otherwise handled by them on behalf of another person, encumber or give lenders a security interest in, such commodities, or on inventories of food or other products derived from such commodities or products, and any receivables or proceeds from the sale of such commodities or products, and that such arrangements are contrary to the public interest; and that section 5(c) of such Act is intended to remedy such burden on commerce in perishable agricultural commodities and to protect the public interest.

**SEC. 4003. TECHNICAL AMENDMENT.**

Section 5(c)(2) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)(2)) is amended to read as follows:

"(2) Perishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held in trust by such commission merchant, dealer, broker, or by a lender who finances the business operations of such a commission merchant, dealer, or broker, whether or not the lender holds a security interest in such trust assets, for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents. Payment shall not be considered to have been made if the supplier, seller, or agent receives a payment instrument which has been dishonored. The provisions of this subsection shall not apply to transactions between a cooperative association (as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), and its members.".

## TITLE V—EQUITABLE TREATMENT FOR SUGARCANE PRODUCERS

**SEC. 5001. EQUITABLE TREATMENT FOR PRODUCERS.**

Section 359f(b)(5) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359ff(b)(5)) (hereinafter referred to as "the 1938 Act"), is amended by striking subparagraph (B) and inserting the following:

"(B) DETERMINATION OF VIOLATION.—No producer shall be considered to have violated subparagraph (A) unless the processor of the sugarcane harvested by such producer from acreage in excess of the proportionate share of the farm markets an amount of sugar that exceeds the allocation of such processor for a fiscal year.

"(C) CIVIL PENALTY.—Any producer on a farm who violates subparagraph (A) by knowingly harvesting, or allowing to be harvested, an acreage of sugarcane in excess of the farm's proportionate share shall be liable to the Commodity Credit Corporation for a civil penalty equal to one and one-half times the United States market value of the quantity of sugar that is marketed by the processor of such sugarcane in excess of the allocation of such processor for the fiscal year. The Secretary shall prorate penalties imposed under this subparagraph in a fair and equitable manner among all the producers of sugarcane harvested from excess acreage that is acquired by such processor.".

**SEC. 5002. ADJUSTMENT AFTER DISASTER.**

Section 359f(b) of the 1938 Act, as amended by section 5001 of this Act, is further amended by inserting after paragraph (6) the following new paragraph:

"(7) ADJUSTMENTS.—Whenever the Secretary determines that, because of a natural disaster or other condition beyond the control of producers that adversely affects a crop of sugarcane subject to proportionate shares, the amount of sugarcane produced by producers subject to the proportionate shares will not be sufficient to enable processors in the State to meet the State's cane sugar allotment and provide a normal carryover inventory of sugar, the Secretary may uniformly allow producers to harvest an amount of sugarcane in excess of their proportionate share, or suspend proportionate shares entirely, as necessary to enable processors to meet the State allotment and provide a normal carryover inventory of sugar.".

**SEC. 5003. CLARIFYING AND CONFORMING AMENDMENTS.**

Section 359f(b) of the 1938 Act, as amended by sections 5001 and 5002 of this Act, is further amended—

(1) in paragraph (1)(B), by—

(A) striking "production of sugar" and inserting "production of sugarcane"; and

(B) inserting "of sugar" before the period at the end;

(2) in the first sentence of paragraph (2), by—

(A) striking "sugar processed from all crops by all processors" and inserting "sugarcane produced by producers in the area"; and

(B) inserting "of sugar" after "provide a normal carryover inventory"; and

(3) in the second sentence of paragraph (2), by inserting "paragraph (7) and" after "under".

**TITLE VI—USE OF ELECTRONIC COTTON WAREHOUSE RECEIPTS**

**SEC. 6001. USE OF ELECTRONIC COTTON WAREHOUSE RECEIPTS.**

Section 17 of the United States Warehouse Act (7 U.S.C. 259) is amended—

(1) in paragraph (1)(A) of subsection (c)—

(A) by striking "The Secretary of Agriculture, or" and inserting "Notwithstanding any other provisions of State or Federal law, the Secretary of Agriculture, or";

(B) by striking "licensed under this Act" and inserting "licensed under this Act or in any other warehouse";

(C) by striking "section 18" and inserting "section 18 or under any applicable State law";

(2) in paragraph (2)(A) of subsection (c), by striking "of this Act" and inserting "of this Act or State law";

(3) in paragraph (2)(B) of subsection (c), by striking "the Secretary may" and inserting "with respect to cotton stored in a warehouse licensed under this Act, the Secretary may";

(4) in paragraph (3) of subsection (c), by striking "licensed under this Act" and inserting "covered under this subsection"; and

(5) by adding the following new subsection at the end thereof:

"(e) Notwithstanding any other provision of State or Federal law, any person designated as a holder of an electronic cotton warehouse receipt on a record in a system of records applicable to cotton maintained on an electronic cotton warehouse receipt system approved by the Secretary of Agriculture pursuant to regulations issued under this section shall, for the purposes of perfecting the security interest of such person under State or Federal law with respect to the cotton covered by such warehouse receipt, be considered to be in possession of the warehouse receipt. This subsection is applicable to electronic cotton warehouse receipts covering cotton stored in a cotton warehouse, whether or not such warehouse is licensed under this Act.".

AMENDMENT NO. 3417

Mr. FORD. I move that the Senate concur in the amendment of the House with a further amendment, which I send to the desk on behalf of Senators LEAHY and LUGAR.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. LEAHY, for himself, and Mr. LUGAR, proposes an amendment numbered 3417.

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

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

(The text of the amendment appears in today's RECORD under "Amendments Submitted.")

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. FOWLER. Mr. President, this legislation is extremely important to the beginning farmers of America and I am pleased to support its passage. However, we have failed to address an important provision expanding the lending authority of the Farm Credit System. I have worked long and hard with the chairman of the Agriculture Committee on this matter and we have come to an agreement which temporarily resolves some of my concerns.

Mr. LEAHY. The interest of the Senator from Georgia in this matter is well documented and he should be commended for his commitment to expanding economic development opportunities in rural America.

Mr. FOWLER. I thank my distinguished chairman and want to clarify our agreement. It is my understanding the Senate Committee on Agriculture, Nutrition, and Forestry will hold a full committee hearing on the expansion of the Farm Credit System's lending authority early next year?

Mr. LEAHY. The distinguished Senator from Georgia is correct. The committee will hold a hearing on that matter at the beginning of the 103d Congress early next year.

Mr. FOWLER. It is also my understanding that after the hearing the committee members will examine the testimony to determine if there is interest in moving forward with legislation. If there is significant interest in moving forward with legislation expanding the lending authority of the Farm Credit System, the committee will act accordingly.

Mr. LEAHY. If after the hearing there is a desire by the members of the committee to address the expansion of lending authority, the committee will act accordingly.

Mr. FOWLER. I thank the Senator from Vermont and also want to recognize his continued leadership on the many issues facing rural America.

Mr. LEAHY. Mr. President, it is with great pleasure that I discuss one section of S. 1709. This act will revitalize the Industrial Development Grant Program. In the past, that program far too narrowly focused on aiding employers—instead of also aiding employees who want job advancement or persons that need job training.

The bureaucratic rules became a straitjacket, preventing dedicated Vermont staff—and USDA staff in other States—from doing their job.

Attracting businesses to Vermont and training Vermonters for quality jobs in Vermont should be top priority for any Vermont business development program.

All too often stacks of regulations written in Washington hinder operations at the local level. The program become buried in red tape. Paperwork and auditing requirements should not be more important than effective educational instruction for job advancement or training.

This act is intended to cut through the paperwork. It will greatly help in Vermont if the USDA officials in Washington properly implement this law. It should be noted that the law is effective on enactment.

The act is designed to permit a much closer coordination between businesses that are considering locating in Vermont and job training and education programs.

Vermont Interactive Television, for example, wants to provide courses and programming aimed at preparing a quality Vermont work force. They were just issued a $400,000 grant to provide technical assistance and training to rural businesses. But red tape would have made it harder to achieve its goals.

This act specifically allows those funds to be used for the expansion and operation of rural distance learning networks, including the VIT network, so as to provide educational instruction or job training to adult students.

I want to thank several people that have played key roles in the expansion of this great program. Dr. Charles Bunting, chancellor of Vermont State Colleges, and Dr. Robert Clarke, president of the Vermont Technical College, provided the key leadership.

Dr. Patricia Thomas, chair of the coordination council for VIT and Judy

Hastings, program manager for Vermont interactive television, should be recognized for their tremendous contributions and for the long hours they have spent making VIT a great success.

Joe Mora, of the Vermont State Colleges, has been extremely helpful in assisting in this effort. USDA staff in Vermont, Rhonda Shippee and Bert MacIntyre, have done their best to help with this project. I greatly appreciate the time and effort they have spent on this program and their dedication to improving rural America.

I intend to carefully monitor USDA's issuance of regulations in Washington to make sure they do not interfere with VIT's ability to offer outstanding programming to Vermonters. I want to stress again that this act is effective when it is signed by the President and I urge the Department not to delay implementation.

Mr. DOMENICI. Mr. President, I would like to take this time to express my sincere appreciation to the distinguished chairman and ranking member of the Committee on Agriculture, Nutrition, and Forestry for including a technical amendment to the Consolidated Farm and Rural Development Act in this bill.

The amendment corrects a technicality that will help small rural communities along our southern border.

Mr. President, H.R. 5487, the Agriculture, Rural Development, Food and Drug Administration, and related agencies appropriations public law for fiscal year 1993, includes $25 million for these small rural communities known as colonias under the Rural and Waste Disposal Grants Program.

The funding for these small rural communities was requested by the President to address the serious water and wastewater deficiencies in those communities.

I am very pleased that the Agriculture appropriations conferees included funding for this very important program in the Agriculture appropriations bill which is now public law. But Mr. President, it has been brought to my attention that many of the colonias in my State may not even qualify for the grants because of technicalities in the final legislative language.

Mr. President, let me first explain the significance of this very important funding for the colonias.

The colonias are small, unincorporated rural communities with population ranging from about 250 persons to about 5,000 persons.

Many of the colonias were originally settled over 100 years ago, and the majority of the residents are low-income families of Mexican and Mexican-American descent.

There are hundreds of individuals that live in the colonias that will suffer from a lack of adequate water and sanitation facilities.

This situation is truly dangerous in terms of sanitation and health hazards from the lack of proper water and sewer systems.

Others have recognized the serious nature of this problem and funding for the colonias.

In fact, Mr. President, the conference report accompanying the Agriculture appropriations bill includes language asking the President of the United States to urge the appropriate agencies, to develop a comprehensive and coordinated strategy and plan of action for the delivery of assistance and programs to improve the adverse environmental and health problems of the colonias.

It seems to me that both the Congress and the President see the urgent needs of the colonias. But because of some technicalities that have arisen the colonias, at least 12 of the 14 colonias in my State of New Mexico, would not have qualified for this important funding without the amendment being adopted here.

According to the Consolidated Farm and Rural Development Act, section 306C(a)(2), moneys under this program will be distributed to a particular county only if that county's unemployment rate is not less than 125 percent of the National average and the per capita income of the residents is not more than 70 percent of the national average per capita income.

The majority of the colonias are located in Dona Ana County in my State of New Mexico.

Mr. President, presently the County of Dona Ana, does not qualify because its unemployment rate ranges around 110 percent of the national average. This is due, in part, because Dona Ana is a very large county and includes the thriving city of Las Cruces, New Mexico State University and the White Sands missile range which bring down the County's overall unemployment rate.

Because the county does not qualify the colonias in that county would not have received funding under this initiative. The colonias and the surrounding rural areas in Dona Ana County paint a much gloomier picture than the city of Las Cruces. I believe the colonias are well above 125 percent of the national unemployment average.

Mr. President, the technical change in this bill will amend section 306C(a)(2) of the Consolidated Farm and Rural Development Act to include a rural area which was recognized as a colonia as of October 1, 1989.

Because of this technical change, the colonia in Dona Ana County, as well as colonias in other counties, will have a chance to receive funding to address their water and wastewater needs.

Mr. LUGAR. Mr. President, today the Senate is considering a series of provisions addressing issues relating to agricultural credit, rural development and improvements of a technical nature to existing farm programs.

These bills contain many important provisions that deserve the attention and support of the Senate. One of the bills, S. 1709, H.R. 6125—pertaining to the Farm Credit System, contains provisions that address issues raised by the Treasury Department and the General Accounting Office [GAO] in their 1991 review of Government sponsored enterprises [GSE]. Importantly, it contains language that unequivocally restates the obligation of the Farm Credit System to repay the Federal assistance authorized in the 1987 Farm Credit Act. This bill also establishes an orderly schedule for the repayment of that debt. The farmers and ranchers comprising the Farm Credit System should be commended for their efforts to implement this repayment schedule.

For the Members not as close to the farm credit situation, I am pleased to report that net income for the System and individual banks has been up for the past several years, and every year marks a drop in the level of nonaccruing loans is dropping in virtually every farm credit district. Further the System is continuing to contribute to its own self insurance fund to protect against future requests for Federal assistance. Currently that fund is capitalized at a level of approximately $660 million.

The language of the bill requires each System bank to enter into or continue in effect an agreement with the Farm Credit System Financial Assistance Corporation [FAC] such that each bank will make annual annuity-type payments to the Financial Assistance Corporation that will provide for the orderly funding of each bank's obligation under section 6.9(e) of the Farm Credit Act of 1971, as amended.

In December of 1990, the three banks for cooperatives entered into agreements under which certain payments have been made to FAC consistent with the requirement. The remaining System banks entered into similar agreements at the end of 1991, but these never became operable. It is the intent of this bill that the agreements executed by the System banks, to the extent that they are consistent with the requirements of this bill, qualify as the agreements required by the section of this legislation dealing with the repayment of capital preservation commitments.

Another bill, contains provisions that would assist beginning farmers and ranchers begin their farming ventures. I strongly support that objective. The bill also contains a provision that establishes a timeframe under which FmHA borrowers are directed to leave the FmHA umbrella and seek private sources of capital. This bill requires graduation from FmHA lending after 10 years. I also strongly favor that graduation provision.

I believe it is important that Congress take all possible steps to redirect the lending focus of the FmHA away from being source of subsidized credit to marginal farmers almost in perpetuity toward a proactive focus of assisting new farmers to acquire the experience and land to begin a career in farming.

Mr. President, these bills have been carefully reviewed over the past several weeks and I believe have been tailored to address any concerns raised by Members. I urge their swift consideration.

## ELHAM GHANDOUR CICIPPIO RELIEF ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar 779, S. 2499, a bill for the relief of Elham Ghandour Cicippio.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2499) for the relief of Elham Ghandour Cicippio.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. WAIVER OF PERIOD OF RESIDENCY REQUIREMENT.**

Elham Ghandour Cicippio shall be considered to have satisfied the requirements of section 316 of the Immigration and Nationality Act relating to required periods of residence and physical presence within the United States, and, notwithstanding section 310(d) of that Act, may be naturalized if she is otherwise eligible for naturalization under that Act.

**SEC. 2. LIMITATION OF WAIVER.**

Section 1 shall apply only if Elham Ghandour Cicippio files an application for naturalization within 60 days after the date of the enactment of this Act.

AMENDMENT NO. 3418, EN BLOC

(Purpose: For the relief of Elham Ghandour Cicippio)

Mr. SIMPSON. Mr. President, on behalf of Senator SPECTER, I send two amendments to the desk, en bloc, and ask for their immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. SPECTER, proposes amendments, en bloc, numbered 3418.

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

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

The amendments are as follows:

On page 1, line 9, strike "310(d)" insert "316(a)(1)".

On page 1, line 6, strike "316" insert "319(a)".

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendments, en bloc.

The amendments (No. 3418), en bloc, were agreed to.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2499

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

**SECTION 1. WAIVER OF PERIOD OF RESIDENCY REQUIREMENT.**

Elham Ghandour Cicippio shall be considered to have satisfied the requirements of section 319(a) of the Immigration and Nationality Act relating to required periods of residence and physical presence within the United States, and, notwithstanding section 316(a)(1) of that Act, may be naturalized if she is otherwise eligible for naturalization under that Act.

**SEC. 2. LIMITATION OF WAIVER.**

Section 1 shall apply only if Elham Ghandour Cicippio files an application for naturalization within 60 days after the date of the enactment of this Act.

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

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

The motion to lay on the table was agreed to.

## DAIRY AND DISASTER ASSISTANCE ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar 280, H.R. 2893, the Disaster and Dairy Assistance Act of 1991.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2893) to extend to 1991 crops the disaster assistance provisions of the Food, Agriculture, Conservation and Trade Act of 1990.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Agriculture, Nutrition, and Forestry, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

***SECTION 1. SHORT TITLE; TABLE OF CONTENTS.***

*(a) SHORT TITLE.—This Act may be cited as the "Dairy and Disaster Assistance Act of 1991".*

*(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:*

*Sec. 1. Short title; table of contents.*

*TITLE I—DAIRY PRICE SUPPORT AND STABILIZATION PROGRAM*

*Sec. 101. Findings.*
*Sec. 102. Policy and purpose.*
*Sec. 103. Price support operations; surplus reduction program.*
*Sec. 104. Standards of identity for milk.*
*Sec. 105. Mandated dairy sales to the Soviet Union.*
*Sec. 106. Regulations.*
*Sec. 107. Effective date.*

*TITLE II—EMERGENCY CROP LOSS ASSISTANCE*

*Sec. 201. Extension of emergency crop loss assistance to 1990 and 1991 crops.*
*Sec. 202. Emergency grants to assist low-income migrant and seasonal farmworkers.*
*Sec. 203. Emergency aquaculture program.*
*Sec. 204. Emergency livestock feed assistance.*
*Sec. 205. Emergency forage program.*

***TITLE I—DAIRY PRICE SUPPORT AND STABILIZATION PROGRAM***

***SEC. 101. FINDINGS.***

*Congress finds that—*

*(1) milk and dairy products are basic foods and as a valuable part of the human diet a primary source of required nutrients, such as calcium;*

*(2) the production of milk and dairy products plays a significant role in the economy of the United States, in that—*

*(A) milk and dairy products are consumed by millions of people in the United States every day; and*

*(B) the production of milk and dairy products involves approximately 200,000 dairy farmers and requires substantial handling, processing, and marketing resources;*

*(3) dairy farmers have a relatively limited ability to protect themselves from price risk in that—*

*(A) the commodity they produce is not easily storable;*

*(B) they are restricted in their access to forward pricing or hedging; and*

*(C) dairy farming is so specialized that they cannot mitigate price risk by diversifying the mix of commodities they produce;*

*(4) unstable farm prices are detrimental to the nation's consumers of milk because processors, in order to manage their risk, will increase margins above levels expected with stable prices;*

*(5) current dairy program policies, which do not include an inventory management component, have failed to prevent the producer market price for milk from collapsing in 1990 and in 1991;*

*(6) the all-milk price is expected to be less than the cost of production, subjecting dairy farmers to financial stress not experienced in decades;*

*(7) without further action, producer milk prices in future years will continue to be unstable, making it difficult to maintain an economically healthy dairy sector;*

*(8) the measures resulting from the amendments made by this title, including the surplus reduction program, are needed to—*

*(A) ensure consumers of a reliable and adequate supply of pure and wholesome milk and dairy products at reasonable prices;*

*(B) respond adequately to current and anticipated future dairy supply and demand problems; and*

*(C) ensure a level of farm income for dairy producers adequate to maintain productive capacity sufficient to meet the anticipated future needs; and*

*(9) the measures resulting from the amendments made by this title should avoid any increase in net Federal outlays in the milk price support program.*

***SEC. 102. POLICY AND PURPOSE.***

*(a) IN GENERAL.—It is declared to be the policy of Congress that it is in the public interest to—*

*(1) balance milk production and consumption in order to improve and stabilize farm income and limit Government expenditures;*

*(2) reduce undesirable fluctuations in supplies and prices of milk and stabilize the price of milk at fair and reasonable levels to protect the interests of consumers and producers; and*

*(3) facilitate orderly marketing conditions for milk and dairy products to enable dairy farmers in the United States to respond adequately to the needs of consumers.*

*(b) PROTECTION OF CONSUMERS.—It is the sense of Congress that the authorities provided by this title and the amendments made by this title shall be used to ensure the production of pure and wholesome milk and dairy products at the level required to meet the needs of consumers in the United States.*

***SEC. 103. PRICE SUPPORT OPERATIONS; SURPLUS REDUCTION PROGRAM.***

*(a) PRICE SUPPORT.—Subsection (b) of section 204 of the Agricultural Act of 1949 (7 U.S.C. 1446e(b)) is amended to read as follows:*

*"(b) RATE.—*

*"(1) 1991.—During the period beginning on January 1, 1991, and ending on December 31, 1991, the price of milk shall be supported at a rate of not less than $10.10 per hundredweight for milk containing 3.67 percent milkfat.*

*"(2) 1992 THROUGH 1995.—*

*"(A) IN GENERAL.—During the period beginning on January 1, 1992, and ending on December 31, 1995, the price of milk shall be supported at a rate of not less than $11.10 per hundredweight for milk containing 3.67 percent milkfat.*

*"(B) ADJUSTMENT FOR PROGRAM OPERATION.—Notwithstanding any other provision of law, if net removals by the Commodity Credit Corporation exceed 5 billion pounds of milk and products of milk (milk equivalent, total milk solids basis) for any year, the Secretary shall support the price in the immediately subsequent year at a rate of not less than $12.10 per hundredweight for milk containing 3.67 percent milkfat.".*

*(b) BUTTER AND NONFAT DRY MILK.—Paragraph (3) of section 204(c) of such Act is amended to read as follows:*

*"(3) BUTTER AND NONFAT DRY MILK.—*

*"(A) ESTABLISHED PURCHASE PRICES.—*

*"(i) 1992.—In calendar year 1992, the Secretary shall establish the purchase price for butter at not more than $0.9425 per pound, and the purchase price for nonfat dry milk at not less than $0.995 per pound.*

*"(ii) 1993 THROUGH 1995.—In each of the calendar years 1992 through 1995, the Secretary shall establish the purchase price for butter and nonfat dry milk as the Secretary determines to be appropriate.*

*"(B) NOTIFICATION.—If the Secretary determines that the rate of price support between the purchase prices for nonfat dry milk and butter should be allocated in a manner that does not result in the lowest level of expenditures by the Commodity Credit Corporation, the Secretary shall notify the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the alternative allocation and the justification for the alternative allocation.*

*"(C) TIMING OF PURCHASE PRICE ADJUSTMENT.—The Secretary may make adjustments in the purchase prices for nonfat dry milk and butter the Secretary considers to be necessary not more than twice in each calendar year.".*

*(c) RECOURSE LOANS FOR PROCESSED MILK PRODUCTS.—Subsection (e) of section 204 of such Act is amended to read as follows:*

*"(e) RECOURSE LOANS FOR PROCESSED MILK PRODUCTS.—*

*"(1) IN GENERAL.—Beginning on January 1, 1993, if the Secretary determines that operation of a recourse loan program will improve the orderly marketing of dairy products and the stability of dairy product prices, the Secretary may make available to processors of milk a recourse loan on products of milk (butter, cheese, and nonfat dry milk).*

*"(2) RATE.—The Secretary shall offer loans on the products at a rate that will enable plants of average efficiency to pay producers, on average, a price that is at least 95 percent but not more than 100 percent of the simple average price received by producers for manufacturing grade milk containing 3.67 percent milkfat for the immediately preceding 5 years, excluding the year in which the average price was the highest and the year in which the average price was the lowest.*

*"(3) TERMS.—Loans shall be made under this section only in the first 5 months of the calendar year and shall mature at the earlier of—*

*"(A) the end of 6 months; or*

*"(B) the end of the fiscal year.*

*"(4) ASSESSMENT.—*

*"(A) IN GENERAL.—No later than December 1, 1992, the Secretary shall assess the extent to which the operation of a recourse loan program, made available to the processors of the products of milk, will improve the performance and functioning of dairy markets.*

*"(B) EFFECT ON ORDERLY MARKETING.—The Secretary shall consider the extent to which the operation of a recourse loan program will improve the orderly marketing of dairy products and the stability of dairy product prices within a marketing year.*

*"(C) CONSULTATION.—In conducting the assessment and as soon as possible after the assessment is completed, the Secretary shall consult with the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate and, as determined by the Secretary, appropriate representatives from the dairy industry.".*

*(d) SURPLUS REDUCTION PROGRAM.—Subsection (g) of section 204 of such Act is amended to read as follows:*

*"(g) SURPLUS REDUCTION AND PREVENTION PROGRAM.—*

*"(1) IN GENERAL.—The Secretary shall enter into contracts in each of the 1992 through 1995 calendar years with producers in the United States to reduce the marketings of milk for commercial use to ensure that annual net removals by the Commodity Credit Corporation do not exceed 4.5 billion pounds (milk equivalent, total milk solids basis).*

*"(2) NATIONAL REDUCTION IN MILK MARKETINGS.—*

*"(A) ANNUAL DETERMINATION.—Not later than November 15 of each of the calendar years 1991 through 1994, the Secretary shall determine the national reduction in milk marketings necessary in the following calendar year to limit net removals by the Commodity Credit Corporation in the year to a level of not more than 4.5 billion pounds (milk equivalent, total milk solids basis).*

*"(B) CRITERIA.—In making the reduction determination required under subparagraph (A), the Secretary shall—*

*"(i) use the rate of price support that will be effective for the calendar year subsequent to the year in which the determination is made under this section; and*

*"(ii) assume there will be no new entrants during that calendar year in the surplus reduction and prevention program established under this subsection.*

*"(3) REGIONAL REDUCTION IN MILK MARKETINGS.—*

*"(A) IN GENERAL.—The Secretary shall ensure that participation in the surplus reduction and prevention program shall be proportionately distributed, based on the quantity of milk produced, among the regions identified in subparagraph (B).*

*"(B) DEFINITION OF REGIONS.—For purposes of this subsection, the United States shall be divided into seven geographic regions as follows:*

*"(i) California, Oregon, and Washington.*

*"(ii) Arizona, Arkansas, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Texas, Utah, and Wyoming.*

*"(iii) Illinois, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.*

*"(iv) Wisconsin.*

*"(v) Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.*

*"(vi) Delaware, Indiana, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, and West Virginia.*

*"(vii) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.*

*"(C) REGIONAL MARKETING PERCENTAGE.—Not later than November 15 of each of the calendar years 1991 through 1994, the Secretary shall determine a regional marketing percentage for each region that is equal to the ratio of—*

*"(i) the total quantity of milk marketed in the region in the 12 months prior to the determination; to*

*"(ii) the total quantity of milk marketed in the United States in the 12 months prior to the determination.*

*"(D) REGIONAL ALLOCATION.—To the extent practicable (taking into consideration the regional supply and demand for fluid milk), the Secretary shall determine the total reduction in the quantity of milk marketed for a region under the surplus reduction and prevention program to be equal to the product obtained by multiplying—*

*"(i) the national reduction in milk marketings, as determined under paragraph (2); by*

*"(ii) the regional marketing percentage for that region, as determined under subparagraph (C).*

*"(4) SURPLUS REDUCTION CONTRACTS.—*

*"(A) IN GENERAL.—Beginning on January 1, 1992, the Secretary shall provide cash payments from the Commodity Credit Corporation to producers who enter into surplus reduction contracts to reduce the quantity of milk the producers market for commercial use during the relevant time period.*

*"(B) RATE OF PAYMENTS.—In determining the amount to be paid to producers under the contracts, the Secretary may offer payments to, or accept bids from, producers at a level that is necessary to achieve the national and regional reductions in milk marketings required under this subsection.*

*"(C) PERIOD OF CONTRACT.—In those cases in which contracts are entered into, the Secretary shall offer to enter into contracts in which a participant shall reduce the quantity of milk marketed by the participant over a period of 24 to 36 months, as determined by the Secretary. The Secretary may offer contracts for a shorter period to permit the dairy industry to adjust to unforeseen changes in factors affecting milk production, prices, and the demand for milk products, as determined by the Secretary. In no case shall contracts be for a period of less than 12 months.*

*"(D) ANNUAL LEVEL OF REDUCTION.—For each year of a contract, the level of reduction in the*

*quantity of milk marketed shall be equal to the product obtained by multiplying—*

*"(i) not less than 5 percent, nor more than 30 percent; by*

*"(ii) the producer's relevant milk marketing history for that contract year, as determined pursuant to subparagraph (E).*

*"(E) MILK MARKETING HISTORY.—For purposes of surplus reduction contracts entered into under this subsection, a producer's milk marketing history shall be equal to—*

*"(i) for a producer entering into a surplus reduction contract for reduction beginning in calendar year 1992, the quantity of milk marketed by a producer during 1991;*

*"(ii) for a producer entering into a surplus reduction contract for reduction beginning in calendar year 1993, the average quantity of milk that is marketed and considered marketed by the producer during 1991 and 1992; and*

*"(iii) for a producer entering into a surplus reduction contract for reduction beginning in calendar year 1994 or 1995, the average quantity of milk that is marketed and considered marketed by the producer during the previous 3 years.*

*"(F) ENROLLMENT PERIOD.—*

*"(i) FREQUENCY OF ENROLLMENT PERIODS.—The Secretary shall offer to enter into surplus reduction contracts on at least three occasions during 1992, and on as many occasions during 1993 through 1995 as the Secretary determines necessary.*

*"(ii) INITIAL PERIOD.—The Secretary shall allow producers to enroll in the surplus reduction program for an initial period of at least 30 days prior to the beginning of the program. Subsequent enrollment periods shall be of such duration as determined by the Secretary.*

*"(G) PAYMENTS TO PARTICIPANTS.—*

*"(i) TIMING.—The Secretary shall make conditional whole or partial payments to participants in the surplus reduction program on at least a quarterly basis, or more frequently at the option of the Secretary.*

*"(ii) ANNUAL SETTLEMENT PAYMENT.—If necessary, the Secretary shall make an annual settlement payment at the end of each year of the contract period, based on the total reduction in the quantity of milk marketings by the producer during the year.*

*"(iii) REDUCTION IN PRICE RECEIVED.—Any producer that participates in the surplus reduction program shall not be subject to the reduction in price received under subsection (h) on milk marketed during the term of the contract.*

*"(H) FUNDING.—The Secretary shall make payments to participants in the surplus reduction program from funds of the Commodity Credit Corporation.*

*"(I) SEASONAL STABILITY.—The Secretary shall, to the maximum extent practicable and consistent with the other obligations and objectives of this section, administer the surplus reduction program in a manner that will reduce the seasonal fluctuation in the supply of milk produced in the United States.*

*"(J) OTHER TERMS.—Each contract may include such other terms and conditions as are necessary to ensure that the goals and objectives of the surplus reduction program are met, as determined by the Secretary.*

*"(5) SURPLUS PREVENTION CONTRACTS.—*

*"(A) IN GENERAL.—Beginning on January 1, 1992, the Secretary shall offer to enter into contracts with producers not to increase the level of their marketings of milk from the immediately preceding year, as determined in subparagraph (D).*

*"(B) REDUCTION IN PRICE RECEIVED.—Any producer that participates in the surplus prevention program shall not be subject to the reduction in price received under subsection (h) on milk marketed during the term of the contract.*

*"(C) PERIOD OF CONTRACT.—The Secretary shall offer to enter into contracts in which a participant shall agree not to exceed the quantity of milk marketed by the participant over a period of 12 months.*

*"(D) ANNUAL LEVEL OF MARKETINGS.—For each year of a surplus prevention contract, the level of milk marketed by the participant shall not exceed the quantity of milk marketed and considered marketed in the year immediately preceding the term of the contract.*

*"(E) ENROLLMENT PERIOD.—The Secretary shall allow producers to enroll in the surplus reduction program for an initial period of at least 30 days prior to the beginning of the program. Subsequent enrollment periods shall be of such duration as determined by the Secretary.*

*"(F) OTHER TERMS.—Each contract may include such other terms and conditions as are necessary to ensure that the goals and objectives of the surplus prevention program are met, as determined by the Secretary.*

*"(6) CONSIDERED MARKETED.—For purposes of calculating a marketing history under paragraphs (4) and (5), the producer may receive an allowance for amounts considered marketed in previous years only to the extent that for a year the producer enters into a contract under paragraph (4). The quantity of milk considered marketed for the year shall equal the quantity of contracted reduction for the year, except that there shall be no allowance made under this paragraph for quantities considered marketed if the quantity actually marketed in the year exceeded the quantity permitted by the year's contract.*

*"(7) RECORDS.—*

*"(A) MARKETING HISTORY.—Any producer of milk who seeks to enter into a contract for payments under this subsection shall provide the Secretary with evidence of the quantity of milk marketed by the producer in previous years to establish the producer's marketing history, as the Secretary considers necessary and appropriate.*

*"(B) OTHER RECORDS AND REPORTS.—Each producer who enters into a contract with the Secretary to reduce marketings under this subsection shall keep such records and make such reports as the Secretary determines necessary to carry out this subsection.*

*"(8) MODIFICATION OF CONTRACTS.—*

*"(A) AUTHORITY.—Subject to subparagraph (B), the Secretary may, in accordance with such rules or procedures as are prescribed by the Secretary, offer to modify contracts entered into under this subsection.*

*"(B) DETERMINATION.—Prior to a modification under subparagraph (A), the Secretary shall determine that, in the absence of the modification, net removals by the Commodity Credit Corporation would fall excessively below 4.5 billion pounds (milk equivalent, total milk solid basis) during the year.*

*"(9) ASSIGNMENT OF CONTRACTS.—A producer may, with the approval of the Secretary, assign a contract entered into under this paragraph only if—*

*"(A) the producer's interest in the entire milk production facility and the entire dairy herd used by the producer to produce milk for commercial marketings have been transferred as a unit to the person to whom the assignment is to be made;*

*"(B) the producer and the assignee agree in writing that the assignee shall succeed to all rights and liabilities of the producer under the contract; and*

*"(C) a copy of the writing is submitted to the Secretary before the transfer occurs.*

*"(10) DECEASED PRODUCERS.—A contract entered into under this subsection by a producer who by reason of death cannot perform or assign the contract may be performed or assigned, in accordance with paragraph (9), by the estate of the producer.*

*"(11) COMPLIANCE.—*

*"(A) IN GENERAL.—The Secretary shall ensure compliance by producers with the contracted level of reductions in the quantity of milk marketed, including contracts for a term in excess of 1 year. The Secretary shall ensure compliance with surplus reduction contracts on at least a quarterly basis, consistent with payments to producers under paragraph (4)(G)(i).*

*"(B) INITIAL ENROLLMENT.—During the initial enrollment period specified in paragraph (4)(F), the Secretary shall, at the option of the participant, not require full compliance with the terms and conditions of the surplus reduction contract until 45 days after entering into the contract. Full compliance with the terms and conditions of the contract shall be required on a quarterly basis, as provided in this paragraph.*

*"(C) VIOLATIONS OF SURPLUS REDUCTION CONTRACTS.—*

*"(i) REFUNDS.—If a producer violates a contract entered into under paragraph (4), the Secretary shall, as considered appropriate, require that all payments made under the contract be refunded by the producer, with interest at the rate equal, to the extent practicable, to the cost to the Commodity Credit Corporation of its borrowings from the United States Treasury for the relevant time period. The refund shall not relieve the producer from the obligations of the contract.*

*"(ii) PENALTIES.—A producer who enters into a contract under paragraph (4) shall be liable to the Secretary for marketing penalties, in addition to other remedies available under this section, if the producer—*

*"(I) fails to make a required reduction in milk marketings;*

*"(II) retains or acquires an interest in dairy cattle or the production of milk in violation of a contract entered into under this subsection;*

*"(III) makes a false statement in a bid submitted under paragraph (4) as to the producer's milk marketing history;*

*"(IV) makes a false statement as to the producer's reduction in milk marketings required under the contract; or*

*"(V) fails to meet such other terms and conditions of the contract, as the Secretary considers appropriate.*

*"(iii) LEVEL OF PENALTIES.—The amount of a marketing penalty shall be an amount determined by the Secretary that is the higher of—*

*"(I) $5,000 for the violation; or*

*"(II) the quantity of milk involved in the violation multiplied by the current support price, as determined under this section.*

*"(iv) EXCEPTION.—The Secretary may waive penalties under clause (iii) for a violation that is the result of inadvertent errors in reduction of marketings, as determined by the Secretary, except that the amount of a waiver may not exceed 5 percent of the quantity of the reduction in annual milk marketings by the producer provided for under the contract.*

*"(D) VIOLATIONS OF SURPLUS PREVENTION CONTRACTS.—*

*"(i) PENALTY.—If a producer violates a contract entered into under paragraph (5), the Secretary shall, as considered appropriate, require that the producer pay a penalty to the Commodity Credit Corporation for the relevant time period.*

*"(ii) VIOLATION.—The Secretary shall find a producer in violation of a contract if the producer—*

*"(I) exceeds the level of milk marketings provided in the contract;*

*"(II) makes a false statement as to the producer's level of milk marketings required under the contract; or*

*"(III) fails to meet such other terms and conditions of the contract, as the Secretary considers appropriate.*

"(iii) LEVEL OF PENALTY.—The level of the penalty authorized under clause (i) shall equal the sum of—

"(I) the product obtained by multiplying—

"(aa) the amount of the reductions in price received by the producer that would have applied under subsection (h) had that producer not participated in the surplus prevention program during the year; by

"(bb) the total quantity of milk marketed by the producer in that year; and

"(II) an amount determined by the Secretary that is the higher of—

"(aa) $5,000 for the violation; or

"(bb) the quantity of milk involved in the violation multiplied by the current support price, as determined under this section.

"(iv) EXCEPTION.—The Secretary may reduce any penalties under clause (iii)(II) by such amount as the Secretary determines equitable in any case in which the Secretary determines that the failure was unintentional or without knowledge on the part of the person concerned.

"(12) EFFECT ON THE LIVESTOCK INDUSTRY.—In order to minimize the adverse effect of the surplus reduction program on beef, pork, and poultry producers in the United States, the Secretary shall vary the beginning and ending dates of surplus reduction contracts in a region so that the slaughter of dairy animals as a result of the surplus reduction program will occur on a random basis.

"(13) USE OF GOVERNMENT RESOURCES.—In carrying out this subsection, the Secretary may, as the Secretary considers appropriate—

"(A) use the services of State and county committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)); and

"(B) enter into agreements to use, on a reimbursable basis, the services of administrators of the Federal milk marketing orders and State milk marketing programs.".

(e) REDUCTION IN PRICE RECEIVED.—Subsection (h) of section 204 of such Act is amended to read as follows:

"(h) REDUCTION IN PRICE RECEIVED.—

"(1) SURPLUS REDUCTION CONTRACTS.—

"(A) IN GENERAL.—During the period beginning on January 1, 1992, and ending on December 31, 1998, the Secretary shall provide for a reduction in the price received on all milk marketed in the United States for commercial purposes by producers that do not enter into surplus reduction or surplus prevention contracts under subsection (g).

"(B) RATE OF REDUCTION.—

"(i) 1992.—During calendar year 1992, the Secretary shall establish the rate of the reduction under subparagraph (A) in the price received by producers at an amount that is not more than $0.56 per hundredweight of milk marketed.

"(ii) 1993.—During calendar year 1993, the Secretary shall establish the rate of the reduction under subparagraph (A) in the price received by producers at an amount that is equal to the sum of—

"(I) the amount that is necessary to reimburse the Commodity Credit Corporation for all payments to producers who participate in the surplus reduction program under subsection (g)(4) in 1993; and

"(II) the amount, in excess of the funds collected under clause (i), that is necessary to reimburse the Commodity Credit Corporation for payments to producers who participated in the surplus reduction program under subsection (g)(4) in 1992.

"(iii) 1994 THROUGH 1998.—During each of the calendar years 1994 through 1998, the Secretary shall establish the rate of the reduction under subparagraph (A) in the price received by producers in an amount that is equal to the amount that is necessary to reimburse the Commodity Credit Corporation for all payments to producers who participate in the surplus reduction program under subsection (g)(4) in the corresponding year.

"(2) RECONCILIATION COMMITMENTS.—

"(A) 1991.—

"(i) AUTHORITY.—During the period beginning on January 1, 1991, and ending on December 31, 1991, the Secretary shall provide for a reduction in the price received by producers for all milk produced in the United States and marketed by producers for commercial use, in addition to any reduction in price required under paragraph (1).

"(ii) AMOUNT.—The amount of the reduction under clause (i) in the price received by producers shall be 5 cents per hundredweight of milk marketed.

"(iii) REFUND.—The Secretary shall provide a refund of the entire reduction under clause (ii) in the price of milk received by a producer during a calendar year if the producer provides evidence that the producer did not increase marketings in 1991 as compared to marketings by the producer in 1990.

"(B) 1992.—

"(i) AUTHORITY.—During the period beginning on May 1, 1992, and ending on December 31, 1992, the Secretary shall provide for a reduction in the price of milk received by producers that do not enter into surplus reduction or surplus prevention contracts under subsection (g) for all milk produced in the United States and marketed by those producers for commercial use during a contract year, in addition to any reduction in price required under paragraph (1).

"(ii) AMOUNT.—The amount of the reduction under clause (i) in the price received by producers shall be an amount, on a per hundredweight basis of milk marketed, that is sufficient to compensate for refunds made under subparagraph (A)(iii) on the basis of marketings in 1991.

"(C) 1993 THROUGH 1995.—

"(i) AUTHORITY.—During the period beginning on January 1, 1993, and ending on December 31, 1995, the Secretary shall provide for a reduction in the price of milk received by producers that do not enter into surplus reduction or surplus prevention contracts under subsection (g) for all milk produced in the United States and marketed by those producers for commercial use during a contract year, in addition to any reduction in price required under paragraph (1).

"(ii) AMOUNT.—The amount of the reduction under clause (i) in the price received by producers shall be an amount, on a per hundredweight basis of milk marketed, so that total collections shall, to the extent practicable, equal—

"(I) $7,000,000 during calendar year 1993;

"(II) $40,000,000 during calendar year 1994; and

"(III) $80,000,000 during calendar year 1995.

"(3) COLLECTION OF FUNDS.—The funds resulting from the application of any reduction in the price received by producers for milk under paragraph (1) shall be collected and remitted to the Commodity Credit Corporation at such time and in such manner as are prescribed by the Secretary. The funds shall be remitted by any person that purchases milk from a producer, except that in the case of a producer who markets milk of the producer's own production directly to consumers, or other cases as determined by the Secretary, the funds shall be remitted directly to the Corporation by the producer.

"(4) MINIMUM PRICE PROVISIONS.—The funds remitted to the Corporation under this paragraph shall be considered as included in the payments to a producer of milk for purposes of the minimum price provisions of the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937.".

(f) DEFINITIONS.—

(1) IN GENERAL.—Section 204 of such Act is amended—

(A) by redesignating subsections (j) and (k) as subsections (k) and (l), respectively; and

(B) by inserting after subsection (i) the following new subsection:

"(j) DEFINITIONS.—As used in this section:

"(1) MILK EQUIVALENT, TOTAL MILK SOLIDS BASIS.—The term 'milk equivalent, total milk solids basis', of milk and the products of milk purchased by the Commodity Credit Corporation, shall be equal to the weighted-average of the milk equivalent (as computed on a milkfat basis and on a milk solids nonfat basis) of such products, with weighting factors equal to not more than 40 percent for the milk equivalent, milkfat basis, and not more than 70 percent for the milk equivalent, solids nonfat basis. The weighting factors shall total 100 percent.

"(2) NET REMOVALS.—The term 'net removals' means the level of purchases of milk and the products of milk by the Commodity Credit Corporation under this section, less sales under section 407 for unrestricted use.

"(3) UNITED STATES.—The term 'United States' means the 48 contiguous States in the continental United States.".

(2) ADMINISTRATION.—Section 204(d)(5) of such Act is amended by striking "(5) ADMINISTRATION.—" and all that follows through "In estimating" in subparagraph (B) and inserting "(5) ADMINISTRATION.—In estimating".

(h) CONFORMING AMENDMENTS.—Section 204(i) of such Act is amended by striking "subsection (g) or (h)" each place it appears and inserting "subsection (h)".

(i) PERIOD.—Section 204(l) of such Act (as redesignated by subsection (f)(1)(A) of this section) is amended by inserting after "this section" the following: ", other than as provided in subsection (h)(1),".

**SEC. 104. STANDARDS OF IDENTITY FOR MILK.**

(a) IN GENERAL.—Section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937 (hereafter in this section referred to as "the Act"), is amended—

(1) in paragraph (G), by striking "No" and inserting "Except as provided in paragraph (H), no"; and

(2) by striking paragraph (H) and inserting the following new paragraph:

"(H) Beginning on January 1, 1994, an order issued pursuant to this section shall contain terms and conditions that require handlers of fluid milk, subject to the order, to market as the highest class milk for fluid use in the geographic area covered by the order only milk that meets the following requirements:

"(i) Milk marketed as whole milk shall contain not less than 12 percent total milk solids consisting of not less than—

"(I) 8.7 percent milk solids not fat; and

"(II) 3.25 percent milk fat.

"(ii) Milk marketed as low fat milk shall contain not less than 12 percent total milk solids consisting of not less than—

"(I) 10 percent milk solids not fat; and

"(II) 2 percent milk fat.

"(iii) Milk marketed as light milk shall contain not less than 12 percent total milk solids consisting of not less than—

"(I) 11 percent milk solids not fat; and

"(II) 1 percent milk fat.

"(iv) Milk marketed as skim milk shall contain not less than 9 percent total milk solids consisting of—

"(I) not less than 9 percent milk solids not fat; and

"(II) not more than 0.25 percent milk fat.

The Federal Milk Market Order Administrators shall test milk sold at the retail level in the geographic area covered by the order to ensure compliance with this paragraph. Violations of this paragraph shall be subject to the penalties provided in subsection (14).".

(b) EXEMPTION FROM REFERENDUM.—The Secretary of Agriculture shall not conduct a referendum under paragraphs (8), (9), and (19) of section 8c(5)(H) of the Act among producers or polling of processors on the amendment made by subsection (a).

(c) APPLICATION TO STATE MILK MARKETING ORDERS.—The requirements of section 8c(5)(H) of the Act, as amended by subsection (a), shall apply with regard to milk marketed for fluid use under State milk marketing orders.

**SEC. 105. MANDATED DAIRY SALES TO THE SOVIET UNION.**

Section 1163(a) of the Food Security Act of 1985 (7 U.S.C. 1731 note) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection:

"(b) During calendar year 1991, the Secretary shall sell for export to the Union of Soviet Socialist Republics and its former constituent republics, at such prices as the Secretary determines appropriate, not less than 250,000,000 pounds of dairy products owned by the Commodity Credit Corporation, of which not less than 175,000,000 pounds shall be nonfat dry milk and not less than 55,000,000 pounds shall be butter.".

**SEC. 106. REGULATIONS.**

Not later than 60 days after the date of the enactment of this Act, the Secretary of Agriculture shall issue such regulations as are necessary to carry out this title and the amendments made by this title.

**SEC. 107. EFFECTIVE DATE.**

This title and the amendments made by this title shall become effective on the date of the enactment of this Act.

## TITLE II—EMERGENCY CROP LOSS ASSISTANCE

**SEC. 201. EXTENSION OF EMERGENCY CROP LOSS ASSISTANCE TO 1990 AND 1991 CROPS.**

(a) EXTENSION OF ASSISTANCE TO 1990 AND 1991 CROPS.—Chapter 3 of subtitle B of title XXII of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421 note; 104 Stat. 3962) is amended to read as follows:

## "CHAPTER 3—EMERGENCY CROP LOSS ASSISTANCE

**"SEC. 2240. SHORT TITLE.**

"This chapter may be cited as the 'Agricultural Disaster Assistance Act'.

### "Subchapter A—Annual Crops

**"SEC. 2241. PAYMENTS TO PROGRAM PARTICIPANTS FOR TARGET PRICE COMMODITIES.**

"(a) DISASTER PAYMENTS—

"(1) IN GENERAL.—Effective only for producers on a farm who entered into a contract to participate in the production adjustment program established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for an eligible crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice, except as otherwise provided in this subsection, if the Secretary determines that, because of damaging weather or related condition, the total quantity of the crop of the commodity that the producers are able to harvest on the farm is less than the result of multiplying 65 percent of the farm program payment yield established by the Secretary for the crop by the sum of the acreage planted for harvest and the acreage prevented from being planted (because of damaging weather or related condition) to the crop on the farm, as determined by the Secretary, the Secretary shall make a disaster payment available to the producers as provided in this subsection.

"(2) PAYMENTS.—

"(A) PAYMENTS FOR PAYMENT ACRES.—

"(i) ASSIGNMENT OF LOSS.—Except as provided in subparagraph (C), in making payments available under this subsection, the Secretary shall assign any deficiency in production of the eligible crop by producers to payment acres for the crop based on the ratio the payment acres for the crop on the farm bears to the total acres planted for harvest and prevented from being planted to the crop (because of damaging weather or related condition).

"(ii) PAYMENT RATE.—The Secretary shall make a payment available to producers for the deficiency in production for the crop assigned to payment acres at a rate equal to 65 percent of the established price for the crop for any deficiency in production greater than 35 percent for the crop.

"(B) PAYMENTS FOR NONPAYMENT ACRES.—

"(i) ASSIGNMENT OF LOSS.—Except as provided in subparagraph (C), in making payments available under this subsection, the Secretary shall assign the deficiency in production of the eligible crop by producers to nonpayment acres for the crop based on the ratio the nonpayment acres for the crop on the farm bears to the total acres planted for harvest and prevented from being planted to the crop (because of damaging weather or related condition).

"(ii) PAYMENT RATE.—The Secretary shall make a payment available to producers for the deficiency in production for the crop assigned to nonpayment acres at a rate equal to 65 percent of the basic county loan rate for the crop for any deficiency in production greater than 35 percent for the crop.

"(C) PAYMENTS FOR EXTRA LONG STAPLE COTTON AND PRODUCERS OF WHEAT, FEED GRAINS, UPLAND COTTON, OR RICE DURING A CROP YEAR PRIOR TO 1991.—The Secretary shall make a payment under this subsection available to producers of an eligible crop of extra long staple cotton and an eligible crop of wheat, feed grains, upland cotton, or rice that is prior to the 1991 crop at a rate equal to 65 percent of the established price for the crop for any deficiency in production greater than 35 percent for the crop.

"(D) LIMITATION.—Payments shall be made available to producers under this section only if the Secretary determines that—

"(i) the producer entered into a contract to participate in the production adjustment program for the eligible crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice; and

"(ii) the producer is in compliance with the contract.".

"(3) OTHER PROVISIONS.—

"(A) DEFINITIONS.—As used in this section:

"(i) NONPAYMENT ACRES.—The term 'nonpayment acres' means the total acreage planted to wheat, feed grains, upland cotton, or rice, as applicable, by a participant in the production adjustment programs for the commodities under sections 101B, 103B, 105B, 107B, or 504 of the Agricultural Act of 1949 (7 U.S.C. 1441-2, 1444-2, 1444f, 1445b-3a, or 1464) less the amount of payment acres planted to the crop.

"(ii) PAYMENT ACRES.—The term 'payment acres' has the same meaning as in sections 101B(c)(1)(C), 103B(c)(1)(C), 105B(c)(1)(C), or 107B(c)(1)(C) of such Act, as applicable.

"(B) CROP INSURANCE.—Payments provided under this section for a crop of a commodity may not be made available to producers on a farm unless the producers enter into an agreement to obtain multiperil crop insurance, to the extent required under section 2247.

"(4) REDUCTION IN DEFICIENCY PAYMENTS.—The total quantity of a crop of a commodity on which deficiency payments otherwise would be payable to producers on a farm under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) shall be reduced by the quantity on which a payment is made to the producers for the crop under this section.

"(5) ELECTION OF PAYMENTS.—

"(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply only to producers of an eligible crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice on a farm who—

"(i) had failed wheat, feed grain, upland cotton, extra long staple cotton, or rice acreage during the crop year; or

"(ii) were prevented from planting acreage to the commodity because of damaging weather or related condition.

"(B) ELECTION.—The Secretary of Agriculture shall (within 30 days after the date on which assistance is made available under this subchapter for a crop year) permit producers referred to in subparagraph (A) to elect whether to receive disaster payments for the crop for the crop year in accordance with this section in lieu of payments received for the crop under section 101B(c)(1)(D), 103B(c)(1)(D), 105B(c)(1)(E), or 107B(c)(1)(E) of the Agricultural Act of 1949 (7 U.S.C. 1441-2(c)(1)(D), 1444-2(c)(1)(D), 1444f(c)(1)(E), 1445b-3a(c)(1)(E)) (or the corresponding provision in the case of the 1990 crop).

"(6) SPRING WHEAT AS REPLACEMENT CROP FOR WINTER WHEAT.—In providing assistance under this section or section 2242 for a crop of winter wheat, the Secretary shall disregard spring wheat that is planted as a replacement crop for the winter wheat.

"(b) ADVANCE DEFICIENCY PAYMENTS.—

"(1) APPLICATION OF SUBSECTION.—This subsection shall apply only to producers on a farm who elect to participate in the production adjustment program established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for the crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice for an eligible crop.

"(2) FORGIVENESS OF REFUND REQUIREMENT.—

"(A) IN GENERAL.—Subject to subparagraph (B), if because of damaging weather or related condition the total quantity of an eligible crop of the commodity that the producers are able to harvest on the farm is less than the result of multiplying the farm program payment yield established by the Secretary for the crop by the sum of the acreage planted for harvest and the acreage prevented from being planted (because of a natural disaster, as determined by the Secretary) for the crop (hereinafter in this section referred to as the 'qualifying amount'), the producers shall not be required to refund any advance deficiency payment made to the producers for the crop under section 114 of the Agricultural Act of 1949 (7 U.S.C. 1445j) (or, in the case of 1990 crops, section 107C of such Act (7 U.S.C. 1445b-2) as in effect on November 27, 1990) with respect to that portion of the deficiency in production that does not exceed 35 percent of the qualifying amount.

"(B) CROP INSURANCE.—Producers on a farm shall not be eligible for the forgiveness provided for under subparagraph (A), unless the producers enter into an agreement to obtain multiperil crop insurance to the extent required under section 2247.

"(3) ELECTION FOR NONRECIPIENTS.—The Secretary shall allow producers on a farm who, before the date on which assistance is made available under this subchapter for a crop year, elected not to receive advance deficiency payments made available for the crop for the crop year under section 114 of the Agricultural Act of 1949 (7 U.S.C. 1445j) (or, in the case of 1990 crops, section 107C of such Act (7 U.S.C. 1445b-2) as in effect on November 27, 1990) to elect (within 30 days after such date) whether to receive the advance deficiency payments.

"(4) DATE OF REFUND FOR PAYMENTS.—If the Secretary determines that any portion of the advance deficiency payment made to producers for a crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice under section

*114 of the Agricultural Act of 1949 (7 U.S.C. 1445j) (or, in the case of 1990 crops, section 107C of such Act (7 U.S.C. 1445b–2) as in effect on November 27, 1990) must be refunded, the refund shall not be required prior to July 31 of the year following the determination for that portion of the crop for which a disaster payment is made under subsection (a).*

**"SEC. 2242. PAYMENTS TO PROGRAM NON-PARTICIPANTS.**

*"(a) DISASTER PAYMENTS.—*

*"(1) IN GENERAL.—Effective only for producers on a farm who elected not to participate in the production adjustment program established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for an eligible crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice for the crop year, if the Secretary of Agriculture determines that, because of damaging weather or related condition, the total quantity of the crop of the commodity that the producers are able to harvest on the farm is less than the result of multiplying 65 percent of the county average yield established by the Secretary for the crop by the sum of acreage planted for harvest and the acreage for which prevented planted credit is approved by the Secretary for the crop under subsection (b), the Secretary shall make a disaster payment available to the producers.*

*"(2) PAYMENT RATE.—The payment shall be made to the producers at a rate equal to 65 percent of the basic county loan rate (or a comparable price if there is no current basic county loan rate) for the crop, as determined by the Secretary, for any deficiency in production greater than 35 percent.*

*"(b) PREVENTED PLANTING CREDIT.—*

*"(1) IN GENERAL.—The Secretary shall provide prevented planting credit under subsection (a) with respect to acreage for an eligible crop that producers on a farm were prevented from planting to the crop of the commodity for harvest because of damaging weather or related condition, as determined by the Secretary.*

*"(2) MAXIMUM ACREAGE.—The acreage may not exceed the greater of—*

*"(A) a quantity equal to the acreage on the farm planted (or prevented from being planted due to a natural disaster or other condition beyond the control of the producers) to the commodity for harvest in the immediately preceding crop year minus acreage actually planted to the commodity for harvest in the crop year involved;*

*"(B) a quantity equal to the average of the acreage on the farm planted (or prevented from being planted due to a natural disaster or other condition beyond the control of the producers) to the commodity for harvest in the 3 immediately preceding crop years minus acreage actually planted to the commodity for harvest in the crop year involved; or*

*"(C) with respect to crops planted as provided under section 504 of the Agricultural Act of 1949 (7 U.S.C. 1464) for which no such planting history is established, a quantity of acreage determined to be fair and reasonable by the Secretary.*

*"(3) ADJUSTMENTS.—The Secretary shall make appropriate adjustments in applying the limitations contained in paragraph (2) to take into account crop rotation practices of the producers.*

*"(c) LIMITATIONS.—*

*"(1) ACREAGE LIMITATION PROGRAM.—The amount of payments made available to producers on a farm who elect not to participate in the production adjustment program for an eligible crop of a commodity under subsection (a) shall be reduced by a factor equivalent to the acreage limitation program percentage established for the crop under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.).*

*"(2) CROP INSURANCE.—Payments provided under subsection (a) for a crop of a commodity may not be made available to the producers on a farm unless the producers enter into an agreement to obtain multiperil crop insurance to the extent required under section 2247.*

**"SEC. 2243. PEANUTS, SUGAR, AND TOBACCO.**

*"(a) DISASTER PAYMENTS.—*

*"(1) IN GENERAL.—Effective only for an eligible crop of peanuts, sugar beets, sugarcane, and tobacco, if the Secretary of Agriculture determines that, because of damaging weather or related condition, the total quantity of the crop of the commodity that the producers on a farm are able to harvest is less than the result of multiplying 65 percent of the county average yield (or program yield, in the case of peanuts) established by the Secretary for the crop by the sum of the acreage planted for harvest and the acreage for which prevented planted credit is approved by the Secretary for the crop under subsection (b), the Secretary shall make a disaster payment available to the producers.*

*"(2) PAYMENT RATE.—The payment shall be made to the producers at a rate equal to 65 percent of the applicable payment level under paragraph (3), as determined by the Secretary, for any deficiency in production greater than—*

*"(A) 35 percent for the crop; or*

*"(B) with respect to a crop of burley tobacco or flue-cured tobacco, 35 percent of the farm's effective marketing quota for the crop for the crop year.*

*"(3) PAYMENT LEVEL.—For purposes of paragraph (1), the payment level for a commodity shall be equal to—*

*"(A) for peanuts, the price support level for quota peanuts or the price support level for additional peanuts, as applicable;*

*"(B) for tobacco, the national average loan rate for the type of tobacco involved, or (if there is none) the market price, as determined under section 2244(a)(2); and*

*"(C) for sugar beets and sugarcane, a level determined by the Secretary to be fair and reasonable in relation to the level of price support established for crops of sugar beets and sugarcane for the crop year involved, and that, insofar as is practicable, shall reflect no less return to the producer than under the price support levels in effect for the crop year.*

*"(b) PREVENTED PLANTING CREDIT.—*

*"(1) IN GENERAL.—The Secretary shall provide prevented planting credit under subsection (a) with respect to acreage for an eligible crop that producers on a farm were prevented from planting to the crop of the commodity for harvest because of damaging weather or related condition, as determined by the Secretary.*

*"(2) MAXIMUM ACREAGE.—The acreage may not exceed the greater of—*

*"(A) a quantity equal to the acreage on the farm planted (or prevented from being planted due to a natural disaster or other condition beyond the control of the producers) to the commodity for harvest in the immediately preceding crop year minus acreage actually planted for harvest in the crop year involved;*

*"(B) a quantity equal to the average of the acreage on the farm planted (or prevented from being planted due to a natural disaster or other condition beyond the control of the producers) to the commodity for harvest in the 3 immediately preceding crop years minus acreage actually planted to the commodity for harvest in the crop year involved; or*

*"(C) with respect to crops planted on flexible acres as provided under section 504 of the Agricultural Act of 1949 (7 U.S.C. 1464) for which no such planting history is established, a quantity of acreage determined to be fair and reasonable by the Secretary.*

*"(3) ADJUSTMENTS.—The Secretary shall make appropriate adjustments in applying for a crop year the limitations contained in paragraph (2) to take into account crop rotation practices of the producers and any change in quotas for crops of tobacco for the crop year.*

*"(c) LIMITATION.—Payments provided under subsection (a) for a crop of a commodity may not be made available to the producers on a farm unless the producers enter into an agreement to obtain multiperil crop insurance to the extent required under section 2247.*

*"(d) SPECIAL RULES FOR PEANUTS.—Notwithstanding any other provision of law—*

*"(1) a deficiency in production of quota peanuts from a farm, as otherwise determined under this section, shall be reduced by the quantity of peanut poundage quota that was the basis of the anticipated production that has been transferred from the farm;*

*"(2) payments made under this section shall be made taking into account whether the deficiency for which the deficiency in production is claimed was a deficiency in production of quota or additional peanuts and the payment rate shall be established accordingly; and*

*"(3) the quantity of undermarketings of quota peanuts from a farm for a crop that may otherwise be claimed under section 358–1 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358–1) (or, in the case of 1990 crops of peanuts, section 358 of such Act (7 U.S.C. 1358) as in effect on November 27, 1990) for purposes of future quota increases shall be reduced by the quantity of the deficiency of production of the peanuts for which payment has been received under this section.*

*"(e) SPECIAL RULES FOR TOBACCO.—Notwithstanding any other provision of law—*

*"(1) the quantity of undermarketings of quota tobacco from a farm for a crop that may otherwise be claimed under section 317 or 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314c or 1314e) for purposes of future quota increases shall be reduced by the quantity of the deficiency of production of the tobacco for which payment has been received under this section; and*

*"(2) disaster payments made to producers under this section may not be considered by the Secretary in determining the net losses of the Commodity Credit Corporation under section 106A(d) of the Agricultural Act of 1949 (7 U.S.C. 1445–1(d)).*

*"(f) SPECIAL RULE FOR SUGARCANE.—For purposes of determining the total quantity of a crop of sugarcane that the producers on a farm are able to harvest, the Secretary shall make the determination based on the quantity of recoverable sugar.*

**"SEC. 2244. OILSEEDS AND NONPROGRAM CROPS.**

*"(a) DISASTER PAYMENTS.—*

*"(1) IN GENERAL.—*

*"(A) ELIGIBILITY.—Effective only for an eligible crop of oilseeds (as defined in section 205(a) of the Agricultural Act of 1949 (7 U.S.C. 1446f(a)) and nonprogram crops, the Secretary shall make a disaster payment under this section available to the producers on a farm if the Secretary of Agriculture determines that, because of damaging weather or related condition, the total quantity of the crop of the commodity that the producers are able to harvest is less than—*

*"(i) with respect to oilseeds, the result of multiplying 65 percent of the State, area, or county yield, adjusted for adverse weather conditions during the 3 immediately preceding crop years, as determined by the Secretary, for the crop by the sum of the acreage planted for harvest and the acreage for which prevented planting credit is approved by the Secretary for the crop under subsection (b);*

*"(ii) with respect to nonprogram crops (other than as provided in clauses (i), (iii), and (iv)), the result of multiplying 65 percent of the yield established by the Commodity Credit Corporation under subsection (d)(2) for the crop by the*

*sum of the acreage planted for harvest and the acreage for which prevented planting credit is approved by the Secretary for the crop under subsection (b);*

*"(iii) with respect to crops covered in section 207 of the Agricultural Act of 1949 (7 U.S.C. 1446h) (or, in the case of 1990 crops, section 201(b) of such Act (7 U.S.C. 1446(b)) as in effect on November 27, 1990), 65 percent of the historical annual yield of the producers for the crops, as determined by the Secretary; and*

*"(iv) with respect to fish or seafood described in subsection (d)(1)(A)(ii)(III), 65 percent of the historical annual yield of the acreage of the pond or other aquatic areas in which the fish or seafood are produced or prevented from being produced.*

*"(B) PAYMENT RATE.—The payment shall be made to the producers at a rate equal to 65 percent of the applicable payment level under paragraph (2), as determined by the Secretary, for any deficiency in production greater than 35 percent for oilseeds and other nonprogram crops for the crop.*

*"(C) SPECIAL RULE FOR 1990 CROPS.—In the case of 1990 crops, assistance under this section shall be available only to the extent that assistance was not made available under the Disaster Assistance Act of 1989 (Public Law 101–82; 103 Stat. 564) or any other Act for the same losses of the crops.*

*"(2) PAYMENT LEVEL.—For purposes of paragraph (1), the payment level for a commodity shall equal the simple average price received by producers of the commodity, as determined by the Secretary subject to paragraph (3), during the marketing years for the immediately preceding 5 crops of the commodity, excluding the year in which the average price was the highest and the year in which the average price was the lowest in the period.*

*"(3) CALCULATION OF PAYMENTS FOR DIFFERENT VARIETIES.—*

*"(A) CROP-BY-CROP BASIS.—The Secretary shall make disaster payments under this subsection on a crop-by-crop basis, with consideration given to markets and uses of the crops, under regulations issued by the Secretary.*

*"(B) DIFFERENT VARIETIES.—For purposes of determining the payment levels on a crop-by-crop basis, the Secretary shall consider as separate crops, and develop separate payment levels insofar as is practicable for, different varieties of the same commodity, and commodities for which there is a significant difference in the economic value in the market.*

*"(C) DOUBLE CROPPING.—*

*"(i) TREATED SEPARATELY.—In the case of a crop that is historically double cropped (including 2 crops of the same commodity) by the producers on a farm, the Secretary shall treat each cropping separately for purposes of determining whether the crop was affected by damaging weather or related condition and the total quantity of the crop that the producers are able to harvest.*

*"(ii) APPLICATION OF SUBPARAGRAPH.—This subparagraph shall not apply in the case of a replacement crop.*

*"(D) NAVEL AND VALENCIA ORANGES TREATED AS SEPARATE CROPS.—For the purpose of programs administered under this chapter and the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), navel oranges and valencia oranges shall be considered separate crops.*

*"(4) EXCLUSIONS FROM HARVESTED QUANTITIES.—For purposes of determining the total quantity of a nonprogram crop of the commodity that the producers on a farm are able to harvest under paragraph (1), the Secretary shall—*

*"(A) exclude commodities that cannot be sold in normal commercial channels of trade;*

*"(B) exclude dockage, including husks and shells, if the dockage is excluded in determining yields under subsection (d)(2); and*

*"(C) adjust such quantity to take into consideration declines in the value of the crop of the commodity that are attributable to a deterioration in the quality of the commodity caused by the damaging weather or related condition.*

*"(b) PREVENTED PLANTING CREDIT.—*

*"(1) IN GENERAL.—The Secretary shall provide prevented planting credit under subsection (a) with respect to acreage for a crop year that producers on a farm were prevented from planting to the crop of the commodity for harvest because of damaging weather or related condition, as determined by the Secretary.*

*"(2) MAXIMUM ACREAGE.—The acreage may not exceed the greater of—*

*"(A) a quantity equal to the acreage on the farm planted (or prevented from being planted due to a natural disaster or other condition beyond the control of the producers) to the commodity for harvest in the immediately preceding crop year minus acreage actually planted for harvest in the crop year involved;*

*"(B) a quantity equal to the average of the acreage on the farm planted (or prevented from being planted due to a natural disaster or other condition beyond the control of the producers) to the commodity for harvest in the 3 immediately preceding crop years minus acreage actually planted to the commodity for harvest in the crop year involved; or*

*"(C) with respect to crops planted as provided under section 504 of the Agricultural Act of 1949 (7 U.S.C. 1464) for which no such planting history is established, a quantity of acreage determined to be fair and reasonable by the Secretary.*

*"(3) ADJUSTMENTS.—The Secretary shall make appropriate adjustments in applying the limitations contained in paragraph (2) to take into account crop rotation practices of the producers.*

*"(c) LIMITATION.—Payments provided under subsection (a) for a crop of a commodity may not be made available to the producers on a farm unless the producers enter into an agreement to obtain multiperil crop insurance to the extent required under section 2247.*

*"(d) SPECIAL RULES FOR NONPROGRAM CROPS.—*

*"(1) NONPROGRAM CROP DEFINED.—*

*"(A) INCLUDED IN DEFINITION.—Except as provided in subparagraph (B), for purposes of this section, the term 'nonprogram crop' means—*

*"(i) all crops for which crop insurance through the Federal Crop Insurance Corporation was available for a crop year; and*

*"(ii) other commercial crops for which the insurance was not available for the crop year, including—*

*"(I) ornamentals, such as flowering shrubs, flowering trees, field or container grown roses, or turf;*

*"(II) sweet potatoes; and*

*"(III) fish or seafood produced or prevented from being produced in established freshwater commercial aquaculture operations.*

*"(B) EXCEPTION.—The term 'nonprogram crop' in subparagraph (A) shall not include a crop covered under section 2241, 2242, or 2243, or oilseeds.*

*"(2) FARM YIELDS.—*

*"(A) ESTABLISHMENT.—The Commodity Credit Corporation shall establish disaster program farm yields for nonprogram crops to carry out this section.*

*"(B) PROVEN YIELDS AVAILABLE.—If the producers on a farm can provide satisfactory evidence to the Commodity Credit Corporation of actual crop yields on the farm for at least 1 of the immediately preceding 3 crop years, the yield for the farm shall be based on the proven yield.*

*"(C) PROVEN YIELDS NOT AVAILABLE.—If the data do not exist for any of the 3 preceding crop years, the Commodity Credit Corporation shall establish a yield for the farm by using a county average yield for the commodity, or by using other data available to it.*

*"(D) COUNTY AVERAGE YIELDS.—In establishing county average yields for nonprogram crops, the Commodity Credit Corporation shall use the best available information concerning yields. The information may include extension service records, credible nongovernmental studies, and yields in similar counties.*

*"(3) RESPONSIBILITY OF PRODUCERS.—It shall be the responsibility of the producers of nonprogram crops to provide satisfactory evidence of crop losses for a crop year resulting from damaging weather or related condition in order for the producers to obtain disaster payments under this section.*

*"(e) SPECIAL RULE FOR VALENCIA ORANGES.—For the purposes of this section, the 1990 crop of valencia oranges shall include any crop of valencia oranges, regardless of the year in which those oranges would be harvested, that was destroyed or damaged by damaging weather or related condition in 1990.*

***"SEC. 2245. CROP QUALITY REDUCTION DISASTER PAYMENTS.***

*"(a) IN GENERAL.—To ensure that all producers of crops covered under sections 2241 through 2244 are treated equitably, the Secretary of Agriculture shall make additional disaster payments to producers of the crops for a crop year who suffer losses resulting from the reduced quality of the crops caused by damaging weather or related condition, as determined by the Secretary.*

*"(b) ELIGIBLE PRODUCERS.—Producers on a farm of a crop described in subsection (a) shall be eligible to receive reduced quality disaster payments only if the producers incur a deficiency in production of not less than 40 percent (as determined under section 2241, 2242, 2243, or 2244, as appropriate).*

*"(c) MAXIMUM PAYMENT RATE.—The Secretary shall establish the reduced quality disaster payment rate, except that the rate shall not exceed 10 percent, as determined by the Secretary, of—*

*"(1) the established price for the crop, for commodities covered under section 2241;*

*"(2) the basic county loan rate for the crop (or a comparable price if there is no current basic county loan rate), for commodities covered under section 2242;*

*"(3) the payment level under section 2243(a)(3), for commodities covered by section 2243; and*

*"(4) the payment level under section 2244(a)(2), for commodities covered under section 2244.*

*"(d) DETERMINATION OF PAYMENT.—The amount of payment to a producer under this section shall be determined by multiplying the payment rate established under subsection (c) by the portion of the actual harvested crop on the producer's farm that is reduced in quality by the natural disaster, as determined by the Secretary.*

***"SEC. 2246. EFFECT OF FEDERAL CROP INSURANCE PAYMENTS.***

*"In the case of producers on a farm who obtained crop insurance for a crop of a commodity under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), the Secretary of Agriculture shall reduce the amount of payments made available under this subchapter for the crop to the extent that the amount determined by adding the net amount of crop insurance indemnity payment (gross indemnity less premium paid) received by the producers for the deficiency in the production of the crop and the disaster payment determined in accordance with this chapter for the crop exceeds the amount determined by multiplying—*

*"(1) 100 percent of the yield used for the calculation of disaster payments made under this chapter for the crop; by*

"(2) the sum of the acreage of the crop planted to harvest and the acreage for which prevented planting credit is approved by the Secretary (or, in the case of disaster payments under section 2241, the eligible acreage established under paragraphs (1) and (3)(A) of section 2241(a)); by

"(3)(A) in the case of producers who participated in a production adjustment program for the crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice for the crop year, the established price for the crop of the commodity;

"(B) in the case of producers who did not participate in a production adjustment program for the crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice for the crop year (and, with respect to flexible acres as provided under section 2241(a)(2), in the case of those producers who did participate in the program for the year), the basic county loan rate (or a comparable price, as determined by the Secretary, if there is no current basic county loan rate) for the crop of the commodity;

"(C) in the case of producers of sugar beets, sugarcane, peanuts, or tobacco, the payment level for the commodity established under section 2243(a)(3); and

"(D) in the case of producers of oilseeds or a nonprogram crop (as defined in section 2244(d)(1)), the simple average price received by producers of the commodity, as determined by the Secretary, during the marketing years for the immediately preceding 5 crops of the commodity, excluding the year in which the average price was the highest and the year in which the average price was the lowest in the period.

**"SEC. 2247. CROP INSURANCE COVERAGE.**

"(a) REQUIREMENT.—To be eligible to receive for an eligible crop year a disaster payment under this subchapter, an emergency loan under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 et seq.) for crop losses due to damaging weather or related condition, or forgiveness of the repayment of advance deficiency payments under section 2241(b), the producers on a farm shall agree to obtain multiperil crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) for the 1992 crop.

"(b) LIMITATIONS.—Notwithstanding subsection (a), producers on a farm shall not be required to agree to obtain crop insurance under subsection (a) for a commodity—

"(1) unless the producers' deficiency in production, with respect to the crop for which a disaster payment under this chapter otherwise may be made, exceeds 75 percent;

"(2) where, or if, crop insurance coverage is not available to the producers for the commodity for which the payment, loan, or forgiveness is sought;

"(3) if the producers' annual premium rate for the crop insurance is an amount greater than 125 percent of the average premium rate for insurance on that commodity for the preceding crop year in the county in which the producers are located;

"(4) in any case in which the producers' annual premium for the crop insurance is an amount greater than 25 percent of the amount of the payment, loan, or forgiveness received; or

"(5) if the producers can establish by appeal to the county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590(b)), or to the county committee established under section 332 of the Consolidated Farm and Rural Development Act (17 U.S.C. 1982), as appropriate, that the purchase of crop insurance would impose an undue financial hardship on the producers and that a waiver of the requirement to obtain crop insurance should, in the discretion of the county committee, be granted.

"(c) IMPLEMENTATION.—

"(1) COUNTY COMMITTEES.—The Secretary of Agriculture shall ensure (acting through the county committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act and located in the counties in which the assistance programs provided for under sections 2241 through 2245 are implemented, and through the county committees established under section 332 of the Consolidated Farm and Rural Development Act in counties in which emergency loans, as described in subsection (a), are made available) that producers who apply for assistance, as described in subsection (a), obtain multiperil crop insurance as required under this section.

"(2) OTHER SOURCES.—Each producer who is subject to the requirements of this section may comply with the requirements by providing evidence of multiperil crop insurance coverage from sources other than through the county committee office, as approved by the Secretary.

"(3) COMMISSIONS.—The Secretary shall provide by regulation for a reduction in the commissions paid to private insurance agents, brokers, or companies on crop insurance contracts entered into under this section sufficient to reflect that the insurance contracts principally involve only a servicing function to be performed by the agent, broker, or company.

"(d) REPAYMENT OF BENEFITS.—Notwithstanding any other provision of law, if (before the end of the crop year for which multiperil crop insurance is obtained pursuant to subsection (a)) the crop insurance coverage is canceled by the producer, the producer—

"(1) shall make immediate repayment to the Secretary of any disaster payment or forgiven advance deficiency payment that the producer otherwise is required to repay; and

"(2) shall become immediately liable for full repayment of all principal and interest outstanding on any emergency loan described in subsection (a) made subject to this section.

**"SEC. 2248. CROPS HARVESTED FOR FORAGE USES.**

"Not later than 45 days after funds are appropriated to carry out this subchapter for a crop year, the Secretary of Agriculture shall announce the terms and conditions by which producers on a farm may establish a yield for that crop year with respect to crops that were, or will be, harvested during the crop year for silage and other forage uses.

**"SEC. 2249. PAYMENT LIMITATIONS.**

"(a) LIMITATION.—Subject to subsections (b) and (c), the total amount of payments that a person shall be entitled to receive for a crop year under one or more of the programs established under this subchapter may not exceed $100,000.

"(b) NO DOUBLE BENEFITS.—No person may receive disaster payments for a crop year under this subchapter to the extent that the person receives a livestock emergency benefit for lost feed production in that year under section 606 of the Agricultural Act of 1949 (7 U.S.C. 1471d).

"(c) COMBINED LIMITATION.—

"(1) IN GENERAL.—No person may receive any payment under this subchapter or benefit under title VI of the Agricultural Act of 1949 (7 U.S.C. 1471 et seq.) for livestock emergency losses suffered in a crop year if the payment or benefit will cause the combined total amount of the payments and benefits received by the person in the year to exceed $100,000.

"(2) ELECTION.—If a producer is subject to paragraph (1), the person may elect (subject to the benefits limitations under section 609 of the Agricultural Act of 1949 (7 U.S.C. 1471g) whether to receive the $100,000 in the payments, or the livestock emergency benefits (not to exceed $50,000), or a combination of payments and benefits specified by the person.

"(d) REGULATIONS.—The Secretary of Agriculture shall issue regulations prescribing such rules as the Secretary determines necessary to ensure a fair and reasonable application of the limitations established under this section.

**"SEC. 2250. SUBSTITUTION OF CROP INSURANCE PROGRAM YIELDS.**

"(a) IN GENERAL.—Notwithstanding any other provision of this chapter, the Secretary of Agriculture may permit each eligible producer of a crop of a commodity who has obtained multiperil crop insurance for the crop for a crop year or, as provided in subsection (c), the preceding crop year under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) to substitute, at the discretion of the producer, the crop insurance yield for the crop, as established under such Act, for the farm yield otherwise assigned to the producer under this subchapter, for the purposes of determining the producer's eligibility for a disaster payment on the crop under this subchapter for the crop year involved and the amount of the payment.

"(b) ADJUSTMENT OF ADVANCED DEFICIENCY PAYMENTS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this chapter, if an eligible producer of wheat, feed grains, upland cotton, extra long staple cotton, or rice for a crop year elects to substitute yields for the producer's crop under subsection (a), the producer's eligibility for a waiver of repayment of an advance deficiency payment on the crop under this chapter shall be adjusted as provided in paragraph (2).

"(2) AMOUNT.—The amount of production of the crop on which the producer otherwise would be eligible for waiver of repayment of advance deficiency payments under this subchapter shall be reduced by an amount of production equal to the difference between—

"(A) the amount of production eligible for disaster payments under this subchapter using a substituted yield under this section; and

"(B) the amount of production that would have been eligible for disaster payments using the farm program payment yield otherwise assigned to the producer under this chapter.

"(c) MULTIPERIL CROP INSURANCE NOT AVAILABLE.—A producer may use the crop insurance yield for the producer's crop of a commodity for the preceding crop year for purposes of substituting yields under subsection (a) if the producer demonstrates to the Secretary that, through no fault of the producer, multiperil crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) was not made available to the producer for the producer's crop of the commodity for the crop year involved.

"(d) DEFINITION OF ELIGIBLE PRODUCER.—For purposes of this section, the term 'eligible producer' means a producer of a crop of wheat, feed grains, upland cotton, extra long staple cotton, rice, or oilseeds.

**"SEC. 2251. DE MINIMIS YIELDS.**

"(a) IN GENERAL.—The Secretary of Agriculture may determine a de minimis yield for each crop eligible for reduced yield disaster payments under this subchapter.

"(b) LEVEL.—The de minimis yield shall be set at a level that will minimize any incentive (because of the prospect of disaster payments) for a producer to abandon crops that have a value that exceeds the cost of harvesting. In no case may the de minimis yield be less than the amount of production that, when valued at current market prices, equals the average cost of harvesting the crop, as determined by the Secretary.

"(c) ACTUAL YIELDS OF ZERO.—Any producer whose actual yield for a crop is equal to or less than the de minimis yield for the crop shall be considered as having an actual yield of zero for the purpose of calculating any reduced yield disaster payments for the crop under this subchapter.

**"SEC. 2252. PRODUCER ELIGIBILITY.**

"A producer on a farm who produces any crop of a commodity for which disaster payments are made available under this subchapter shall qualify for a disaster payment if the total quantity of the commodity that the producer is able to harvest on that farm is reduced as a result of damaging weather or related condition in an amount that meets the criteria of section 2241, 2242, 2243, or 2244, even though the producers on the farm, collectively, may not meet the criteria.

**"SEC. 2253. DEFINITIONS.**

"For purposes of this chapter:

"(1) DAMAGING WEATHER.—The term 'damaging weather' includes but is not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, earthquake, or excessive wind (or any combination thereof).

"(2) PERSON.—The term 'person' shall have the meaning given the term by the Secretary in regulations, which shall conform, to the extent practicable, to the regulations defining the term issued under section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) and the Disaster Assistance Act of 1988 (7 U.S.C. 1421 note).

"(3) RELATED CONDITION.—The term 'related condition' includes but is not limited to insect infestations, plant diseases (including fire blight), or other deterioration of a crop of a commodity, including aflatoxin, that is accelerated or exacerbated naturally as a result of damaging weather.

**"Subchapter B—Orchards**

**"SEC. 2255. ELIGIBILITY.**

"(a) LOSS.—The Secretary of Agriculture shall provide assistance under section 2256 to eligible orchardists that planted trees for commercial purposes but lost the trees as a result of damaging weather or related condition occurring in 1990 or 1991, as determined by the Secretary.

"(b) LIMITATION.—An eligible orchardist shall qualify for assistance under subsection (a) only if the orchardist's tree mortality, as a result of the damaging weather or related condition, exceeds 35 percent (adjusted for normal mortality).

**"SEC. 2256. ASSISTANCE.**

"The assistance provided by the Secretary of Agriculture to eligible orchardists for losses described in section 2255 shall consist of either—

"(1) reimbursement of 65 percent of the cost of replanting trees lost and rehabilitating trees damaged as a result of damaging weather or related condition in the calendar year involved in excess of 35 percent mortality (adjusted for normal mortality); or

"(2) at the discretion of the Secretary, sufficient seedlings to reestablish the stand.

**"SEC. 2257. LIMITATION ON ASSISTANCE.**

"(a) LIMITATION.—The total amount of payments that a person shall be entitled to receive under this subchapter for a calendar year may not exceed $25,000, or an equivalent value in tree seedlings.

"(b) REGULATIONS.—The Secretary of Agriculture shall issue regulations prescribing such rules as the Secretary determines necessary to ensure a fair and reasonable application of the limitation established under this section.

**"SEC. 2258. DEFINITION.**

"For purposes of this subchapter, the term 'eligible orchardist' means a person who produces annual crops from trees for commercial purposes and owns 500 acres or less of the trees.

**"SEC. 2259. DUPLICATIVE PAYMENTS.**

"The Secretary of Agriculture shall establish guidelines to ensure that no person receives duplicative payments under this subchapter and the forestry incentives program, agricultural conservation program, or other Federal program.

**"Subchapter C—Forest Crops**

**"SEC. 2261. ELIGIBILITY.**

"(a) LOSS.—The Secretary of Agriculture shall provide assistance, as specified in section 2262, to eligible tree farmers that planted tree seedlings in 1990 or 1991 for commercial purposes but lost the seedlings as a result of damaging weather or related condition occurring in 1990 or 1991, respectively, as determined by the Secretary.

"(b) LIMITATION.—An eligible tree farmer shall qualify for assistance under subsection (a) only if the tree farmer's tree seedling mortality, as a result of the damaging weather or related condition, exceeds 55 percent (adjusted for normal mortality).

**"SEC. 2262. ASSISTANCE.**

"The assistance provided by the Secretary of Agriculture to eligible tree farmers for losses described in section 2261 shall consist of either—

"(1) reimbursement of 65 percent of the cost of replanting seedlings lost due to damaging weather or related conditions in the calendar year involved in excess of 35 percent mortality (adjusted for normal mortality); or

"(2) at the discretion of the Secretary, sufficient tree seedlings to reestablish the stand.

**"SEC. 2263. LIMITATION ON ASSISTANCE.**

"(a) LIMITATION.—The total amount of payments that a person shall be entitled to receive under this subchapter may not exceed $25,000 for a calendar year, or an equivalent value in tree seedlings.

"(b) REGULATIONS.—The Secretary of Agriculture shall issue regulations prescribing such rules as the Secretary determines necessary to ensure a fair and reasonable application of the limitation established under this section.

**"SEC. 2264. DEFINITION.**

"For purposes of this subchapter, the term 'eligible tree farmer' means a person who grows trees for harvest for commercial purposes and owns 1,000 acres or less of the trees.

**"SEC. 2265. DUPLICATIVE PAYMENTS.**

"The Secretary of Agriculture shall establish guidelines to ensure that no person receives duplicative payments under this subchapter and the forestry incentives program, agricultural conservation program, or other Federal program.

**"Subchapter D—Administrative Provisions**

**"SEC. 2266. INELIGIBILITY.**

"(a) GENERAL RULE.—A person who has qualifying gross revenues in excess of $2,000,000 annually, as determined by the Secretary of Agriculture, shall not be eligible to receive any disaster payment or other benefits under this chapter.

"(b) QUALIFYING GROSS REVENUES.—For purposes of this section, the term 'qualifying gross revenues' means—

"(1) if a majority of the person's annual income is received from farming, ranching, and forestry operations, the gross revenue from the person's farming, ranching, and forestry operations; and

"(2) if less than a majority of the person's annual income is received from farming, ranching, and forestry operations, the person's gross revenue from all sources.

**"SEC. 2267. TIMING AND MANNER OF ASSISTANCE.**

"(a) TIMING OF ASSISTANCE.—

"(1) ASSISTANCE MADE AVAILABLE AS SOON AS PRACTICABLE.—Subject to paragraph (2), the Secretary of Agriculture shall make disaster assistance available under this chapter, as soon as practicable after the date on which appropriations are made available to carry out this chapter.

"(2) COMPLETED APPLICATION.—No payment or benefit provided under this chapter shall be payable or due until such time as a completed application for the payment or benefit for a crop of a commodity has been approved.

"(b) MANNER.—The Secretary may make payments available under subchapter A in the form of cash, commodities, or commodity certificates, as determined by the Secretary.

**"SEC. 2268. COMMODITY CREDIT CORPORATION.**

"(a) USE.—Except as provided in section 2271, the Secretary of Agriculture shall use the funds, facilities, and authorities of the Commodity Credit Corporation in carrying out this chapter.

"(b) EXISTING AUTHORITY.—The authority provided by this chapter shall be in addition to, and not in place of, any authority granted to the Secretary or the Commodity Credit Corporation under any other provision of law.

**"SEC. 2269. EMERGENCY LOANS.**

"Section 321(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(b)) shall not apply for a calendar year to persons who otherwise would be eligible for an emergency loan under subtitle C of such Act, if the eligibility is the result of damage to an annual crop planted for harvest in the year.

**"SEC. 2270. REGULATIONS.**

"The Secretary of Agriculture or the Commodity Credit Corporation, as appropriate, shall issue regulations to implement this chapter as soon as practicable after the date on which appropriations are made to carry out this chapter, without regard to the requirement for notice and public participation in rulemaking prescribed in section 553 of title 5, United States Code, or in any directive of the Secretary.

**"Subchapter E—Authorization of Appropriations**

**"SEC. 2271. AUTHORIZATION OF APPROPRIATIONS.**

"Any benefits or assistance (including the forgiveness of unearned advanced deficiency payments or any emergency loans) made available under this chapter shall be provided for a year only to the extent provided for in advance in appropriations Acts. To carry out this chapter, there are authorized to be appropriated such sums as may be necessary for fiscal year 1992. Sums appropriated under this section shall remain available until expended.

**"SEC. 2272. PRORATION OF BENEFITS.**

"Any funds made available for carrying out this chapter for a calendar year in appropriations Acts shall be prorated to all producers eligible for assistance under this chapter in the year.

**"Subchapter F—Application of Chapter**

**"SEC. 2273. ELIGIBLE CROP.**

"(a) ELIGIBLE CROP.—For the purposes of this chapter, the term 'eligible crop' means the 1990 or 1991 crop of wheat, feed grains, upland cotton, extra long staple cotton, rice, peanuts, oilseeds, sugarcane, sugar beets, tobacco, or nonprogram crop.

"(b) ADVERSE IMPACT OF DAMAGING WEATHER.—Assistance under this chapter shall be provided for—

"(1) the 1990 crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, peanuts, oilseeds, sugarcane, sugar beets, tobacco, and nonprogram crops only with respect to crop damage caused by damaging weather or related condition occurring during 1990 (or with respect to a fall seeded crop, the fall of 1989); and

"(2) the 1991 crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, peanuts, oilseeds, sugarcane, sugar beets, tobacco, and nonprogram crops only with respect to crop damage caused by damaging weather or related condition occurring during 1991 (or with respect to a fall seeded crop, the fall of 1990).

"(c) ELECTION OF APPLICABLE BENEFITS.—Producers on a farm eligible for benefits under this chapter with respect to both the 1990 and 1991 crop years of a commodity may elect to receive benefits with respect to either the 1990 or 1991 crop year of the commodity, but not both.".

(b) CLERICAL AMENDMENTS.—The table of contents in section 1(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3359) is amended—

*(1) by inserting after the item relating to the chapter heading of chapter 3 of subtitle B of title XXII of such Act the following new item:*

*"Sec. 2240. Short title.";*

*(2) by striking the item relating to section 2242 and inserting the following new item:*

*"Sec. 2242. Payments to program nonparticipants.";*

*(3) by striking the item relating to section 2244 and inserting the following new item:*

*"Sec. 2244. Oilseeds and nonprogram crops.";*

*(4) by striking the item relating to section 2247 and inserting the following new item:*

*"Sec. 2247. Crop insurance coverage.";*

*(5) by striking the item relating to section 2251 and inserting the following new items:*

*"Sec. 2251. De minimis yields.*
*"Sec. 2252. Producer eligibility.*
*"Sec. 2253. Definitions."; and*

*(6) by inserting after the item relating to section 2272 the following new items:*

*"SUBCHAPTER F—APPLICATION OF CHAPTER*

*"Sec. 2273. Eligible crop.".*

***SEC. 202. EMERGENCY GRANTS TO ASSIST LOW-INCOME MIGRANT AND SEASONAL FARMWORKERS.***

*(a) INCLUSION OF PERMANENT FARMWORKERS AND PACKINGHOUSE WORKERS.—Section 2281 of the Food, Agriculture, Conservation, and Trade Act of 1990 (42 U.S.C. 5177a) is amended—*

*(1) by inserting ", permanent," after "migrant" each place it appears; and*

*(2) in subsection (b)—*

*(A) by inserting "(including a packinghouse worker)" after "an individual"; and*

*(B) by inserting "or packinghouse work" after "farm work" both places it appears.*

*(b) CLERICAL AMENDMENTS.—*

*(1) SECTION HEADING.—The section heading of such section is amended to read as follows:*

***"SEC. 2281. EMERGENCY GRANTS TO ASSIST LOW-INCOME FARMWORKERS AND PACKINGHOUSE WORKERS.".***

*(2) TABLE OF CONTENTS.—The item relating to such section in the table of contents in section 1(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3359) is amended to read as follows:*

*"Sec. 2281. Emergency grants to assist low-income farmworkers and packinghouse workers.".*

***SEC. 203. EMERGENCY AQUACULTURE PROGRAM.***

*Subtitle B of title XXII of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421 note, 104 Stat. 3962) is amended by adding at the end the following new chapter:*

***"CHAPTER 5—EMERGENCY AQUACULTURE PROVISIONS***

***"SEC. 2276. EMERGENCY AQUACULTURE PROGRAM.***

*"(a) IN GENERAL.—The Secretary shall implement an emergency aquaculture program to assist owners and operators of established commercial fresh water aquaculture operations in restoring the retention levees and other structural improvements that have been damaged by damaging weather or related condition in 1991.*

*"(b) COST-SHARE.—Assistance under this section shall be provided through cost-share agreements entered into by the Secretary with the owners and operators for the restoration of the damaged levees and other structural improvements. The Secretary shall share half the costs incurred under each agreement based on damage surveys made pursuant to regulations issued by the Secretary.*

*"(c) FUNDING.—*

*"(1) IN GENERAL.—The Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this section as provided in section 2268.*

*"(2) AUTHORIZATION OF APPROPRIATIONS.—Any benefits or assistance made available under this section shall be provided for a year only to the extent provided for in advance in appropriations Acts. To carry out this section, there are authorized to be appropriated $1,000,000 for fiscal year 1992. Sums appropriated under this subsection shall remain available until expended.*

*"(3) PRORATION.—To ensure the equitable award of funds for agreements under this section as a result of the limitations in paragraphs (1) and (2), the Secretary may prorate, and adopt procedures to facilitate the proration of, funds made available under this section.".*

***SEC. 204. EMERGENCY LIVESTOCK FEED ASSISTANCE.***

*Section 604 of the Agricultural Act of 1949 (7 U.S.C. 1471b) is amended—*

*(1) by redesignating subsection (d) as subsection (e); and*

*(2) by inserting after subsection (c) the following new subsection:*

*"(d) The Secretary shall consider, if appropriate, the level of precipitation during a growing season in a State, county, or area in a State in making a determination whether to provide emergency livestock feed assistance or other additional assistance under this title.".*

***SEC. 205. EMERGENCY FORAGE PROGRAM.***

*(a) IN GENERAL.—The Secretary of Agriculture shall implement an emergency forage program for established pasture damaged by damaging weather or related condition in 1991, under which the Secretary shall enter into cost-share agreements with owners or operators of the damaged land to provide for reseeding of forage crops on the land in order to facilitate late fall 1991 and early spring 1992 grazing and haying. Assistance may be provided to the owners and operators only when—*

*(1) the forage crop will not regenerate naturally;*

*(2) reseeding is the most cost-effective method for reestablishing the forage crop; and*

*(3) reseeding is not undertaken simply to improve the forage crop damaged by the drought.*

*(b) COST-SHARE.—The Secretary shall share half the costs incurred under each agreement entered into under subsection (a), including the costs of seed, fertilizer, and other inputs on reseeded pasture.*

*(c) LIMITATIONS ON ASSISTANCE.—*

*(1) TOTAL ASSISTANCE.—The total amount of payments an owner or operator of pasture land shall be entitled to receive under this section shall be $3,500.*

*(2) RESEEDING.—The Secretary may cost-share for reseeding under this section only if the reseeding is to be used for nonannual crops planted for pasture purposes.*

*(d) FUNDING.—*

*(1) IN GENERAL.—The Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this section.*

*(2) AUTHORIZATION OF APPROPRIATIONS.—Any benefits or assistance made available under this section shall be provided for a year only to the extent provided for in advance in appropriations Acts. To carry out this section, there are authorized to be appropriated $50,000,000 for fiscal year 1992. Sums appropriated under this subsection shall remain available until expended.*

*(3) PRORATION.—To ensure the equitable award of agreements under this section, as limited under paragraph (2), the Secretary may prorate, and adopt procedures to facilitate the proration of, funds made available under this section.*

*(e) DEFINITIONS.—As used in this section, the terms "damaging weather" and "related condition" have the same meanings provided such terms under section 2253 of the Food, Agriculture, Conservation, and Trade Act of 1990 (as amended by section 201(a) of this Act).*

AMENDMENT NO. 3419

Mr. FORD. Mr. President, I send a substitute amendment to the desk on behalf of Mr. LEAHY and Mr. LUGAR, and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. LEAHY (for himself and Mr. LUGAR) proposes an amendment numbered 3419.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

(The text of the amendment appears in today's RECORD under "Amendments Submitted.")

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3419) was agreed to.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to engrossed for a third reading, was read the third time, and passed, as follows:

(The bill H.R. 2893, will appear in a subsequent issue of the RECORD.)

The title was amended so as to read: "An Act to enhance the financial safety and soundness of the banks and associations of the Farm Credit System, and for other purposes."

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

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

The motion to lay on the table was agreed to.

## INTERSTATE RAIL PASSENGER NETWORK COMPACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5602, a bill granting consent of Congress to the interstate rail passenger network compact between Indiana and Tennessee, and also covering Illinois, Kentucky, Georgia, and Florida, received today from the House; that the bill be deemed read the third time, passed, and the motion to reconsider be laid upon the table.

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

So the bill (H.R. 5602) was deemed read the third time, and passed.

Mr. SIMON. The Senate today will pass H.R. 5602, a bill granting consent to the interstate rail passenger network compact.

This bill will authorize Illinois, Indiana, Kentucky, Tennessee, Georgia, and Florida to take the first preliminary steps toward developing an Amtrak route spanning from Chicago to Florida. The western route, as it has been called, will stimulate economic growth and create jobs throughout the designated areas.

At the same time, development of the western route must proceed in a prudent and careful manner. In this regard, I would like to emphasize the limited scope of the legislation approved by the Senate today. First, the legislation only authorizes participating States to undertake a feasibility study, carrying forward research previously performed by the National Railroad Passenger Corporation [Amtrak]. The compact cannot and will not obligate any participating State to contribute toward any other project, including the development, implementation, management, or operation of the interstate railroad system contemplated by the study. Thus, for example, the determination by the Interstate Rail Passenger Advisory Council of the proportionate share that each State will contribute toward the implementation and management of the proposed restoration will not be binding on the participating States and will not create any obligation under the compact.

Second, a State's obligation to provide funds, equipment, or other things of value for the implementation of the feasibility study is specifically subject to appropriation by the individual State legislatures. This is implicit, if not explicit, in section 4, subsection (2) of the Federal bill, which says that the States will "[p]rovide financial assistance * * * that is available." In general, a State will not incur any obligation to provide funds, equipment, or other things of value under the compact's terms unless these obligations are approved by the legislature of that State.

Once again, in closing, I think this legislation is an important step in the development of a new Amtrak route linked to Illinois. I look forward to further progress in the future on this issue.

## PENNSYLVANIA AND NEW JERSEY DELAWARE RIVER PORT AUTHORITY SUPPLEMENTAL COMPACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 783, H.R. 5452; that statements with respect to the passage of this bill be inserted at the appropriate place in the RECORD; and that the bill be deemed read the third time, passed, and the motion to reconsider passage be laid upon the table.

So the bill (H.R. 783) was deemed read the third time, and passed.

## HOMELESS VETERANS COMPREHENSIVE SERVICE PROGRAMS ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5400.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House agree to the amendment of the Senate to the bill (H.R. 5400) entitled "An Act to establish in the Department of Veterans Affairs a program of comprehensive service for homeless veterans," with the following amendment:

In lieu of the matter inserted by the amendment of the Senate to the text of the bill, insert:

*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 "Homeless Veterans Comprehensive Service Programs Act of 1992".*

***SEC. 2. PILOT PROGRAM.***

*(a) IN GENERAL.—Subject to the availability of appropriations provided for under section 12, the Secretary of Veterans Affairs shall establish and operate, through September 30, 1995, a pilot program under this Act to expand and improve the provision of benefits and services by the Department of Veterans Affairs to homeless veterans.*

*(b) COMPREHENSIVE CENTERS.—The pilot program shall include the establishment of no more than four demonstration programs (in addition to any existing programs providing similar services) at sites under the jurisdiction of the Secretary to be centers for the provision of comprehensive services to homeless veterans. The services to be provided at each site shall include a comprehensive and coordinated array of those specialized services which may be provided under existing law.*

*(c) PLACEMENT OF VBA EMPLOYEES.—The pilot program shall also include the services of such employees of the Veterans Benefits Administration as the Secretary determines appropriate at—*

*(1) no more than 45 sites at which the Secretary provides services to homeless chronically mentally ill veterans pursuant to section 115 of Public Law 100-322 (38 U.S.C. 1712 note);*

*(2) no more than 26 sites at which the Secretary furnishes domiciliary care to homeless veterans pursuant to section 801(b) of Public Law 100-628 (102 Stat. 3257);*

*(3) no more than 12 centers which provide readjustment counseling services under section 1712A of title 38, United States Code; and*

*(4) each of the demonstration sites established under subsection (b).*

***SEC. 3. GRANTS.***

*(a) AUTHORITY TO MAKE GRANTS.—Subject to the availability of appropriations provided for under section 12, the Secretary of Veterans Affairs, during fiscal years 1993, 1994, and 1995, shall make grants to assist eligible entities in establishing new programs to furnish outreach, rehabilitative services, vocational counseling and training, and transitional housing assistance to homeless veterans.*

*(b) CRITERIA FOR AWARD OF GRANTS.—The Secretary shall establish criteria and requirements for the award of a grant under this section, including criteria for entities eligible to receive such grants. The Secretary shall publish such criteria and requirements in the Federal Register not later than 90 days after the date of the enactment of this Act. In developing such criteria and requirements, the Secretary shall consult with organizations with experience in the area of providing service to homeless veterans and to the maximum extent possible shall take into account the findings of the assessment of the Secretary under section 107 of the Veterans' Medical Programs Amendments of 1992. The criteria established under this section shall include the following:*

*(1) Specification as to the kinds of projects for which such grant support is available, which shall include (A) expansion, remodeling, or alteration of existing buildings, or acquisition of facilities, for use as service centers, transitional housing, or other facilities to serve homeless veterans, and (B) procurement of vans for use in outreach to, and transportation for, homeless veterans to carry out the purposes set forth in subsection (a).*

*(2) Specification as to the number of projects for which grant support is available, which shall include provision for no more than 25 service centers and no more than 20 programs which incorporate the procurement of vans as described in paragraph (1).*

*(3) Appropriate criteria for the staffing for the provision of the services for which a grant under this section is furnished.*

*(4) Provisions to ensure that the award of grants under this section (A) shall not result in duplication of ongoing services, and (B) to the maximum extent practicable, shall reflect appropriate geographic dispersion and an appropriate balance between urban and nonurban locations.*

*(5) Provisions to ensure that an entity receiving a grant shall meet fire and safety requirements established by the Secretary, which shall include such State and community requirements that may apply, but fire and safety requirements applicable to buildings of the Federal Government shall not apply to real property to be used by a grantee in carrying out the grant.*

*(6) Specifications as to the means by which an entity receiving a grant may contribute in-kind services to the start-up costs of any project for which support is sought and the methodology for assigning a cost to that contribution for purposes of subsection (c).*

*(c) FUNDING LIMITATIONS.—A grant under this section may not be used to support operational costs. The amount of a grant under this section may not exceed 65 percent of the estimated cost of the expansion, remodeling, alteration, acquisition, or procurement provided for under this section.*

*(d) ELIGIBLE ENTITIES.—The Secretary may not make a grant under this section unless the applicant for the grant—*

*(1) is a public or nonprofit private entity with the capacity (as determined by the Secretary) to effectively administer a grant under this section;*

*(2) has demonstrated that adequate financial support will be available to carry out the project for which the grant has been sought consistent with the plans, specifications, and schedule submitted by the applicant; and*

*(3) has agreed to meet the applicable criteria and requirements established under subsection (b) (and the Secretary has determined that the applicant has demonstrated the capacity to meet those criteria and requirements).*

*(e) APPLICATION REQUIREMENT.—An entity described in subsection (d) desiring to receive assistance under this section shall submit to the*

*Secretary an application. The application shall set forth—*

*(1) the amount of the grant requested with respect to a project;*

*(2) a description of the site for such project;*

*(3) plans, specifications, and the schedule for implementation of such project in accordance with requirements prescribed by the Secretary under subsection (b); and*

*(4) reasonable assurance that upon completion of the work for which assistance is sought, the program will become operational and the facilities will be used principally to provide to veterans the services for which the project was designed, and that not more than 25 percent of the services provided will serve clients who are not receiving such services as veterans.*

*(f) PROGRAM REQUIREMENTS.—The Secretary may not make a grant to an applicant under this section unless the applicant, in the application for the grant, agrees to each of the following requirements:*

*(1) To provide the services for which the grant is furnished at locations accessible to homeless veterans.*

*(2) To maintain referral networks for, and aid homeless veterans in, establishing eligibility for assistance, and obtaining services, under available entitlement and assistance programs.*

*(3) To ensure the confidentiality of records maintained on homeless veterans receiving services under the grant.*

*(4) To establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant and to such payments as may be made under section 4.*

*(5) To seek to employ homeless veterans and formerly homeless veterans in positions created for purposes of the grant for which those veterans are qualified.*

*(g) SERVICE CENTER REQUIREMENTS.—In addition to criteria established under subsection (b), the Secretary shall, in the case of an application for a grant for a service center for homeless veterans, require that—*

*(1) such center shall provide services to homeless veterans during such hours as the Secretary may specify and shall be open to such veterans on an as-needed, unscheduled basis;*

*(2) space at such center will be made available, as mutually agreeable, for use by staff of the Department of Veterans Affairs, the Department of Labor, and other appropriate agencies and organizations in assisting homeless veterans served by such center;*

*(3) such center shall be equipped and staffed to provide, or to assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, meals, transportation assistance, and such other services as the Secretary determines necessary; and*

*(4) such center may be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training), as well as any outreach and case management services that may be necessary to carry out this paragraph.*

***SEC. 4. PER DIEM PAYMENTS.***

*(a) PER DIEM PAYMENTS FOR FURNISHING SERVICES TO HOMELESS VETERANS.—Subject to the availability of appropriations provided for under section 12, the Secretary of Veterans Affairs, pursuant to such criteria as the Secretary shall prescribe, shall provide to a recipient of a grant under section 3 (or an entity eligible to receive a grant under section 3 which after the date of enactment of this Act establishes a program which the Secretary determines carries out the purposes described in section 3) per diem payments at such rates as the Secretary shall prescribe by regulation for services furnished to any homeless veteran—*

*(1) whom the Secretary has referred to the grant recipient (or entity eligible for such a grant); or*

*(2) for whom the Secretary has authorized the provision of services.*

*In a case in which the Secretary has authorized the provision of services, per diem payments may be paid retroactively for services provided not more than 3 days before the authorization was provided.*

*(b) LIMITATION.—The amount of per diem payments made with respect to a veteran under this section may not exceed one-half of the cost to the grant recipient (or other eligible entity) of providing such service.*

*(c) IN-KIND ASSISTANCE.—In lieu of per diem payments under this section, the Secretary may, with the approval of the grant recipient, provide in-kind assistance (through the services of Department employees and the use of other Department resources) to a grant recipient (or entity eligible for such a grant) under section 3.*

*(d) INSPECTIONS.—The Secretary may inspect any facility of an entity eligible for payments under subsection (a) at such times as the Secretary considers necessary. No per diem payment may be made to an entity under this section unless the facilities of that entity meet such standards as the Secretary shall prescribe.*

***SEC. 5. OUTREACH SERVICES.***

*Section 7722 of title 38, United States Code, is amended by adding at the end thereof the following:*

*"(e) In carrying out this section, the Secretary shall assign such employees of the Veterans Benefits Administration as the Secretary considers appropriate to conduct outreach programs and provide outreach services for homeless veterans. Such outreach services may include site visits through which homeless veterans can be identified and provided assistance in obtaining benefits and services that may be available to them.".*

***SEC. 6. EXPANSION OF PROGRAMS FOR HOMELESS VETERANS.***

*Section 801 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Public Law 100-628; 102 Stat. 3257) is amended in subsection (c), by striking out "to homeless" and inserting in lieu thereof "with a primary emphasis on those homeless".*

***SEC. 7. AUTHORITY TO LEASE CERTAIN PROPERTY OF THE DEPARTMENT OF VETERANS AFFAIRS FOR EXTENDED LEASE TERMS.***

*(a) AUTHORITY.—Notwithstanding section 8122(a)(1) of title 38, United States Code, and subject to subsection (b), the Secretary of Veterans Affairs may lease to a representative of the homeless for a term in excess of three years any real property at the West Los Angeles Veterans Affairs Medical Center for which an application of the representative for the use of the property has been approved by the Secretary of Health and Human Services under section 501(e) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(e)). Any such lease shall be subject to the provisions of section 501(f) of such Act (42 U.S.C. 11411(f)).*

*(b) LIMITATION.—The Secretary may not lease real property under subsection (a) for a term in excess of three years to a representative of the homeless unless the representative agrees to use the property only as a location for the provision of services to homeless veterans and the families of such veterans.*

*(c) DEFINITION.—In this section, the term "representative of the homeless" has the meaning given such term in section 501(h)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(h)(4)).*

***SEC. 8. AUTHORITY TO MAKE PROPERTIES AVAILABLE FOR HOMELESS PURPOSES.***

*(a) LEASE OR DONATION.—Section 3735(a) of title 38, United States Code, is amended—*

*(1) in paragraph (2)—*

*(A) by inserting ", lease, lease with an option to purchase, or donate" after "sell"; and*

*(B) by inserting "or lease or donation" after "sale";*

*(2) in paragraph (3)(B), by inserting ", leased, or donated" after "sold";*

*(3) by redesignating paragraph (4) as paragraph (6); and*

*(4) by inserting after paragraph (3) the following new paragraphs:*

*"(4) The term of any lease under this subsection may not exceed three years.*

*"(5) An approved entity that leases a property from the Secretary under this section shall be responsible for the payment of any taxes, utilities, liability insurance, and other maintenance charges or similar charges that apply to the property.".*

*(b) EXTENSION OF AUTHORITY.—Section 3735(b) of such title is amended by striking out "September 30, 1993" and inserting in lieu thereof "December 31, 1995".*

***SEC. 9. FINANCING OF PROPERTIES TO ASSIST HOMELESS VETERANS.***

*(a) FINANCING.—Section 3735 of title 38, United States Code (as amended by section 8), is further amended—*

*(1) by redesignating subsection (b) as subsection (c); and*

*(2) by inserting after subsection (a) the following new subsection (b):*

*"(b)(1) Subject to paragraphs (2) and (3), the Secretary may make loans to organizations described in paragraph (1)(A) of subsection (a) to finance the purchase of property by such organizations under such subsection.*

*"(2) In making a loan under this subsection, the Secretary—*

*"(A) shall establish credit standards to be used for this purpose;*

*"(B) may, pursuant to section 3733(a)(6) of this title, provide that the loan will bear interest at a rate below the rate that prevails for similar loans in the market in which the loan is made; and*

*"(C) may waive the collection of a fee under section 3729 of this title in any case in which the Secretary determines that such a waiver would be appropriate.".*

***SEC. 10. ANNUAL REPORTS.***

*Not later than May 1 of each of 1994, 1995, and 1996, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the implementation of this Act. Each such report shall, to the extent feasible, include information on (1) the number of veterans assisted, (2) the services provided, and (3) the Secretary's analysis of the operational and clinical effectiveness and cost-effectiveness of the programs established under, or with assistance provided by, this Act.*

***SEC. 11. AUTHORIZATION OF APPROPRIATIONS FOR HOMELESS VETERANS' REINTEGRATION PROJECTS.***

*(a) AUTHORIZATION OF APPROPRIATIONS.—Section 738 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11448) is amended by adding at the end the following new subsection:*

*"(e) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to carry out this section the following amounts:*

*"(A) $10,000,000 for fiscal year 1993.*

*"(B) $12,000,000 for fiscal year 1994.*

*"(C) $14,000,000 for fiscal year 1995.*

*"(2) Funds obligated for any fiscal year to carry out this section may be expended in that fiscal year and the succeeding fiscal year.".*

*(b) CONFORMING AMENDMENTS.—(1) Section 739 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11449) is amended—*

*(A) in subsection (a)(3)—*

*(i) by striking out "$17,000,000" and inserting in lieu thereof "$14,800,000"; and*

*(ii) by striking out "1993," and all that follows through "this subtitle" and inserting in lieu thereof "1993"; and*

*(B) in subsection (b), by striking out "other than section 738 of this subtitle and for the program under section 738 of this subtitle".*

*(2) Section 741 of such Act (42 U.S.C. 11451) is amended by inserting "738 and" before "740".*

***SEC. 12. AUTHORIZATION OF APPROPRIATIONS.***

*There are authorized to be appropriated to carry out this Act (other than section 8) $48,000,000 for each of the fiscal years 1993, 1994, and 1995. No funds may be used to carry out the provisions of sections 2, 3, and 4 of this Act unless expressly provided for in an appropriation law. Nothing in this Act shall be construed to diminish funds for, continuation of, or expansion of existing programs administered by the Secretary of Veterans Affairs to serve veterans.*

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I urge my colleagues to approve H.R. 5400, the proposed Homeless Veterans Comprehensive Programs Act of 1992. The measure, as it comes before the Senate, reflects a compromise agreement reached by the Committees on Veterans' Affairs of the Senate and House of Representatives on provisions relating to homeless veterans contained in H.R. 5400 as passed by the House on July 27, 1992, and in S. 2512 as passed by the Senate on September 8, 1992, as an amendment in the nature of a substitute to H.R. 5400.

This compromise agreement would assist the Nation's homeless veterans and their families by creating new programs to provide needed services, improving and expanding existing VA and Department of Labor programs, and by encouraging the coordination of VA and other Federal, State, and local services. I am extremely pleased that both committees were able to arrive at this far-reaching compromise before the end of the 102d Congress.

Mr. President, I will at this time summarize the compromise agreement and discuss certain key provisions. Detailed descriptions of all provisions are set forth in the explanatory statement prepared by the two committees to accompany this compromise agreement. My counterpart, Representative SONNY MONTGOMERY, chairman of the House Veterans' Affairs Committee, inserted this explanatory statement in the RECORD during House consideration of this measure.

SUMMARY OF PROVISIONS

The compromise agreement includes provisions that would:

First, require VA, subject to the availability of expressly provided appropriations, to carry out a pilot program under which (a) up to four comprehensive service centers for homeless veterans would be established and, second, employees of VA's Veterans Benefits Administration would provide benefits counseling at VA sites at which VA provides services to homeless veterans.

Second, authorize VA, subject to the availability of expressly provided appropriations, to assist eligible entities in establishing programs to provide services to homeless veterans by providing grants of up to 65 percent of the costs of establishing these programs.

Third, authorize VA, subject to the availability of expressly provided appropriations, to make per diem payments to VA-approved entities which provide services to homeless veterans whom VA has either referred to the entities or for whom VA has authorized the entities to provide services. The amount of per diem would be limited to 50 percent of the entities' costs of furnishing the services.

Fourth, amend section 7722 of title XXXVIII, which contains a general requirement that VA conduct outreach to inform all eligible veterans of the benefits for which they may be eligible, to add a specific requirement that VA conduct outreach to homeless veterans.

Fifth, expand the scope of VA's homeless chronically mentally ill [HCMI] veterans program so as to authorize the provision of services to all homeless veterans, with a primary emphasis being given to homeless veterans who have a chronic mental illness.

Sixth, authorize VA, with respect to any property at the West Los Angeles VA Medical Center made available under title V of the McKinney Act, to enter into leases for more than 3 years if the organization approved to use the property agrees to use the property to provide services to homeless veterans and their families.

Seventh, amend VA's authority to sell at a discount VA-repossessed properties to nonprofit organizations and State agencies so as to authorize VA, first, to finance such sales by extending credit to the buyer, and second, to lease, lease with an option to purchase, or donate VA-repossessed properties to eligible nonprofit organizations and State agencies for use as shelters for homeless veterans and their families.

Eighth, require VA to submit annual reports in fiscal years 1994–96 on the implementation of the provisions contained in the compromise agreement.

Ninth, authorize appropriations for fiscal years 1993 through 1995 for the homeless veterans reintegration projects administered by the Department of Labor pursuant to the McKinney Act. The authorized appropriations would increase from the currently authorized fiscal year 1993 level of $2.2 million to $10 million for fiscal year 1993, $12 million for fiscal year 1994, and $14 million for fiscal year 1995.

Tenth, authorize appropriations of $48 million for each of fiscal years 1993 through 1995 for the purpose of carrying out the provisions contained in the compromise agreement and prohibit the expenditure of funds to carry out sections 2, 3, and 4 of the compromise agreement unless funds are expressly provided for in an appropriation law.

Mr. President, at this time I would like to highlight certain provisions of this compromise agreement.

UTILIZATION OF VA-ACQUIRED PROPERTIES TO ASSIST HOMELESS VETERANS

Mr. President, section 9 of the compromise agreement would amend section 3735 of title XXXVIII—which authorizes VA to sell acquired properties at a discount to nonprofit organizations and Government agencies that will use them to shelter or house homeless veterans and their families—so as to authorize VA to make loans directly to nonprofit organizations and State agencies for such purchases. VA would be required to develop credit standards that would apply to such loans and would be authorized to charge purchasers less than the market rate of interest on the loans.

I believe that these modifications would provide eligible nonprofit and Government entities a more realistic opportunity to purchase acquired properties under the discount-sale program, which has been woefully underutilized since it was established in 1987. Enabling VA to finance sales of properties by extending credit to nonprofit organizations buying them could significantly improve participation in the acquired property sale program.

Under the current program, although VA offers as much as a 50-percent discount on acquired properties, an organization must finance a purchase either through its own cash reserves or by a conventional mortgage from a lending institution—options which are ill-suited for nonprofit organizations that put their resources into badly needed services and thus seldom have substantial accumulations of cash on hand. By allowing VA to finance the sales directly, and by permitting the Secretary to develop credit standards specifically for this program, this provision should make it possible for many more properties to be used to provide housing for homeless veterans and their families.

Mr. President, section 8 of the compromise agreement would further improve this VA program by authorizing VA to lease, lease with an option to purchase, or donate VA-repossessed properties to nonprofit organizations and State agencies for the purpose of providing housing to homeless veterans. An approved entity leasing a property would be responsible for payment of taxes, utilities, insurance, and maintenance costs associated with the property and would be required to collect rent from the homeless individuals living in the properties.

I believe that the program improvements that would be made by sections 8 and 9 of the compromise agreement would encourage the development of new opportunities for housing homeless veterans through collaborative ventures with nonprofit organizations.

HOMELESS VETERANS REINTEGRATION PROJECTS

Mr. President, section 11 of the compromise agreement would extend the program authority, and increase the

authorized levels of appropriations, for the homeless veterans reintegration projects [HVRP] program administered by the Department of Labor. The HVRP program is a grant program under which grantees hire formerly homeless veterans to conduct outreach to homeless veterans and provide supportive services, job training, job readiness skills, and job placement.

At an April 9, 1992, committee hearing, the Deputy Assistant Secretary for Labor for Veterans Employment and Training, Robin Higgins, testified that, in fiscal year 1990, 11,493 homeless veterans were contacted through outreach efforts, 5,204 of them were enrolled in the program, and 2,309 of those enrolled in the program were placed in jobs, a placement rate of 44 percent.

I have received very favorable comments regarding the HVRP Program from community service providers, the National Coalition for the Homeless, and individual veterans who have been assisted. Up to this point, however, it has been a very small-scale demonstration program—with only 18 projects in 15 cities. The program has shown more than sufficient promise to warrant an increase in its scope. Thus, section 11 of the compromise agreement would increase the authorized level of appropriations from the current fiscal year 1993 level of $2.2 million to $14 million by fiscal year 1995.

Mr. President, it is a national disgrace that many thousands of veterans of the U.S. Armed Forces are sleeping on the streets of our Nation. These men and women are in desperate need of assistance to meet their most basic human needs and to rejoin the mainstream of American life. They answered the call to serve and defend their country, and I believe that we as a nation should respond to their individual and collective crises and assist them in their time of need. This legislation would provide for housing opportunities that would not otherwise exist, and I urge my colleagues to support this measure.

In closing, I thank our committee's ranking Republican member, Senator SPECTER, for his support of this legislation and all members of the committee for their cooperation and assistance regarding this measure. I would also like to note the valuable contributions made by Joan Alker of the National Coalition for the Homeless, the members of the National Coalition for Homeless Veterans, and the individual veterans—Stanley Jordan, William Sherman, and Raymond Tracey—who shared with the committee their personal experiences of homelessness and sought assistance for their fellow veterans.

I also express my gratitude for their work on this legislation to committee minority staff members Yvonne Santa Anna, who has since moved to Senator SPECTER's personal staff, Carrie Gavora, Bill Tuerk, and Tom Roberts and majority staff members Virginia Rowthorn-Apel, Kimberly Morin, who recently left the committee staff, Thomas Tighe, Bill Brew, and Ed Scott.

Mr. President, I urge all of my colleagues to support this important legislation, and I ask unanimous consent that the joint explanatory statement prepared by the Committees on Veterans' Affairs be printed in the RECORD at this point.

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

EXPLANATORY STATEMENT OF H.R. 5400, THE HOMELESS VETERANS COMPREHENSIVE SERVICE PROGRAMS ACT OF 1992

This document explains the provisions of two measures relating to programs for homeless veterans that have been passed by the Senate and House of Representatives, upon which the Committees on Veterans' Affairs of the Senate and House have reached agreement, and which are offered as a proposed House amendment to the Senate amendments to H.R. 5400.

The measures referred to above are H.R. 5400, the proposed "Comprehensive Service Programs For Homeless Veterans Act of 1992", as passed by the House on July 27, 1992 (hereinafter referred to as the "House bill"), and the text of S. 2512 as reported in the Senate, which was passed by the Senate on September 8, 1992, as a substitute amendment for H.R. 5400 (hereinafter referred to as the "Senate amendment").

The differences between the provisions of the House bill and the Senate amendment are noted in this document, except for clerical corrections, conforming changes made necessary by the compromise agreement, and minor drafting, technical, and clarifying changes.

COMPREHENSIVE CENTERS PILOT PROGRAM

Current law: Nothing in current law requires the establishment of comprehensive service centers for homeless veterans or the assignment of veterans benefits counselors at any particular sites in order to serve homeless veterans.

House bill: Section 2 would require VA, subject to the availability of appropriations expressly provided for in an appropriation law, to establish and operate through FY 1995 a pilot program under which (a) there would be established not more than 4 VA comprehensive service centers for homeless veterans, and (b) veterans benefits counselors would provide services at not more than 45 sites at which VA carries out the homeless chronically mentally ill veterans program, 26 sites at which VA carries out the domiciliary care for homeless veterans program, 12 centers which provide readjustment counseling, and each of the comprehensive service centers established under the program.

Senate amendment: No provision.

Compromise agreement: Section 2 follows the House bill with amendments to (a) clarify that any comprehensive service centers established under the demonstration program would be in addition to any existing programs providing similar services, (b) omit specific reference to the services that may be provided at the comprehensive centers created under this program and instead authorize the Secretary to provide any services which are authorized to be provided under current law, and (c) clarify that benefits counseling provided at the specified sites is to be furnished by employees of the Veterans Benefits Administration.

GRANT PROGRAM FOR THE ESTABLISHMENT OF PROGRAMS TO ASSIST HOMELESS VETERANS

Current law: Current law does not authorize VA to make grants for the establishment of programs to assist homeless veterans.

House bill: Section 3(a) would require VA, subject to the availability of appropriations, to make grants during FYs 1993 through 1995 to assist eligible entities in establishing new programs to furnish outreach, rehabilitative services, vocational counseling and training, and transitional housing assistance to homeless veterans.

Senate amendment: No provision.

Compromise agreement: Section 3(a) follows the House bill.

The Committees note that the intent of the grant program is to assist in the establishment of new programs, or new components of existing programs, that will provide needed services to homeless veterans. In this regard, both newly established organizations and existing organizations would be eligible for grant support for the furnishing of specified assistance that is needed in an area or community so long as, in the case of existing organizations, they are not already providing that kind of assistance in such area or community.

*Development of criteria for award of grants*

House bill: Section 3(b) would require VA to (a) establish and publish in the Federal Register, within 90 days after the date of enactment, criteria and requirements for the awarding of grants under the program, and (b) in developing such criteria, consult with the National Coalition for Homeless Veterans and to the maximum extent possible take into account homeless veterans' needs as indicated by the findings of the assessment required under section 5 of the bill (described below).

Senate amendment: No provision.

Compromise agreement: Section 3(b) follows the House bill with an amendment that would require the Secretary, in developing criteria for the award of grants under this program, to consult with organizations with experience in the area of serving homeless veterans.

The Committees note that this modification is intended to broaden the consultation requirement so as to facilitate broader participation by organizations with experience in providing services to homeless veterans. The Committees fully expect, however, that the National Coalition of Homeless Veterans would be among the entities consulted in view of the organization's members' extensive experience in providing services to homeless veterans.

The Committees also note that the assessment referred to in the House bill is not included in the compromise agreement because a similar assessment requirement was included in section 107 of the conference report on S. 2344, which passed the House of Representatives on September 23, 1992, and the Senate on September 25, 1992. However, the Committees intend that the assessments required under that legislation be taken into account by the Secretary in the development of grant criteria in the same manner that the House bill would have required.

*Specific criteria for award of grants*

House bill: Section 3(b) would also require that criteria established for the award of grants include: (a) specification as to the kind of projects eligible for grant support,

which would be required to include renovation or acquisition of existing facilities for use as service centers, transitional housing or other facilities to serve homeless veterans and procurement of vans for use in outreach to and transportation for homeless veterans; (b) specification as to the number of projects for which grants are available, which would be limited to no more than 25 service centers and 20 programs that incorporate the procurement of vans; (c) appropriate criteria for staffing; (d) provisions to ensure that the award of grants does not result in a duplication of ongoing services in excess of identified needs and reflects appropriate geographic dispersion and appropriate balance between urban and nonurban locations; (e) provisions to ensure that grantees meet applicable State and community—not federal—fire and safety requirements; and (f) specifications as to how a grantee may contribute in-kind services to the start-up costs of any project for which grant support is sought and the methodology for assigning a cost to that contribution.

Senate amendment: No provision.

Compromise agreement: Section 3(b) follows the House bill with an amendment that requires VA to establish fire and safety standards, which, at a minimum, shall include a requirement of compliance with applicable State and community fire and safety standards.

The Committees note that this requirement is consistent with that applicable to VA's approval of a residential-care facility under section 1730(b)(2)(A) of title 38, United States Code.

*Funding limitations*

House bill: Section 3(c) would prohibit the use of a grant to support operational costs of a grantee, except as provided in section 4 of this bill, relating to per diem payments to eligible entities for services provided to homeless veterans, and would prohibit the award of a grant in excess of 65% of the estimated cost of the expansion, remodeling, alteration, acquisition, or procurement authorized under the program.

Senate amendment: No provision.

Compromise agreement: Section 3(c) follows the House bill with an amendment clarifying the different nature of grants—which may only be used for acquiring, expanding, or renovating facilities or for procuring vans—and per diem payments, which are intended to cover a portion of an organization's operational costs.

*Eligible entities*

House bill: Section 3(d) would require that, to be eligible for a grant under the program, an applicant (a) must be a public or nonprofit private entity with the capacity (as determined by the Secretary) to administer a grant effectively; (b) must have demonstrated that adequate financial support will be available to carry out the project for which the grant is sought consistent with the plans, specifications, and schedule submitted by the applicant; and (c) must have agreed to meet applicable criteria and regulations (and the Secretary determines that the applicant is capable of compliance). A nonprofit entity established by VA employees under section 1718(b)(2) of title 38 would be prohibited from receiving a grant.

Senate amendment: No provision.

Compromise agreement: Section 3(d) follows the House bill with an amendment deleting language that would make nonprofit entities established under section 1718(b)(2) of title 38 ineligible for grants.

The Committees intend that nonprofit organizations which contract with VA to furnish rehabilitative services under section 1718 be eligible to apply for grant support. However, while the Committees intend that such organizations be eligible, the Committees also intend that the grant program be eavilable to the broadest possible range of eligible entities. In this regard, the Committees are concerned that organizations with ongoing contractual relations with Va may be perceived as having an advantage in the awarding of grants, and thus direct VA to ensure that such organizations do not receive an inappropriate advantage in the award of grants.

*Application requirements*

House bill: Section 3(e) would require that a grant applicant submit an application which sets forth (a) the amount of the grant requested with respect to a project; (b) a description of the site of the proposed project; (c) plans, specifications, and the schedule for implementation of the project in accordance with the requirements prescribed by the Secretary; and (d) reasonable assurance that upon completion of the project for which a grant is sought, the program will become operational and the facilities will be used to provide to the veterans the services for which the project was designed and that not more than 25 percent of the services will be provided to clients not receiving services as veterans.

Senate amendment: No provision.

Compromise agreement: Section 3(e) follows House bill.

*Program requirements for programs awarded grants*

House bill: Section 3(f) would require that an applicant, in order to receive a grant, agree to (a) provide the services for which the grant is furnished at locations accessible to homeless veterans; (b) maintain referral networks for, and aid homeless veterans in, establishing eligibility for assistance and obtaining services under available entitlement and assistance programs; (c) ensure the confidentiality of records maintained on homeless veterans receiving services under the grant; (d) establish procedures for fiscal control and fund accounting necessary to ensure proper disbursement and accounting with respect to the grant and to receipt of per diem payments; and (e) seek to employ homeless veterans and formerly homeless veterans in positions created for purposes of the grant for which those veterans are qualified.

Senate provision: No provision.

Compromise amendment: Section 3(f) follows the House bill.

*Requirements for the award of grants to establish homeless veterans service centers*

House bill: Section 3(f)(5) would require, in addition to the general program requirements, that an applicant for a grant to establish a homeless veterans service center agree that the center would (a) provide services during hours specified by the Secretary and shall be open to homeless veterans on an as-needed, unscheduled basis; (b) make space at the center available, as mutually agreeable, for use by staff of VA, Department of Labor, and other appropriate agencies and organizations to assist homeless veterans in the center; (c) be equipped and staffed to provide, or to assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, transportation assistance, and other services the Secretary determines are necessary; and (d) be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training) and any outreach and case management services that may be necessary to carry out such services.

Senate amendment: No provision.

Compromise agreement: Section 3(g) generally follows the House bill.

PER DIEM PAYMENTS

Current law: Current law does not authorize VA to make per diem payments to organizations for providing services specifically to homeless veterans.

House bill: Section 4(a) would require VA, subject to the availability of appropriations expressly provided for in an appropriation law, to provide to a grantee (or to an entity eligible to receive a grant which establishes a program consistent with the purposes of the grant program) per diem payments at rates prescribed by the Secretary for services furnished to any homeless veteran (a) referred by the Secretary to the grantee (or eligible entity) or (b) for whom the Secretary, within three working days, has authorized the provision of services if the veteran is eligible for such services from VA.

Senate amendment: No provision.

Compromise agreement: Section 4(a) follows the House bill with an amendment omitting the limitation that per diem payments may only be made for services which VA itself is authorized to provide.

*Limitation on per diem payments*

House bill: Section 4(b) would limit the amount of per diem paid with respect to a veteran to 50 percent of the grantee's (or eligible entity's) cost of providing the services furnished.

Senate bill: No provision.

Compromise agreement: Section 4(b) follows the House bill.

The Committee notes that payments may be made for services such as benefits and employment counseling and job training that would involve periodic visits of relatively brief duration and not necessarily overnight shelter or day-long visits. The Committees expect that the Secretary will develop appropriate criteria for the payment of per diem for various kinds of services under the compromise agreement.

*Authority to provide in-kind assistance in lieu of per diem payments*

House bill: Section 4(c) would authorize VA to provide, with the approval of the grantee, in-kind assistance in lieu of per diem.

Senate amendment: No provision.

Compromise agreement: Section 4(c) follows the House bill.

*VA inspections of facilities of entities eligible for per diem payments*

House bill: Section 4(d) would authorize VA to inspect any facility of an entity eligible to receive per diem payments and prohibits the payment of per diem if an entity's facilities do not meet VA standards.

Senate amendment: No provision.

Compromise agreement: Section 4(d) follows the House bill.

ASSESSMENT OF NEEDS OF HOMELESS VETERANS

Current law: Under section 107 of the conference report on S. 2344, the Veterans' Medical Programs Amendments of 1992, which the House passed on September 23, 1992, and the Senate passed on September 25, 1992, the director of each VA regional benefits offices or the director of each VA medical center would be required to conduct assessments of the needs of homeless veterans in their respective catchment areas. The assessments would include the needs of homeless veterans with respect to (a) health care, (b) education and training, (c) employment, (d) shelter, (e)

counseling, and (f) outreach services and the extent to those needs are being met adequately by VA and other federal programs, State and local government programs, and programs of nongovernmental organizations.

House bill: Section 5 is substantively similar to the provisions included in section 107 of the conference report on S. 2344, the Veterans' Medical Programs Amendments of 1992.

Senate bill: No provision.

Compromise agreement: No provision.

OUTREACH SERVICES

Current law: Section 7722 of title 38 requires VA to conduct outreach services to ensure that all veterans are informed of the benefits for which they may be eligible or to which they may be entitled.

House bill: Section 6 would require VA to assign such employees of the Veterans Benefits Administration as the Secretary considers appropriate to conduct outreach services for homeless veterans, including site visits to identify homeless veterans and provide such veterans assistance in obtaining benefits.

Senate amendment: No provision.

Compromise agreement: Section 5 would amend section 7722 of title 38 so as to require the Secretary to conduct appropriate outreach services for homeless veterans, including assigning Veterans Benefits Administration employees to conduct site visits to identify homeless veterans and provide such veterans assistance in obtaining benefits.

EXTENSION AND EXPANSION OF PROGRAMS FOR HOMELESS VETERANS

Current law: Under section 115(d) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322) (as amended by section 201(c) of the Veterans' Benefits Amendments of 1989 (Public Law 101-237) and as would be amended by section 107(h) of the Veterans' Medical Programs Amendments of 1992, which the House passed on September 23, 1992, and the Senate passed on September 25, 1992), VA is authorized to conduct a program to provide care and treatment and rehabilitative services (directly or by contract) in halfway houses, therapeutic communities, psychiatric residential treatment centers, and other community-based treatment facilities to homeless veterans suffering from chronic mental illness disabilities. Public Law 100-628, the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, authorized appropriations of $30 million for each of FYs 1989 and 1990 and required that 50 percent of the funds so appropriated in those years be available for that program and for VA's domiciliary care for homeless veterans program, which was authorized in Public Law 100-71, the Supplemental Appropriations Act of 1987. Public Law 101-237 extended the authority for the homeless chronically mentally ill veterans program through September 30, 1992, and Public Law 100-645 authorized appropriations of $31.5 million for FY 1991 and $33.075 million for FY 1992 to be divided equally between the programs. Section 107 of the conference report on S. 2344 would extend the authority for the homeless chronically mentally ill veterans program through September 30, 1995, and authorize FY 1993 appropriations of $50 million, with funds appropriated in that year to be allocated between those two programs at the Secretary's discretion.

House bill: Section 7 would (a) extend through FY 1995 VA's authority under section 115(d) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322) to conduct a program of rehabilitative services for homeless chronically mentally ill veterans; and (b) authorize funds appropriated for that program, if available, to be expended to assist homeless veterans who are not currently eligible for the HCMI program, but require that chronically mentally ill homeless veterans be given a priority for assistance.

Senate bill: No provision.

Compromise agreement: Section 6 of the compromise agreement would amend section 115(d) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322) so as to expand the scope of the homeless chronically mentally ill veterans program to include all homeless veterans, with primary emphasis being given to homeless veterans who have a chronic mental illness.

The Committees note that the underlying program authority for the existing program would be extended through September 30, 1995, as proposed in the House bill, in section 107(g) of the Veterans' Medical Programs Amendments of 1992, which passed the House on September 23, 1992, and the Senate on September 25, 1992.

AUTHORITY TO LEASE PROPERTIES TO ASSIST HOMELESS VETERANS

Current law: Section 3735 of title 38 authorizes VA, through September 30, 1993, to sell VA-acquired properties at a discount to nonprofit organizations and State agencies that agree to use the properties as a shelter for homeless veterans and their families.

House bill: Section 8 would amend section 3735 to authorize VA to lease, lease with an option to purchase, or donate, to nonprofit or State agencies VA-acquired properties for use as shelter for homeless veterans and their families.

Senate amendment: Section 2 would add to title 38 a proposed new section 3736, that would require VA to carry out through September 30, 1997, a program under which VA would be required annually to make available to nonprofit organizations and State agencies not more than 10 percent of eligible VA-acquired properties for use solely as transitional housing for homeless veterans and their families. Properties would be made available for a nominal fee by lease or by lease with an option to purchase. An approved entity leasing a property would be required (a) to collect rent from veteran occupants in an amount that does not exceed the lesser of (i) the costs of operating and maintaining the property or (ii) 30% of the occupants' income; and (b) to the maximum extent practicable, to (i) utilize the services of homeless veterans in maintaining, operating, and renovating the property, and (ii) provide veteran occupants appropriate information and referrals regarding available services. Properties eligible for lease would be those acquired by default on a loan made, insured, or guaranteed by VA, which are vacant, have been listed for sale for at least 60 days, and are not subject to a sales contract.

Compromise agreement: Section 8 would amend section 3735 of title 38 to authorize VA, through FY September 30, 1997, to lease, lease with an option to purchase, or donate, to nonprofit or State agencies VA-acquired properties for use as shelter for homeless veterans and their families. Any lease would be limited to three years, although the Secretary could include provisions for leases to be renewed; an approved entity leasing a property would be required to collect rent from veteran occupants; and an approved entity that leases a property would be responsible for the payment of any taxes, utilities, liability insurance, and other maintenance charges that apply to the property.

AUTHORITY TO LEASE CERTAIN VA PROPERTY FOR EXTENDED LEASE TERMS

Current law: Title V of the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77; 41 U.S.C. 11411 et seq.) authorizes federal properties, including VA properties, that are surplus, excess, unutilized, or underutilized to be made available by lease for the purpose of assisting homeless persons. Section 8122 of title 38 prohibits VA from entering into a lease of any of its properties for a term in excess of three years.

House bill: Section 9 would authorize VA, with respect to any property at the West Los Angeles VA Medical Center made available under title V of the McKinney Act, to enter into a lease for a term in excess of 3 years with an approved applicant if the applicant agrees to use the property as a location for the provision of services to homeless veterans and their families.

Senate bill: Section 3 is similar to the House provision, except the authority to enter into a lease for a term in excess of three years would apply generally to all VA facilities and not be limited to the West Los Angeles VAMC.

Compromise agreement: Section 7 follows the House bill.

VA FINANCING OF PROPERTIES TO ASSIST HOMELESS VETERANS

Current law: Section 3735(a) of title 38 authorizes VA to sell at a discount VA-acquired properties to nonprofit organizations and State organizations for the purpose of providing shelter for homeless veterans and their families. Under section 3710(g)(2)(a) of title 38, the Secretary is required to establish credit underwriting standards to be used in evaluating VA guaranteed loans.

House bill: No provision.

Senate amendment: Section 1 would amend section 3735 of title 38 to authorize VA to (a) finance directly sales of VA-acquired properties which VA may sell at a discount under section 3735(a) of title 38; (b) waive one or more of the credit underwriting standards that would otherwise apply to direct VA financing under section 3710(g)(2)(A); (c) charge lower-than-market-rate interest; and (d) limit the number of loans in order to protect the interest of the Federal Government. VA would be prohibited from collecting a loan fee for a loan made pursuant to this authority.

Compromise agreement: Section 9 follows the Senate amendment, with amendments that would (a) require the Secretary to establish credit standards to be used to carry out the purposes of this program, and (b) authorize the Secretary to waive a loan fee for loans made under this authority.

HOMELESS VETERANS REINTEGRATION PROJECTS

Current law: Section 738 of the Steward B. McKinney Homeless Assistance Act (Public Law 100-77) authorizes the Secretary of Labor to conduct, directly or through grant or contract, programs to expedite the reintegration of homeless veterans into the labor force. Under this authority, the Secretary of Labor has established the Homeless Veterans Reintegration Projects (HVRP) program, a grant program under which grantees hire formerly homeless veterans to conduct outreach to homeless veterans and provide supportive services, job training, job readiness skills, and job placement. The HVRP program's authority expires on October 1, 1993.

House bill: No provision.

Senate amendment: Section 4 would extend until October 1, 1995, the HVRP program's authority and increase the authorized levels

of appropriations from the currently authorized FY 1993 level of $2.2 million to $10 million for FY 1993, $12 million for FY 1994, and $14 million for FY 1995.

Compromise agreement: Section 11 follows the Senate amendment.

ANNUAL REPORTS

House bill: Section 11 would require VA to submit, by May 1 in each of 1994, 1995, and 1996, a report on the implementation of the bill containing, to the extent practicable, information on the number of veterans assisted, the services provided, and the Secretary's analysis of the operational and clinical effectiveness and cost-effectiveness of programs carried out under the bill.

Senate amendment: No provision.

Compromise agreement: Section 10 follows the House bill.

AUTHORIZATION OF APPROPRIATIONS

House bill: Section 10 would (a) authorize appropriations of $48 million for each of FYs 1993 through 1995; (b) prohibit the use of funds to carry out the House bill (except for section 8, regarding VA's authority to lease or donate VA-acquired properties to nonprofit and State organizations) unless expressly provided for in an appropriaton law; and (c) provide that nothing in the House bill be construed to diminish funds for, or continuation of, existing programs administered by VA.

Senate amendment: No provision.

Compromise agreement: Section 12 follows the House bill with amendments to (a) clarify that nothing in the compromise agreement shall be construed to limit expansion of existing programs administered by VA, and (b) prohibit the expenditure of funds to carry out sections 2, 3, and 4 of the bill unless expressly provided for in an appropriation law.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

## CONSUMER PROTECTION ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1392.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 1392) entitled "An Act to strengthen the authority of the Federal Trade Commission regarding fraud committed in connection with sales made with a telephone, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Consumer Protection Telemarketing Act".*

***SEC. 2. FINDINGS.***

*The Congress makes the following findings:*

*(1) Telemarketing differs from other sales activities in that it can be carried out by sellers across State lines without direct contact. Telemarketers can also be very mobile, easily moving from State to State.*

*(2) Interstate telemarketing fraud has become a problem of such magnitude that the resources of the Federal Trade Commission are not sufficient to insure adequate consumer protection from such fraud.*

*(3) Consumers and others are estimated to lose $1 billion a year in telemarketing fraud.*

*(4) Consumers are victimized by other forms of telemarketing deception and abuse.*

*(5) Consequently, Congress should enact legislation that will offer consumers necessary protection from telemarketing deception (including fraud) and abuse.*

***SEC. 3. TELEMARKETING RULES.***

*(a) IN GENERAL.—*

*(1) The Commission shall prescribe rules prohibiting deceptive (including fraudulent) telemarketing activities and other abusive telemarketing activities.*

*(2) The Commission shall include in such rules respecting deceptive telemarketing activities—*

*(A) a definition of deceptive telemarketing activities, and*

*(B) criteria that are symptomatic of deceptive telemarketing as distinguished from ordinary telemarketing business practices.*

*(3) The Commission shall include in such rules respecting other abusive telemarketing activities a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy. In prescribing the rules described in this paragraph, the Commission shall consider—*

*(A) including a requirement that goods or services offered by telemarketing be shipped or provided within a specified period and that if the goods or services are not shipped or provided within such period, a refund be required, and*

*(B) including, where practicable, authority for a person who orders a good or service through telemarketing to cancel the order within a specified period.*

*(b) RULEMAKING.—*

*(1) The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.*

*(2) A rule issued under subsection (a) shall be considered a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act.*

*(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) regarding unfair or deceptive acts or practices.*

*(d) SECURITIES AND EXCHANGE COMMISSION RULES.—*

*(1) PROMULGATION.—*

*(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under subsection (a), the Securities and Exchange Commission shall promulgate rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing activities by persons described in paragraph (2).*

*(B) EXCEPTION.—The Securities and Exchange Commission is not required to promulgate a rule under subparagraph (A) if it determines that—*

*(i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in paragraph (2) substantially similar to that provided by rules promulgated by the Federal Trade Commission under subsection (a); or*

*(ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets.*

*If the Securities and Exchange Commission determines that an exception described in clause (i) or (ii) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.*

*(2) APPLICATION.—*

*(A) IN GENERAL.—The rules promulgated by the Securities and Exchange Commission under paragraph (1)(A) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company. The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in the preceding sentence.*

*(B) DEFINITIONS.—For purposes of subparagraph (A)—*

*(i) the terms "broker", "dealer", "transfer agent", "municipal securities dealer", "municipal securities broker", "government securities broker", and "government securities dealer" have the meanings given such terms by paragraphs (4), (5), (25), (30), (31), (43), and (44) of section 3(a) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4), (5), (25), (30), (31), (43), and (44));*

*(ii) the term "investment adviser" has the meaning given such term by section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)); and*

*(iii) the term "investment company" has the meaning given such term by section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)).*

*(e) COMMODITY FUTURES TRADING COMMISSION RULES.—*

*(1) APPLICATION.—The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in subsection (f)(1) of section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a).*

*(2) PROMULGATION.—Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a) is amended by adding at the end the following new subsection:*

*"(f)(1) Except as provided in paragraph (2), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under section 3(a) of the Consumer Protection Telemarketing Act, the Commission shall promulgate rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing activities by any person registered or exempt from registration under this Act in connection with such person's business as a futures commission merchant, introducing broker, commodity trading advisory, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.*

*"(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—*

*"(A) rules adopted by the Commission under this Act provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 3(a) of the Consumer Protection Telemarketing Act; or*

*"(B) such a rule promulgated by the Commission is not necessary or appropriate in the pub-*

*lic interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.*

*If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.".*

**SEC. 4. ACTIONS BY STATES.**

*(a) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 3, the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.*

*(b) NOTICE.—The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.*

*(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.*

*(d) ACTIONS BY THE COMMISSION.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 3, no State may, during the pendency of such action instituted by the Commission, institute a civil action under subsection (a) against any defendant named in the Commission's complaint for acts or omissions alleged in the complaint for violation of any rule as alleged in the Commission's complaint.*

*(e) ACTIONS BY OTHER STATE OFFICIALS.—*

*(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.*

*(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice of telemarketing which violates a rule of the Commission under section 3.*

**SEC. 5. ACTIONS BY PRIVATE PERSONS.**

*(a) IN GENERAL.—Any person adversely affected by any pattern or practice of telemarketing which violates any rule of the Commission under section 3 or an authorized person acting on such person's behalf may, within 3 years after discovery of the violation, bring a civil action in an appropriate district court of the United States against a person who has engaged or is engaging in such pattern or practice of telemarketing if the amount in controversy exceeds the sum or value of $50,000 in actual damages for each person adversely affected by such telemarketing. Such an action may be brought to enjoin such telemarketing, to enforce compliance with any rule of the Commission under section 3, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.*

*(b) NOTICE.—The plaintiff shall serve prior written notice of the action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the person shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.*

*(c) ACTIONS BY THE COMMISSION.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 3, no person may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.*

*(d) COSTS AND FEES.—The court, in issuing any final order in any action brought under subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.*

*(e) CONSTRUCTION.—Nothing in this section shall restrict any right which any person may have under any statute or common law.*

**SEC. 6. CLEARINGHOUSE.**

*(a) IN GENERAL.—The Commission shall establish a clearinghouse for inquiries made to Federal agencies concerning telemarketing. The clearinghouse will provide information (other than information which may not be disclosed under section 552(b) of title 5, United States Code, or under regulations prescribed by the Commission to implement such section) to anyone making inquiries respecting persons engaged in telemarketing or direct such inquiries to the appropriate Federal or State agency.*

*(b) LIABILITY FOR PROVIDING INFORMATION.—No person who provides information to the clearinghouse established under subsection (a) shall be liable for damages for the provision of such information unless such person provided such information knowing it to be false.*

**SEC. 7. ADMINISTRATION AND APPLICABILITY OF ACT.**

*(a) IN GENERAL.—Except as otherwise provided in sections 4 and 5, this Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act.*

*(b) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 3 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.*

**SEC. 8. DEFINITIONS.**

*For purposes of this Act:*

*(1) The term "attorney general" means the chief legal officer of a State.*

*(2) The term "Commission" means the Federal Trade Commission.*

*(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.*

*(4) The term "telemarketing" means a plan, program, or campaign which is conducted to induce purchases of goods or services by significant use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which—*

*(A) contains a written description or illustration of the goods or services offered for sale,*

*(B) includes the business address of the seller,*

*(C) includes multiple pages of written material or illustrations, and*

*(D) has been issued not less frequently than once a year,*

*where the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation.*

**SEC. 9. REVIEW.**

*Upon the expiration of 5 years following the date of the enactment of this Act, the Federal Trade Commission shall review the implementation of this Act and its effect on deceptive telemarketing activities and report the results of the review to the Congress.*

AMENDMENT NO. 3420

(Purpose: To make an amendment in the nature of a substitute)

Mr. FORD. I move that the Senate concur in the amendments of the House with a further amendment which I send to the desk now on behalf of Senator BRYAN.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. BRYAN, proposes an amendment numbered 3420.

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

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

The amendment is as follows:

In lieu of the matter proposed to be inserted by the House amendment to the bill, insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Telemarketing and Consumer Fraud and Abuse Prevention Act".

**SEC. 2. FINDINGS.**

The Congress makes the following findings:

(1) Telemarketing differs from other sales activities in that it can be carried out by sellers across State lines without direct contact with the consumer. Telemarketers can also be very mobile, easily moving from State to State.

(2) Interstate telemarketing fraud has become a problem of such magnitude that the resources of the Federal Trade Commission are not sufficient to ensure adequate consumer protection from such fraud.

(3) Consumers and others are estimated to lose $40 billion a year in telemarketing fraud.

(4) Consumers are victimized by other forms of telemarketing deception and abuse.

(5) Consequently, Congress should enact legislation that will offer consumers nec-

essary protection from telemarketing deception (including fraud) and abuse.

**SEC. 3. TELEMARKETING RULES.**

(a) IN GENERAL.—

(1) The Commission shall prescribe rules prohibiting deceptive (including fraudulent) telemarketing activities and other abusive telemarketing activities.

(2) The Commission shall include in such rules respecting deceptive telemarketing activities—

(A) a definition of deceptive telemarketing activities, and

(B) criteria that are symptomatic of deceptive telemarketing as distinguished from ordinary telemarketing business practices.

(3) The Commission shall include in such rules respecting other abusive telemarketing activities (A) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy, and (B) restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers. In prescribing the rules described in this paragraph, the Commission shall also consider—

(A) including a requirement that goods or services offered by telemarketing be shipped or provided within a specified period and that if the goods or services are not shipped or provided within such period, a refund be required;

(B) including, where practicable, authority for a person who orders a good or service through telemarketing to cancel the order within a specified period; and

(C) recordkeeping requirements.

(b) RULEMAKING.—

(1) The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, Unites States Code.

(2) A rule issued under subsection (a) shall be considered a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts of practices.

(d) SECURITIES AND EXCHANGE COMMISSION RULES.—

(1) PROMULGATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under subsection (a), the Securities and Exchange Commission shall promulgate, or require any national securities exchange or registered securities association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing activities by persons described in paragraph (2).

(B) EXCEPTION.—The Securities and Exchange Commission is not required to promulgate a rule under subparagraph (A) if it determines that—

(i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in paragraph (2) substantially similar to that provided by rules promulgated by the Federal Trade Commission under subsection (a); or

(ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets.

If the Securities and Exchange Commission determines that an exception described in clause (i) or (ii) applies, the Securities and Exchange Commission shall publish in the Federal Register its determination with the reasons for it.

(2) APPLICATION.—

(A) IN GENERAL.—The rules promulgated by the Securities and Exchange Commission under paragraph (1)(A) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company. The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in the preceding sentence.

(B) DEFINITIONS.—For purposes of subparagraph (A)—

(i) the terms "broker", "dealer", "transfer agent", "municipal securities dealer", "municipal securities broker", "government securities broker", and "government securities dealer" have the meanings given such terms by paragraphs (4), (5), (25), (30), (31), (43), and (44) of section 3(a) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4), (5), (25), (30), (31), (43), and (44));

(ii) the term "investment adviser" has the meaning given such term by section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)); and

(iii) the term "investment company" has the meaning given such term by section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)).

(e) COMMODITY FUTURES TRADING COMMISSION RULES.—

(1) APPLICATION.—The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in subsection (f)(1) of section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a).

(2) PROMULGATION.—Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a) is amended by adding at the end the following new subsection:

"(f)(1) Except as provided in paragraph (2), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Commission shall promulgate, or require each registered futures association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing activities by any person registered or exempt from registration under this Act in connection with such person's business as a futures commission merchant, introducing broker, commodity trading advisory, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

"(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

"(A) rules adopted by the Commission under this Act provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act; or

"(B) such a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.".

**SEC. 4. ACTIONS BY STATES.**

(a) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 3, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) VENUE; SERVICE OF PROCESS.—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the telemarketing occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) ACTIONS BY THE COMMISSION.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 3, no State may, during the pendency of such action instituted by the Commission, institute a civil action under subsection (a) against any defendant named in the Commission's complaint for acts or omissions alleged in the complaint for violation of any rule as alleged in the Commission's complaint.

(f) ACTIONS BY OTHER STATE OFFICIALS.—

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection

(a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice of telemarketing which violates a rule of the Commission under section 3.

**SEC. 5. ACTIONS BY PRIVATE PERSONS.**

(a) IN GENERAL.—Any person adversely affected by any pattern or practice of telemarketing which violates any rule of the Commission under section 3, or an authorized persons acting on such person's behalf, may, within 3 years after discovery of the violation, bring a civil action in an appropriate district court of the United States against a person who has engaged or is engaging in such pattern or practice of telemarketing if the amount in controversy exceeds the sum or value of $50,000 in actual damages for each person adversely affected by such telemarketing. Such an action may be brought to enjoin such telemarketing, to enforce compliance with any rule of the Commission under section 3, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The plaintiff shall serve prior written notice of the action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the person shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(c) ACTIONS BY THE COMMISSION.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 3, no person may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(d) COSTS AND FEES.—The court, in issuing any final order in any action brought under subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.

(e) CONSTRUCTION.—Nothing in this section shall restrict any right which any person may have under any statute or common law.

**SEC. 6. PROCESS.**

(a) CIVIL SUITS.—In any suit brought against a person, partnership, or corporation under section 13(b) of the Federal Trade Commission Act (15 U.S.C. 53(b)) to enjoin—

(1) deceptive telemarketing activities or other abusive telemarketing activities in violation of the rules prescribed under this Act, or

(2) unfair or deceptive telemarketing acts or practices in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1)),

the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be summoned without regard to whether they reside or transact business in the district in which the suit is brought, and to that end process may be served wherever such other person, partnership, or corporation may be found.

(b) CRIMINAL CONTEMPT ACTIONS.—In any case described in subsection (a)(1) or (2), the Commission may bring a criminal contempt action for violations of orders obtained in such case in the same manner as civil penalty and other Federal court actions apply under section 16(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)(1)). Such criminal cases may be initiated by the Commission pursuant to the appointment as a Special Assistant United States Attorney by the Attorney General of an attorney employed full-time by the Commission to assist the Attorney General in the prosecution of such cases. Such appointment may be instituted at the request of the court which has entered the order for which contempt is sought. The Attorney General shall decide on the appointment within 45 days after receipt of such request for appointment of a Commission lawyer as a Special Assistant United States Attorney. The authority to bring criminal contempt actions under this subsection expires 3 years after the date of enactment of this Act.

**SEC. 7. INVESTIGATION.**

(a) CIVIL INVESTIGATIVE DEMAND FOR PHYSICAL EVIDENCE.—In any investigation by the Commission with respect to—

(1) deceptive telemarketing activities or other abusive telemarketing activities in violation of the rules prescribed under this Act, or

(2) unfair or deceptive telemarketing acts or practices in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1)),

the Commission's powers with respect to a civil investigative demand shall include a demand for the production of physical evidence.

(b) ISSUANCE OF DEMAND.—A civil investigative demand in an investigation described in subsection (a)(1) or (2) may require the person upon whom the demand is served to produce physicial evidence for inspection, to give oral testimony concerning physical evidence, or to furnish such physical evidence and testimony in combination with documentary material, answers, or testimony described in section 20(c)(1) of the Federal Trade Commission Act (15 U.S.C. 57b-1(c)(1)).

(c) CONTENTS.—Each such civil investigative demand for the production of physical evidence shall—

(1) describe each class of physical evidence to be produced under the demand with such definiteness and certainty as to permit such evidence to be fairly identified;

(2) prescribe a return date or dates which will provide a reasonable period of time within which the physical evidence so demanded may be assembled and made available for inspection and copying or reproduction; and

(3) identify the custodian to whom such physical evidence shall be made available.

(d) PRODUCTION OF EVIDENCE IN RESPONSE TO DEMAND.—The production of physical evidence in response to such civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the physical evidence required by demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(e) OTHER REQUIREMENTS.—Except as provided in this section, the requirements of section 20 of the Federal Trade Commission Act (15 U.S.C. 57b-1) apply to a civil investigative demand in an investigation described in subsection (a)(1) or (2).

(f) DEFINITION.—In this subsection, the term "physical evidence" means any object or device.

**SEC. 8. ADMINISTRATION AND APPLICABILITY OF ACT.**

(a) IN GENERAL.—Except as otherwise provided in sections 4 and 5, this Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act.

(b) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 3 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

**SEC. 9. DEFINITIONS.**

For purposes of this Act:

(1) The term "attorney general" means the chief legal officer of a State.

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term "telemarketing" means a plan, program, or campaign which is conducted to induce purchases of goods or services by significant use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which—

(A) contains written description or illustration of the goods or services offered for sale,

(B) includes the business address of the seller,

(C) includes multiple pages of written material or illustrations, and

(D) has been issued not less frequently than once a year,

where the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation.

**SEC. 10. REVIEW.**

Upon the expiration of 5 years following the date of the enactment of this Act, the Commission shall review the implementation of this Act and its effect on deceptive telemarking activities and report the results of this review to the Congress.

Mr. BRYAN. As chairman of the Commerce Committee Consumer Subcommittee, I am pleased by the consideration by the full Senate of S. 1392, legislation to protect consumers from telemarketing fraud.

It is now common knowledge that the telemarketing business has become

a fertile ground for fraudulent operators. The FTC estimates that telemarketing fraud costs consumers billions of dollars each year. The Consumer Federation of America, along with the National Association of Consumer Agency Administrators, completed a survey of State and local consumer protection agencies which identified telemarketing as one of the worst consumer ripoffs and abuses. A recent report by the National Consumers League shows that over 5.5 million people have bought something by telephone they now feel was a definite fraud.

Under these practices, consumers are typically offered goods and services that are what we call too good to be true. The offers include luxury items and fabulous trips at little or no cost. The consumer is often required to pay in advance, and is generally asked to pay by credit card. The reality, however, is that many of these deals are indeed too good be to be true. Sometimes the items are never delivered, or are not of the value which the consumer expected. Many of these operations are fly-by-night boilerroom shops, whose contact with the consumer is limited to the telephone, and whose mobility permit the consumer no recourse in the event the goods are deficient or not delivered. The quick movement and deceptive tactics by these scam operators also make it difficult for enforcement and prosecution, particularly for State law enforcement officials.

As I have stated before, no one knows the problems of telemarketing abuse better than the citizens of my own State of Nevada. During the 1980's, fraudulent telemarketing boilerrooms were a growth industry in Nevada. The State's consumer affairs division has recorded over 15,000 written complaints and over 66,000 telephone inquiries from consumers concerned about such fraud. Estimates show that Nevada consumers lost about $8 million between 1984 and 1989 because of fraudulent telemarketing schemes.

The State government, together with the Federal strike force, has done an admirable job in attempting to deal with this overwhelming problem. The boilerroom industry has gone into sharp decline, from 400 telemarketing firms with 20,000 employees in 1988 to 60 operations with 5,000 salespeople in 1989. The State has enacted creative and effective legislation to address this problem, requiring licensing of telemarketers and establishing tough antifraud provisions in the securities area, which I was pleased to sign into law when I served as Governor.

The effects of telemarketing fraud, however, are felt throughout the Nation, both by consumers and legitimate telemarketers. The FTC and the National Association of State Attorneys General have both stated that they consider telemarketing fraud a grave threat to consumers, and that the problem is one of their top priorities.

In the last Congress, I introduced legislation to strengthen the FTC's authority, and the ability of State attorneys general and individual consumers, to combat fraudulent telemarketing. I was joined in that effort by Senator MCCAIN. At the beginning of this Congress, Senator MCCAIN and I reintroduced the legislation. The bill, S. 1392, was passed unanimously by the full Senate. Similar legislation introduced by Congressman SWIFT, H.R. 3203, was passed by the House.

The legislation that I am introducing today retains provisions from S. 1392 as originally passed, and also incorporates provisions from H.R. 3203. This legislation directs the Federal Trade Commission to undertake a rulemaking to prohibit fraudulent and abusive telemarketing activities. It also provides new enforcement tools for the FTC. Equally important, S. 1392 provides a new cause of action for State attorneys general and other State officials, and for private parties.

The bill provides that the FTC rules respecting deceptive and abusive telemarketing activities shall be considered rules issued under section 18(a)(2)(B) of the Federal Trade Commission Act. In determining whether to make a finding under section 18(f)(1) of the Federal Trade Commission Act that the acts or practices of banks, savings associations, or Federal credit unions are not unfair or deceptive in this connection, it is the intention of the Congress that the appropriate Federal banking regulator include in its consideration, first, whether banks, savings associations, or credit unions in fact engage in deceptive or abusive telemarketing, and, second, whether existing laws or regulations provide protection from deceptive or abusive telemarketing substantially similar to the protection provided by the rules promulgated by the FTC under this bill.

Second, it is the intention of the Congress that the rules the FTC will promulgate under this bill concerning deceptive and abusive telemarketing activities expressly prohibit credit card laundering. Credit card laundering is the practice by which fraudulent telemarketers, sometimes acting in conjunction with third-party intermediaries as brokers, persuade merchants with access to the credit card system to submit, in the name of that merchant, the fraudulent telemarketers' sales drafts into the credit card system. This practice enables the fraudulent telemarketer to avoid the safeguards the credit card systems and the financial institutions participating in these systems have established to preclude access by the fraudulent telemarketer to the credit care system.

The FTC's prohibition of credit card laundering should be broad enough to cover all of the parties involved in credit card laundering—the fraudulent telemarketer, the merchant submitting the fraudulent telemarketer's sales drafts into the credit card system, and any third-party intermediaries causing or arranging the credit card laundering. However, this credit card laundering prohibition should not cover the activities of a legitimate servicing organization which, as an authorized agent of a member of a credit card system, provides services directly to merchants, including, among other things, processing sales drafts. It should not cover an act or practice expressly permitted in a valid agreement with a member of a credit card system or the member's authorized agent. An agreement in violation of the rules of the application credit card system should not constitute a valid agreement for these purposes. In addition, this prohibition generally should not apply to a messenger or other delivery service that is used by a telemarketer merely to physically transport sales drafts, if the messenger or delivery service does not arrange for the sales drafts to be presented to a member of the credit card system or the member's agent.

Finally, the bill provides that the private party actions provided for in the bill may be brought by a victim or an authorized person acting on the victim's behalf. It is the intention of the Congress that such an authorized person includes, among others, a financial institution that has incurred loss or damage, such as through reimbursement of a victimized credit card holder, as well as a member organization comprising financial institution members, or any parent organization of such member organization, if one or more of its financial institution members is eligible to bring a civil action under the bill.

It should be noted that both the National Association of Attorneys General and the U.S. Department of Justice strongly support the provision that would allow all the State attorneys general to enforce a Federal telemarketing rule both on behalf of consumers and State entities. The parens patriae language is not intended to introduce any additional procedural requirements that would delay or otherwise hinder the ability of the State attorneys general to move quickly to enforce the rights of citizens of their States.

Mr. President, this legislation is vitally important. S. 1392 will protect all consumers, as well as legitimate businesses and financial institutions, from becoming unwilling victims of unscrupulous and fraudulent telemarketers. I ask for the unanimous support of my colleagues.

Mr. MCCAIN. Mr. President, I am pleased at the passage of the conference report on S. 1392, the Tele-

marketing and Consumer Fraud and Abuse Prevention Act. This legislation is long overdue. It addresses the issue of telemarketing fraud which continues to prey upon innocent victims in my State of Arizona, and around the country. Advancements in communications technology have ironically proven to be both a benefit and a liability to consumers. While new technologies have provided greater choices to consumers in the marketplace, they have also widened the options of scam operators in selecting a vehicle for cheating consumers out of their earnings.

We all know too well the prevalence of these practices. Senator BRYAN and I have worked together on two telemarketing fraud bills, S. 2494, which was unanimously passed in the Senate in the fall of 1990, and S. 1392 which was again approved in the fall of 1991. This legislation has become increasingly more imperative as the practice becomes more and more sophisticated and less apparent even to the most alert consumer. The need for enacting Federal legislation has never been greater.

I have stated repeatedly that this legislation is not directed at the legitimate telemarketing industry. This industry has provided consumers greater options for obtaining information, entertainment, and home shopping opportunities. A great many of these telemarketing companies are legitimately operated by honest business men and women. Nevertheless, the increases in telemarketing fraud have been a scourge on the industry, and consumers have lost money, in some cases their health, and, in all cases, their patience.

Telemarketing and consumer fraud costs American taxpayers tens of billions of dollars per year. Such fraud is often committed by individuals who escape legal action by dismantling their operation and relocating to begin the operation again. In the cases of these so-called boilerroom scams, both the victims and the perpetrators are difficult to locate since the operations often consist of nothing more than phone banks which do not readily provide detailed evidence of illegal activity.

Of even greater concern are the so-called root organizations which support the boiler rooms and facilitate credit card laundering, an activity which has been shown to be integral to the telemarketing fraud industry. The Federal Trade Commission [FTC] has focused its efforts on bringing cases against these root organizations in order to bring down their client boilerroom outfits, and stop credit card laundering.

The impact of credit card laundering has been harmful to both consumers and banking institutions throughout the Nation. This is exemplified by the situation where a fraudulent telemarketer uses the credit card privileges of a merchant to obtain legitimate credit card drafts as records of transactions to receive payment from the unsuspecting customer's bank.

This exact scenario played out in my State of Arizona. On February 15, 1990, Gateway National Bank in Phoenix was declared insolvent by the Office of the Comptroller of the Currency. Just 1 year prior to insolvency, Gateway claimed assets of $11 million. One of the main reasons attributed to its demise was the overwhelming number of chargebacks the bank had to absorb because of merchants' failure to pay. These chargebacks ate away at the bank's equity capital, depleting it so as to render the bank insolvent.

The message here is clear: With credit card fraud, and all kinds of telemarketing fraud, the consumer and the banking communities are the big losers.

The cases involving telemarketing fraud continue to make news. In April 1991, the FTC brought charges against the makers and marketers of the Arizona-based Amerdream Corp. which misrepresented its product, the so-called ultimate solution diet program, falsely claiming that a Harvard study showed an ingredient in the ultimate solution's night trim diet tablets to be effective in achieving significant weight loss and reducing cholesterol levels and blood pressure. The program also promised consumers of the ultimate solution a 100-percent moneyback guarantee and a $1,000 U.S. Treasury bond just for buying and testing a 2-month supply, which has now been found to be false.

In July 1991, the FTC brought additional charges against the president of Amerdream for false claims made through another one of his companies, also based in Arizona, Advanced Automotive Technologies, Inc., the maker of the Petromizer. A Federal court found that Advanced Automotive falsely represented that the Petromizer increases gas mileage by more than 28 percent, increases automobile horsepower and acceleration by 11 percent, and reduces automobile emissions, including a 100-percent reduction in carbon monoxide emissions, and that various Federal and State organizations helped develop or had tested the product and proven its effectiveness. This marketing technique was very effective in the period during the conflict in the Persian Gulf, where concerns about gasoline supplies were heightened.

As a result of the FTC's efforts in these two cases, a Federal court ordered the companies to pay nearly $675,000 for consumer redress.

I wish these were isolated cases, but we all know they are not. Every segment of society is victimized by telemarketing fraud. The elderly are always targeted by scam operators peddling phony health care products.

Every consumer cries out for greater law enforcement protection. Congressional action has been long overdue, and I am pleased that the Senate and the House of Representatives have passed this legislation.

One of the most important aspects of this legislation are the enforcement provisions which will help the FTC catch these scam operators, wherever they may go, and bring them to justice. The bill also assists the State attorneys general in fighting telemarketing fraud as well. Each part of this bill is extremely important within the framework of helping those on a State and Federal level fight telemarketing fraud and protect consumers.

I appreciate the efforts that have been made by the legitimate members of the telemarketing community and by the consumer advocacy groups, both of whom have worked together in a successful partnership to fight against fraud.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

## INTER-AMERICAN SCIENTIFIC COOPERATION ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 3215, the Inter-American Scientific Cooperation Act of 1992, and that the Senate then proceed to its immediate consideration.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3215) to reinvigorate cooperation between the United States and Latin America in science and technology.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3421

(Purpose: To make an amendment in the nature of a substitute)

Mr. FORD. Mr. President, on behalf of Senator BINGAMAN and Senator LIEBERMAN, I send a substitute amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] for Mr. BINGAMAN (for himself and Mr. LIEBERMAN) proposes an amendment numbered 3421.

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

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

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Inter-American Scientific Cooperation Act of 1992".

**SEC. 2. FINDINGS AND DEFINITION.**

(a) FINDINGS.—The Congress finds the following:

(1) Latin America shares a wide range of scientific and technological concerns with the United States.

(2) The need for science and technology cooperation with Latin America has increased significantly since the 1970s, but mechanisms for cooperation have decreased significantly since many countries in Latin America graduated from programs sponsored by the Agency for International Development.

(3) Latin American scientists and engineers have increasingly looked to Europe and Japan for advanced training and research. This trend may result in a loss of mutually beneficial commerce and scientific cooperation between Latin America and the United States.

(4) Investment by the United States in the Latin American science and technology infrastructure and participation of United States scientists and engineers in short-term and long-term assignments in Latin America can further improve relations between the United States and Latin America, and bring many benefits to the United States, including scientific access, enhanced trade and investment relations, and the opportunity to contribute to economic growth and democratization in the hemisphere.

(5) Science and technology cooperation with the United States, and advanced training and research in the United States, can bring many benefits to Latin America. In developing countries, cooperation can contribute to the strengthening of basic science and technology infrastructure. In industrially advanced Latin American countries, cooperation can increase opportunities in many scientific disciplines and in the frontier scientific fields.

(6) Considerable progress in science and technology cooperation can be made with relatively modest investments.

(7) The return to democracy in a number of Latin American countries provides renewed vigor for freedom of scientific inquiry, cooperation, and progress, as well as a focus for the reversal of the decline in science and technology cooperation between the United States and Latin America.

(b) DEFINITIONS.—As used in this Act—

(1) the term "debt-for-science exchange" means an agreement, between a grantee under section 4 and a Latin American country, that provides that the grantee shall cancel its right to collect payment on a portion of the commercial external debt of that Latin American country, in exchange for the country's contribution to the grantee of local currencies or other assets to support scientific and technological research in the country;

(2) the term "Director" means the Director of the National Science Foundation; and

(3) the term "Latin America" means Mexico, the Caribbean basin, Central America, and South America.

**SEC. 3. ESTABLISHMENT OF THE PROGRAM.**

The National Science Foundation shall establish an Inter-American Scientific Cooperation Program (hereafter in this Act referred to as the "Program") aimed at increasing the level of science and technology cooperation between the United States and Latin America. The National Science Foundation, in establishing the Program, shall identify and cooperate with private and governmental funding bodies, both in Latin America and in the United States. The Program shall include the following elements;

(1) Encouragement and funding of project development interchanges and joint research projects between United States and Latin American scientists and engineers. Joint projects and interchanges funded by the National Science Foundation shall, whenever possible, include cost sharing from sources within the Latin American countries whose citizens participate. The Director shall determine the amount of cost sharing which is required.

(2) Establishment in accordance with section 13 of the National Science Foundation Act of 1950 (42 U.S.C. 1872) of an Inter-American Scientific Exchange. The Exchange's activities shall include collection and dissemination of information to Latin Americans on avenues for advanced study in science and engineering in the United States; United States assistance to Latin American institutions, at the institutions' request, for development of courses, seminars, and curricula in science and engineering; and other forms of scientific and technological cooperation as may be mutually agreeable, such as research projects in furtherance of professional development. In carrying out this paragraph the Director shall coordinate with other Federal agencies offering programs for foreign nationals for advanced study and research in the sciences and in engineering.

(3) Exchange of information and technical assistance between United States and Latin American scientists and engineers interested in establishing data bases and connecting to computer networks such as the National Research and Education Network.

(4) Exchange of information to facilitate the routing of scientific equipment between the United States and Latin America, including information with respect to matching equipment with need, identifying technical maintenance requirements, and meeting customs regulations

(5) Promotion of research programs which utilize unique natural environments or existing or potential centers of scientific research excellence in Latin America.

**SEC. 4. DEBT-FOR-SCIENCE EXCHANGES**

"(a) GRANTS.—The Director is authorized to make grants to nongovernmental organizations within the United States, including colleges and universities, for the purpose of acquiring the commercial external debt of Latin American Countries and undertaking such other activities as are necessary to carry out debt-for-science exchanges. Before making any grant under this section, the Director shall ascertain that—

(1) funds received from a Latin American country in connection with the debt-for-science exchange to which the grant applies will be expended only for cooperative research and development projects, including those described in section 3; or to fund endowments for the long-term support of cooperative research and development projects;

(2) the debt-for-science exchange will result in making funds available for such cooperative projects which otherwise would not be available;

(3) the amount of local currency provided by the Latin American country as a result of the debt-for-science exchange will be substantially greater than the cost of acquiring the country's commercial external debt;

(4) the grantee certifies that the Latin American country has accepted the terms of the exchange and that an agreement has been reached to cancel the commercial debt in an agreed upon fashion; and

(5) Federal grants made under this section will be equally matched by non-Federal contributions to acquire the commercial external debt of the Latin American country.

"(b) RETENTION OF INTEREST.—Grantees or subgrantees of funds provided under this section may retain, without deposit in the Treasury of the United States and without further appropriation, interest earned on the proceeds of any resulting debt-for-science exchange pending disbursements of such proceeds and interest for approved program purposes, which may include the establishment of an endowment, the income of which is used for such purposes.

"(c) COORDINATION WITH OTHER FEDERAL AGENCIES.—In carrying out subsection (a) the Director shall coordinate with Federal agencies, such as the Agency for International Development, that have expertise in debt exchanges.

**SEC. 5. REPORT ON BINATIONAL SCIENCE FOUNDATIONS.**

"(a) REPORT TO CONGRESS.—Within 180 days after the date of enactment of this Act, the Director shall submit to Congress a report which—

(1) describes existing Binational Science Foundations in Latin America and elsewhere and the research funded by them;

(2) identifies successful binational foundations in Latin America in areas other than sciences and technology;

(3) evaluates the advantages and disadvantages of Binational Science Foundations in comparison to direct funding of joint research projects;

(4) identifies countries in Latin America that might benefit by establishment of a Binational Science Foundation between that country and the United States;

(5) identifies types of cooperative scientific research and educational projects that might most effectively be funded through Binational Science Foundations;

(6) assesses, by country, the availability of private-sector funding and in-country funding to match United States funding of Binational Science Foundations in Latin America; and

(7) identifies legislative or administrative changes needed if the National Science Foundation is to fund establishment of Binational Science Foundations.

(b) CONSULTATION.—In carrying out subsection (a), the Director shall consult with Federal agencies, such as the Department of State and the Agency for International Development, that have participated in binational foundations in Latin America and elsewhere.

**SEC. 6. REPORT ON PROGRAM.**

Within 180 days after the date of enactment of this Act, the Director shall submit to Congress a report which—

(1) details activities funded by the National Science Foundation and carried out by or in cooperation with Latin American countries during the preceding fiscal year;

(2) includes a description of how activities of the Program relate to other ongoing and prospective National Science Foundation activities in Latin America;

(3) describes plans for the current and upcoming fiscal years' activities of the Program;

(4) recommends priorities for the Program for cooperation in terms of scientific disciplines and geographic regions; and

(5) recommends necessary legislative or administrative changes in the Program.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Director for carrying out this Act—

(1) $10,000,000 for fiscal year 1993; and

(2) $10,000,000 for fiscal year 1994.

Mr. BINGAMAN. Mr. President, on behalf of myself and Senator LIEBERMAN, I send to the desk a substitute amendment to H.R. 3215, the Inter-American Scientific Cooperation Act of 1992, which authorizes the National Science Foundation [NSF] to establish an Inter-American Scientific Cooperation Program to increase efforts to support joint research projects in Latin America. I appreciate the help of Senator HOLLINGS, who is chairman of the primary committee of jurisdiction on this legislation, the Commerce Committee, in developing this compromise amendment.

I first introduced this legislation in 1990 (S. 2733) as a companion bill to a bill introduced by Congressman BROWN (H.R. 2152). My interest derived really from the efforts of my former New Mexico colleague Congressman Manuel Lujan, now Secretary of the Interior who championed very similar legislation during his tenure in the House. In this Congress I introduced S. 2733 and am pleased to have Senators SEYMOUR and LIEBERMAN as cosponsors of the bill. Over the past 2 years this legislation has gone through several iterations. As originally conceived, and still retained in this amendment, the legislation seeks to establish a strong alliance in joint research and education between Latin America and the United States.

This legislation is aimed at increasing our scientific and technological ties with the nations of Latin America. The United States is known as a world leader in science and technology. In order to maintain and strengthen our leadership, the United States needs to reevaluate our current process for science and technology cooperation. Unfortunately, cooperative efforts between the United States and one of our most important partners, Latin America, have declined in the past 20 years. The amendment seeks to reverse this trend by establishing a strong alliance in joint research and education between Latin America and the United States.

As scientific cooperation between Latin America and the United States has declined, Latin America has looked increasingly to Europe and Japan for scientific and technological training. This trend, in conjunction with the increased emphasis on science and technology in the national development plans of many Latin American nations, will mean a loss of United States influence if we do not act to reassert our interest in this area. Such a reawakening of United States-Latin American cooperation is not only possible but imperative. The amendment is but one step, albeit an important step, toward reinvigorating cooperation between the United States and Latin America.

The amendment will help American scientists working with their colleagues in Latin America to cooperatively develop new technologies and address and monitor environmental problems. We need to develop policies with our Latin American neighbors which are consistent and which support common interests in science and technology. As the Latin American nations strive to increase the standard of living for their people and as we strive to become more economically competitive with other industrialized nations in Europe and Asia, the need for cooperation between the nations of Latin America and the United States becomes evident. It is good policy for us to forge scientific and technological partnerships with Latin America now, as a basis for establishing economic markets later. The United States would not only aid Latin America but would also benefit from expanded trade and investment opportunities.

Unique natural environments and conditions make Latin America a critical area for research opportunities for United States scientists. For example, to thoroughly investigate such topics as the deforestation of the Amazon Basin and its contribution to global climate change and species diversity, United States scientists need stable working relationships with Latin American scientists as well as access to these environments.

The new Inter-American Scientific Cooperation Program within the NSF would consist of several elements. The first is an expansion of funds. At present, NSF funds joint research projects between the United States and Latin America through its international division, with funding under $1 million. The amendment would expand the scope of joint research activities with an authorization of up to $10 million in fiscal year 1993 and up to $10 million in fiscal year 1994.

This amendment would also increase the number of Latin American exchange students eligible to study in the United States. Since the peak year of 1982, enrollment of Latin American students in the United States has dropped by 31 percent and more Latin American students have elected to study in Europe and in Japan. This trend has been fostered by several factors including the Latin American debt crisis, devaluation of currencies, decline of oil revenues, rise in the cost of education in the United States, improvement in indigenous opportunities, and increased opportunities in other Latin American countries, Europe, and Japan.

In order to reverse these trends, this amendment establishes the Inter-American Scientific Educational Development Exchange to provide graduate and post-doctoral fellowships, both for Latin Americans studying in the United States and for United States students who wish to study in Latin America. There will also be an exchange of information and technical assistance between the scientists and engineers of both countries interested in establishing data bases and computer linkages.

In addition, this amendment authorizes NSF to provide grants to colleges and universities so that they may enter into debt-for-science swaps in order to leverage NSF research dollars. Under these arrangements, colleges and universities purchase, from American banks, commercial debt issued by Latin American countries. Due to the Latin American debt crisis, this debt is often available for a fraction of its face value.

I would have preferred that the amendment go further with respect to binational science foundations in Latin America. I favored language that would facilitate the establishment of binational science foundation encouraging, whenever possible, each participating country in Latin America to make financial contributions to the establishment of such foundations. But because of concerns from the Senate Foreign Relations Committee this amendment calls for the National Science Foundation to report to Congress on how binational science foundations could be used to provide long-term funding for cooperative research projects in Latin American countries.

We have already had reports written on this topic. There are other binational science foundations, like those established between Israel and the United States, and more recently in the Freedom Support Act, which will hopefully be passed within the next few days, with Russia and the other States of the former Soviet Union, which can serve as models for foundations with Latin American countries. I can only hope we will receive a positive report from NSF allowing us to move forward with establishing the foundation in the next Congress.

Mr. President, the viability of the United States economy is inescapably linked to the world economy. A successful Latin America will be fundamental to world economic growth and thus to our own. Increased cooperation by the United States and Latin America in the areas of science and technology will provide new research and development opportunities and, as a consequence, positively impact economic growth. I urge my colleagues to support this important legislation.

AMENDMENT NO. 3422

(Purpose: To establish a wind engineering program within the National Institute of Standards and Technology)

Mr. FORD. Mr. President, on behalf of Senator HOLLINGS, I send an amend-

ment regarding wind engineering to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] for Mr. HOLLINGS (for himself and Mr. THURMOND) proposed an amendment numbered 3422.

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

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

The amendment is as follows:

At the end, add the following:

**SEC. 8. SHORT TITLE.**

(a) This section may be cited as the "Wind Engineering Program Act of 1992".

(b) FINDINGS AND PURPOSES.—The Congress finds the following:

(1) Hurricanes and tornadoes kill more Americans and destroy more property than any other natural disaster.

(2) Each year, in the United States, extreme winds cause billions of dollars of damage to homes, schools, and other buildings, roads and bridges, electrical power distribution networks, and communications networks.

(3) Research on wind and wind engineering has resulted in improved methods for making buildings and other structures less vulnerable to extreme winds, but additional research funding is needed to develop new, improved, and more cost-effective methods of wind-resistant construction.

(4) Federal funding for wind engineering research has decreased over the last twenty years.

(5) Wind research has been hampered by a lack of data on near-surface wind speed and distribution during hurricanes, tornadoes, and other severe storms.

(6) Many existing methods for wind-resistant construction are inexpensive and easy to implement but often they are not applied because the construction industry and the general public are unaware of such methods.

(7) Various Federal agencies have important roles to play in wind engineering research, but at present there is little interagency cooperation or coordination in this area.

(8) Establishment of a Federal Wind Engineering Program would result in new technologies for wind-resistant construction, broader application of such technologies in construction, and ultimately decreased loss of life and property due to extreme winds.

(c) PURPOSE.—The purpose of this section is to create a Wind Engineering Program within the National Institute of Standards and Technology, which would—

(1) provide for wind engineering research;

(2) serve as a clearinghouse for information on wind engineering; and

(3) improve interagency coordination on wind engineering research between the National Institute of Standards and Technology, the National Oceanic and Atmospheric Administration, the National Science Foundation, the Federal Aviation Administration, and other appropriate agencies.

(d) ESTABLISHMENT.—Within the National Institute of Standards and Technology, there shall be established a Wind Engineering Program which shall—

(1) conduct research and development, in cooperation with the private sector and academia, on new methods for mitigating wind damage due to tornadoes, hurricanes, and other severe storms;

(2) fund construction and maintenance of wind tunnels and other research facilities needed for wind engineering research;

(3) promote the application of existing methods for, and research results on, reducing wind damage to buildings that are usually incompletely- or non-engineered, such as single family dwellings, mobile homes, light industrial buildings, and small commercial structures;

(4) transfer technology developed in wind engineering research to the private sector so that it may be applied in building codes, design practice, and construction;

(5) conduct, in conjunction with the National Oceanic and Atmospheric Administration, post-disaster research following hurricanes, tornadoes, and other severe storms to evaluate the vulnerability of different types of buildings to extreme winds;

(6) serve as a point of contact for dissemination of research information on wind engineering and work with the private sector to develop education and training programs on construction techniques, develop from research results, for reducing wind damage;

(7) work with the National Oceanic and Atmospheric Administration, the Federal Aviation Administration, and other agencies as is appropriate, on meteorology programs to collect and disseminate more data on extreme wind events; and

(8) work with the National Science Foundation to support and expand basic research on wind engineering.

(e) AUTHORIZATIONS.—(1) There are authorized to be appropriated to the National Institute of Standards and Technology for the purpose of this section $1,000,000 for fiscal year 1993 and $3,000,000 for fiscal year 1994.

(2) Of the amounts authorized under paragraph (1), no less than 50 percent shall be used for cooperative agreements with the National Oceanic and Atmospheric Administration, the National Science Foundation, the Federal Aviation Administration, or other agencies, for wind engineering research, development of improved practices for structures, and the collection and dissemination of meteorological data needed for wind engineering.

Mr. HOLLINGS. Mr. President, the amendment that Senator THURMOND and I are offering is nearly identical to S. 3273, the Wind Engineering Program Act of 1992, which I introduced, along with Senators INOUYE, BREAUX, AKAKA, and BENTSEN, on September 25. A companion bill, H.R. 6039, was introduced in the House by Representatives TOM LEWIS, GEORGE BROWN, and several others.

This is a small but important bill that will do a great deal to prevent the type of wind damage caused by Hurricane Hugo in South Carolina, Hurricane Andrew in Florida and Louisiana, and Hurricane Iniki in Hawaii. Houses ripped to pieces by the wind—entire neighborhoods flattened—block after block without a single house or tree standing; these are the terrible effects of the recent storms that have ravaged several of our States.

By taking a few extra precautions, architects and builders can construct buildings to withstand hurricane-force winds, and it does not require a great deal of special, expensive hardware or sophisticated, new building techniques. Engineers have developed inexpensive, simple techniques for ensuring that roofs stay in place and windows remain intact—even if wind speeds top 120 or 130 miles per hour. Yet, too often, home owners and builders do not know about these techniques.

This amendment would create a Wind Engineering Program at the National Institute of Standards and Technology [NIST] of the Department of Commerce. For years, the Center for Building Technology at NIST has helped builders and architects to design better buildings. The Center is well-known for developing new ways to design and build earthquake-resistant buildings. It helps builders to evaluate new building materials and techniques.

The Wind Engineering Program Act would authorize a total of $4 million over the next 2 years to create a Wind Engineering Program at NIST. The program would coordinate wind engineering research being done at the National Oceanic and Atmospheric Administration [NOAA], the National Science Foundation [NSF], and other agencies. One-half of the money authorized would be used for joint projects with other agencies. For instance, this money could be used by NOAA and Department of Defense meteorologists to provide better data on wind speeds in severe storms so that wind engineers at NIST, in universities, and in industry can understand better how winds damage structures. NIST could also join with NSF to fund wind engineering research in universities and to ensure that the results of that research are disseminated to the architects and builders who can put them into practice.

In this area of wind engineering, there is some very exciting, useful research being done in our universities. I am most familiar with research being done at Clemson University by Dr. Bell Sill, Dr. Peter Sparks, and others. They have constructed a wind tunnel that enables them to test the response of different types of roofs to hurricane-force winds. In addition, after Hurricane Hugo they used their expertise to assess the damage and determine how communities could prepare better for the next hurricane. This amendment will ensure that such important work in continued.

The program created by this amendment is similar to that called for in a recently released National Research Council report, "Wind and the Built Environment: U.S. Needs in Wind Engineering and Hazard Mitigation." That report documents how wind engineering could save lives and billions of dollars throughout the country and makes clear the inadequacy of Federal wind engineering programs.

The Wind Engineering Program created by this bill will be small, but I believe it can do a great deal to reduce the damage caused by hurricanes in the future. During the 1980's, severe wind storms—hurricanes, tornadoes, mountain winds like chinooks, and Santa Anas—caused an average of about $3.7 billion in damage to buildings and other facilities each year. According to some estimates, without new efforts to reduce wind damage, by the year 2000, the average annual cost could rise to $8.8 billion. This bill represents a solid investment—in terms of dollars and, more importantly, in terms of lives saved.

I urge my colleagues to support this legislation.

The ACTING PRESIDENT pro tempore. Without objection, the amendment is agreed to.

So the amendment (No. 3422) was agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the substitute amendment, as amended, is agreed to.

So the substitute amendment (No. 3421), as amended, was agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the bill is considered deemed read a third time and passed.

So the bill (No. 3215), as amended, was deemed read the third time and passed.

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

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

The motion to lay on the table was agreed to.

## UNITED STATES AND STATE OF UTAH LAND EXCHANGE ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 758, H.R. 5118, relating to a Utah land exchange.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5118) to exchange lands within the State of Utah, between the United States and the State of Utah.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The ACTING PRESIDENT pro tempore. Are there any additional floor amendments.

AMENDMENT NO. 3423

Mr. FORD. Mr. President, on behalf of Senator GARN, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] for Mr. GARN proposes an amendment numbered 3423.

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

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

The amendment is as follows:

On page 3, lines 9 and 10, strike "Nevada, amounting to about" and insert "Nevada, comprising approximately".

On page 5, line 2, strike "Act, credit to" and insert "Act, compensate".

On page 5, line 3, strike "Utah the" and insert "Utah for".

On page 5, line 11, strike "shall send" and insert "shall transmit to".

On page 6, line 6, strike "coal in" and insert "coal located in".

On page 6, line 8, strike "coal in" and insert "coal located in".

On page 6, starting on line 11, strike "Secretary may" and insert "Secretary shall".

On page 6, line 12, strike "the right to receive".

On page 7, strike lines 1 through 3 and insert "royalties under this section exceeding $12,500,000 annually."

On page 7, line 22, strike "shall arrange" and insert "shall provide".

On page 8, strike lines 3 through 14 and insert:

"(b) DEADLINE AND DISPUTE RESOLUTION.—(1) If after two years from the date of enactment of this Act, the parties have not agreed upon the final terms of some or all of the exchanges authorized by this Act, including the value of the lands involved in some or all of such exchanges, notwithstanding any other provisions of law, the United States District Court for the District of Utah, Central Division, shall have jurisdiction to hear, determine, and render judgment on the value of any and all lands, or interests therein, involved in the exchange."

On page 8, strike lines 15 through 24.

On page 9, after line 5 insert:

"(c) ADJUSTMENT.—If the State shares revenue from the selected Federal properties the value of such properties shall be the value otherwise established under this section, less the percentage which represents the Federal revenue sharing obligation, but such adjustment shall not be considered as reflecting a property right of the State of Utah.

"(d) INTEREST.—Any royalty offer by the Secretary pursuant to subsection 7(b) shall be adjusted to reflect net present value as of the effective date of the exchange. The State shall be entitled to receive a reasonable rate of interest at a rate equivalent to a five year treasury note on the balance of the value owed by the United States from the effective date of the exchange until full value is received by the State and mineral rights revert to the United States as prescribed by subsection 9(a)(3).".

On page 12, line 24, strike "establish funding," and insert "establish a funding mechanism,".

Mr. GARN. Mr. President, I am pleased to join with my colleague from Utah, Senator HATCH, to legislatively address a situation which was placed upon the State of Utah by the Federal Government at the time it entered the Union in 1896. Many people, including the Governor and representatives of PTA's throughout Utah have worked tirelessly to bring us closer together on a State land exchange bill than we have ever previously been.

The amendments now before the Senate resolve the shortcomings of a bill passed earlier this week by the House, H.R. 5118. Specifically, the amendments allow the State of Utah to recoup revenues due it from the Federal Government from a broad cross section of Federal lands and royalties, in addition to those lands which are specifically listed in the bill. The House bill capped such revenues for these additional offers at $25 million total. The Senate amendments would allow the State to receive $12.5 million per year until the value of the land it traded to the Federal Government is met. Since no more than 50 percent of the revenues can come from so-called additional offers, this means the State could receive more money for the operation of its school system, sooner than if the House provision were left in place. It is a fair proposition to both the Federal Government and the State of Utah.

The effect of this legislation would be to remove State inholdings from within Utah's national parks, forests, and Indian reservations, in exchange for receiving revenue producing lands based on a recommendation put forth by the Secretary of the Interior and agreed to by the State.

Stated simply, at the time of statehood, the Congress granted Utah land sections numbered 2, 16, 32, and 36 "* * * for the support of the common schools * * *." A quick glance at a Utah State map reveals a hodgepodge system of land ownership that is inefficient, cumbersome, and one which deprives the school system of Utah tens of millions of dollars which, if available would reduce the tax burden of every property owner in the State.

Today, this checkerboard management scheme has the effect of giving every management decision over State lands to the various Federal land managers by default. When small, 1-square-mile sections are all surrounded by Federal land, this result is inevitable. For example, when the U.S. Forest Service or the Bureau of Land Management decides certain lands containing developable coal or other resources are better suited for other nondevelopment purposes, then, even though the State of Utah may want to develop those captive State lands for the benefit of the schools, the Federal land manager can effectively veto any decision the State may make concerning such lands. The end result of this ongoing dilemma is that in 1991, State lands generated less than 2 percent of the State of Utah's school budget. Two percent. The 98-percent difference is made up by Utahns paying inordinately high property taxes.

Mr. President, Utah spends more on education as a percent of its total State budget than any other State. Yet, per capita expenditures on students is the lowest of the 50 States. People may ask how can this be? Well, it's really very simple. The people of Utah have more kids per family than in any other State. We don't complain about the kids because they represent our future. But it is no longer possible to sit idly by while the Federal Government's land management policies effectively deprive Utah's State school trust lands of their revenue producing potential. So, parents and teachers and PTA's everywhere in Utah have begun to tell their elected Representatives to fix the problem, to obtain Utah's fair share. To accomplish this requires legislation. That is why this legislation is so important.

For nearly 18 years, it has been my privilege to represent the State of Utah here in the U.S. Senate. I have always tried to be a representative of all of the people. I haven't always succeeded, but I have always tried.

The bill before the Senate, includes lands with commercial value for selection by the Secretary of the Interior for possible transfer to the State. Regrettably, it does not include all available public land with commercial value in Utah. If it did, rural communities and the State school trust would benefit even more than they will from this limited measure.

In my view, Utah's new Governor, whoever he may be, should be entitled to choose from among all the revenue producing lands in the State, no matter how controversial, no matter where those lands are located. The State school trust and thus every school child in the State should be entitled to benefit from school trust lands in Utah. The PTA's around the State have worked long and hard to support measures which would realize the revenue producing potential available to the State school trust. I share their concerns and have done all that I can to amend the House bill in order to maximize the benefits to Utah's schoolchildren and equally as important, to their taxpaying parents.

In 1896, the Congress specifically set aside these State lands for the purpose of providing the maximum possible revenue to operate the school system in Utah. Now, 96 years later, the taxpaying parents of Utah's schoolchildren are demanding of their Representatives in Congress that this statehood promise finally be put into effect.

Mr. President, in summary, Utahns don't want a handout. We simply want what has been taken away from us—de facto—by the Federal land management agencies, whose mandates often differ from the legal mandate of the State to provide money for the education of its children.

Mr. HATCH. Mr. President, I am pleased to have this opportunity to join with Senator GARN in stating my support for this legislation that will address a problem that has been vexing Utah governmental and school leaders for generations.

When Utah gained its statehood, it was given one-ninth of all acres in the State for the support of its public schools. Out of every 36-square-mile township, Utah was given four sections. Unfortunately, much of that land now lies in the middle of Indian reservations, Forest Service units, national parks, national recreation areas, and land managed by the Bureau of Land Management. These lands, referred to as inholdings, are scattered throughout Utah. In many cases, these inholdings are in remote, inaccessible areas.

The isolated nature of these sections has made it impossible for the State to control, the management or economic development of its land, and as a result, the Utah school trust fund has been deprived of much-needed revenues.

The revenues from school trust land sales, mineral leases, and mineral royalties goes into a permanent account. Interest earnings from that account go into the State's annual education budget. At the end of 1991, Utah's permanent school trust fund contained $44 million. When compared to its other school trust fund neighbors of Arizona, Colorado, Idaho, New Mexico, and Wyoming, Utah is far behind. Colorado's trust fund, which is the next smallest, is over $200 million. New Mexico has over $2.5 billion in its trust fund.

Utah school districts are struggling to provide the necessary services to a growing school age population and are feeling a great deal of financial stress. Utah must have the ability to fully utilize its school trust lands. It is essential that a legislative process be provided to facilitate the exchange or purchase of Utah's inholdings.

This legislation would be beneficial to both the Federal Government and the State of Utah. The Federal Government would gain ownership of lands of great scenic value while maintaining the integrity of our national parks and forests. Utah would be able to better manage its school lands and generate the revenues that are desperately needed by Utah school districts.

Mr. President, I am pleased to join with my colleague in urging passage of this proposal that is so important to Utah's future.

The ACTING PRESIDENT pro tempore. Without objection, the amendment is agreed to.

So the amendment (No. 3423) was agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the bill is considered deemed read the third time and passed.

So the bill (H.R. 5118), as amended, was deemed read the third time and passed.

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

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

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I ask unanimous consent that the Calendar 717 be indefinitely postponed.

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

## JEMEZ NATIONAL RECREATION AREA

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 729, H.R. 2502, relating to the Jemez National Recreation Area.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2502) to establish the Jemez National Recreation Area in the State of New Mexico, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

H.R. 2502

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

**SECTION 1. ESTABLISHMENT.**

(a) PURPOSE AND ESTABLISHMENT.—In order to conserve, protect, and restore the recreational, ecological, cultural, religious, and wildlife resource values of the Jemez Mountains, there is hereby established the Jemez National Recreational Area (hereinafter in this Act referred to as the "recreation area"), to be administered by the Secretary of Agriculture (hereinafter the Secretary).

(b) AREA INCLUDED.—The recreation area shall be comprised of approximately [100,000 acres] 57,000 acres of lands and interests in lands within the Santa Fe National Forest as generally depicted on the map entitled "Jemez National Recreation Area-Proposed" [and dated October, 1991.] and dated September 1992. The map shall be on file and available for public inspection in the offices of the Chief of the Forest Service, Department of Agriculture, Washington, D.C. The Secretary may from time to time make minor revisions in the boundary of the recreation area to promote management effectiveness and efficiency in furtherance of the purposes of this Act.

(c) MAP AND DESCRIPTION.—As soon as practicable after enactment of this Act, the Secretary shall file a map and legal description of the recreation area with the Committee on Interior and Insular Affairs of the

House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Each such map and description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in such legal description and map may be made. Each such map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture.

**SEC. 2. ADMINISTRATION.**

(a) IN GENERAL.—The Secretary shall administer the recreation area in accordance with this Act and the laws, rules, and regulations applicable to National Forest System lands in manner that will further the purposes of the recreation area. Management of the natural resources within the recreation area shall be permitted only to the extent that such management is compatible with and does not impair the purposes for which the recreation area is established. Recreational activities within the recreation area shall include (but not be limited to) hiking, camping, hunting, fishing, skiing, backpacking, rock climbing, and swimming.

(b) MANAGEMENT PLAN.—The Secretary shall, no later than 5 years after the enactment of this Act, develop a management plan for the recreation area as an amendment to the Santa Fe National Forest Land and Resource Management Plan to reflect the establishment of the recreation area and to conform to the provisions of this Act: *Provided*, That nothing in this Act shall require the Secretary to revise the Santa Fe Forest Land and Resource Management Plan pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974.

As part of the management plan for the recreation area, the Secretary shall study newly designated land within the recreation area, and adjacent National Forest Land. The Secretary shall, no later than 5 years after enactment of this Act, submit recommendations with respect to future boundaries for the recreation area.

(c) CULTURAL RESOURCES.—In administering the recreation area, the Secretary shall give particular emphasis to the preservation, stabilization, and protection of cultural resources located within the recreation area in furtherance of the Archaeological Resources Protection Act of 1979 and the National Historic Preservation Act.

(d) NATIVE AMERICANS.—In recognition of the past use of portions of the recreation area by Indian peoples for traditional cultural and religious purposes, the Secretary shall protect religious and cultural sites and provide access from time-to-time to those sites by Indian peoples for traditional cultural and religious purposes. Such access shall be consistent with the purpose and intent of the Act of August 11, 1978 (42 U.S.C. 1991) (commonly referred to as the "American Indian Religious Freedom Act"). The Secretary, in accordance with such Act, upon request of an Indian tribe or pueblo, may from time to time temporarily close to general public use one or more specific portions of the recreational area in order to protect the privacy of religious activities and cultural uses in such portion by Indian peoples. Any such closure shall be made so as to affect the smallest practicable area for the minimum period necessary for such purposes.

(2) In preparing and implementing management plans for the recreation area, the Secretary shall request that the Governor of the Pueblo of Jemez and the chief executive officers of other appropriate Indian tribes and pueblos make recommendations on methods of—

(A) assuring access to religious and cultural sites;

(B) enhancing the privacy and continuity of traditional cultural and religious activities in the recreation area; and

(C) protecting traditional cultural and religious sites in the recreation area.

(e) WILDLIFE RESOURCES.—In administering the recreation area, the Secretary shall give particular emphasis to the conservation and protection of wildlife resources, including species listed as sensitive by the United States Forest Service, within the recreation area and shall comply with applicable Federal and State laws relating to wildlife, including the Endangered Species Act of 1973.

(f) HUNTING.—The Secretary shall permit hunting and fishing on lands and waters under the jurisdiction of the Secretary within the recreation area in accordance with applicable Federal and State law. The Secretary may designate zones where, and establish periods when, such activities will not be permitted for reasons of public safety, administration, fish and wildlife management or public use and enjoyment. Except in emergencies such designation by the Secretary under this subsection shall be put into effect only after consultation with the appropriate State agencies responsible for hunting and fishing activities.

(g) TIMBER HARVESTING.—The Secretary may permit timber harvesting in the recreation area for commercial purposes, including (but not limited to) vigas, latillas, the gathering of fuelwood, and for purposes of public safety, recreation, wildlife, and administration, insofar as the harvesting is compatible with the purposes of the recreation area. The Secretary may provide for timber harvesting in the recreation area insofar as harvesting is compatible with the purposes of this Act. Trees damaged or downed due to fire, disease, or insect infestation may be utilized, salvaged or removed from the recreation area as authorized by the Secretary in furtherance of the purposes of this Act. Nothing in this Act shall be construed to affect the timber sales under contract on the date of enactment of this Act. Nothing in this Act shall be construed to effect the Los Griegos timber sale in the Los Griegos Diversity Unit number 0322 as shown on the West Half Diversity Unit map of the Santa Fe National Forest dated November 1991; except that the Secretary shall manage such sale using uneven aged management including the individual tree selection method.

(h) GRAZING.—The Secretary may permit grazing within the recreation area in accordance with regulations prescribed by the Secretary. Riparian areas will be managed in such a manner as to protect their important resource values.

(i) TRANSPORTATION PLAN.—(1) Within 1 year after the date of enactment of this Act, the Secretary shall prepare a transportation plan that provides for the most efficient use of existing roads and trails to accomplish the purposes of this Act. The plan shall provide for a comprehensive trails system that provides for dispersed recreation while minimizing impact on significant archaeological and religious sites.

(2) The Secretary shall construct, maintain, and close roads within the recreation area only in accordance with such plan.

(j) RECREATIONAL FACILITIES.—The Secretary shall provide for recreational facilities within the recreation area. Such facilities shall be constructed so as to minimize impacts on scenic beauty and the natural character of the recreation area.

(k) VISITOR FACILITIES.—The Secretary shall establish a visitor center and interpretive facilities in or near the recreation area for the purpose of providing for education relating to the interpretation of cultural and natural resources of the recreation area.

(l) POWER TRANSMISSION LINES.—In accordance with Federal and State laws and regulations, the Secretary may permit a utility corridor for high power electric transmission lines only when the Secretary determines that—

(1) there is not a feasible alternative for the location of such corridor;

(2) damage to the recreational and scenic quality of the recreation area will not be significant;

(3) it is in the public interest that such corridor be located in the recreation area; and

(4) a plan to minimize harm to the resources of the recreation area has been developed.

(m) SCIENTIFIC INVESTIGATIONS.—The Secretary may permit scientific investigations within the recreation area upon the Secretary's determination that such investigations are in the public interest and are compatible with the purposes of this Act.

**SEC. 3. ACQUISITION OF LAND.**

(a) STATE LANDS.—Lands, and interests in lands, within the boundaries of the recreation area which are owned by the State of New Mexico, or any political subdivision thereof, may be acquired only by donation or exchange.

(b) OFFERS TO SELL.—In exercising the authority to acquire property under this Act, the Secretary shall give prompt and careful consideration to any offer made by any person owning property within the boundaries of the recreation area established under this Act to sell such property.

(b) OFFERS TO SELL.—The Secretary is authorized to acquire lands and interest in land within the boundaries of the recreation area by donation, purchase with donated or appropriated funds, or exchange: *Provided*, That no lands or interests in land may be added to the recreation area after date of enactment of this Act without specific authorization by Congress and the consent of the owner of such land or interest therein.

**SEC. 4. MINERALS AND MINING.**

(a) LIMITATION ON PATENT ISSUANCE.—(1) Notwithstanding any other provision of law, no patents shall be issued after the date of May 30, 1991 for any location or claim made in the recreation area under the mining laws of the United States.

(2) Notwithstanding any statute of limitations or similar restriction otherwise applicable, any party claiming to have been deprived of any property right by enactment of paragraph (1) may file in the United States Claims Court a claim against the United States within 1 year after the date of enactment of this Act seeking compensation for such property right. The United States Claims Court shall have jurisdiction to render judgment upon any such claim in accordance with section 1491 of title 28, United States Code.

(b) WITHDRAWAL.—Subject to valid existing rights, after the date of enactment of this Act, lands within the recreation area are withdrawn from location under the general mining laws and from the operation of the mineral leasing, geothermal leasing, and mineral material disposal laws.

(c) RECLAMATION.—No mining activity involving any surface disturbance of lands or waters within such area, including disturbance through subsidence, shall be permitted

except in accordance with requirements imposed by the Secretary, including requirements for reasonable reclamation of disturbed lands to a visual and hydrological condition as close as practical to their premining condition.

(d) MINING CLAIM VALIDITY REVIEW.—The Secretary of Agriculture shall undertake and complete within 3 years after the date of enactment of this Act an expedited program to examine all unpatented mining claims, including those for which a patent application has been filed, within the recreation area. Upon determination by the Secretary of Agriculture that the elements of a contest are present, the Secretary of the Interior shall immediately determine the validity of such claims. If a claim is determined to be invalid, the Secretary shall promptly declare the claim to be null and void.

(e) PUBLIC PURPOSES.—The Secretary may utilize mineral materials from within the recreation area for public purposes such as maintenance and construction of roads, trails, and facilities as long as such use is compatible with the purposes of the recreation area.

**SEC. 5. ADJOINING LANDS.**

The Secretary may from time to time evaluate lands adjoining the recreation area for possible inclusion in the recreation area and make recommendations to Congress, including but not limited to, that area authorized for study by section 5 of Public Law 101-556, known as the Baca Location Number 1.

**SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

**"SEC. 7. TAOS RANGER DISTRICT.**

(a) CONVEYANCE OF PROPERTY.—

Not later than 6 months after the date of enactment of this Act, the Secretary of Agriculture shall convey by quit-claim deed to the town of Taos, New Mexico, subject to the terms and conditions stated in section 2, all right, title, and interest of the United States in and to the land and improvements thereon described as follows:

That property locally referred to as the "Old Taos Ranger District Office and Warehouse" located in the town of Taos, Taos County, New Mexico, containing approximately 0.633 acres, specifically described in that certain warranty deed dated January 22, 1937, by William T. and Mary E. Hinde, husband and wife, to the United States, as recorded on January 23, 1937, in book A-34, page 415, of the Record of Deeds of Taos County, New Mexico.

(b) TERMS AND CONDITIONS.—

(1) CONSIDERATION.—The conveyance described in section 1 shall be in consideration of the amount of $360,000, payable in full within the 6-month period referred to in section 1, or, at the option of the town of Taos, in 20 annual payments of $18,000 due on January 1 of the first year following enactment of this Act and annually thereafter until the total amount due has been paid, as agreed upon by the Secretary of Agriculture. The cash so received shall be deposited into a special fund in the Treasury which will remain available until expended by the Secretary for purpose of acquiring, within the State of New Mexico, lands or administrative facilities on National Forest System lands. The town of Taos shall not be charged interest on amounts owed the United States for such conveyance.

(2) RELEASE.—On transfer of the property under section 1 the town of Taos shall release the United States from any liability for claims relating to the property.

(3) REVERSION.—The conveyance described in section 1 shall be a conveyance of fee simple title to the property, subject to reversion to the United States if the property is used for other than public purposes or if the compensation requirements described in subsection (a) are not met.

AMENDMENT NO. 3424

(Purpose: To authorize the Secretary of the Interior to contract with the Smithsonian Institution for the completion of the Prehistoric Trackways Study)

Mr. FORD. Mr. President, on behalf of Senator DOMENICI and Senator BINGAMAN I send two amendments to the desk and ask that they be considered en bloc.

The ACTING PRESIDENT pro tempore. The clerk will report the amendments en bloc.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] for Mr. BINGAMAN (for himself and Mr. DOMENICI) proposes an amendment numbered 3424, en bloc.

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

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

The amendment is as follows:

At the end of the bill, add the following new section:

**SEC. 8. COMPLETION OF PREHISTORIC TRACKWAYS STUDY.**

The Secretary of the Interior is authorized to contract with the Smithsonian Institution for the completion of the prehistoric trackways study required under section 303 of the Act entitled "An Act to conduct certain studies in the State of New Mexico", approved November 15, 1990 (Public Law 101-578).

On page 9, lines 1 through 19, strike section 3 in its entirety and insert in lieu thereof the following:

**"SEC. 3. ACQUISITION OF LAND.**

"(a) IN GENERAL. —The Secretary is authorized to acquire lands and interests therein within the boundaries of the recreation area by donation, purchase with donated or appropriated funds, or exchange: *Provided*, That no lands or interests therein may be acquired except with the consent of the owner thereof.

"(b) STATE LANDS.—Lands or interests therein owned by the State of New Mexico or a political subdivision thereof may be acquired only by donation or exchange.

"(c) OFFERS TO SELL.—The Secretary shall give prompt and careful consideration to any offer made by any person owning property within the boundaries of the recreation area to sell such property.

"(d) NO ADDITIONAL LANDS.—No lands or interests therein outside of the boundaries of the recreation area may be added to the recreation area without specific authorization by Congress.".

The ACTING PRESIDENT pro tempore. Is there further debate? If not, without objection, the amendments are agreed to.

So the amendment (No. 3424) was agreed to.

The ACTING PRESIDENT pro tempore. Are there additional amendments.

If there is no objection the committee amendments are considered and agreed to en bloc.

So the committee amendments were agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the bill is considered deemed read a third time and passed.

So the bill (H.R. 2502), as amended, was deemed read the third time and passed.

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

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

The motion to lay on the table was agreed to.

## DELAWARE RIVER WILD AND SCENIC RIVERS ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 732, H.R. 3457 relating to the Delaware River.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3457) to amend the Wild and Scenic Rivers Act to designate certain segments of the Delaware River in Pennsylvania and New Jersey as components of the National Wild and Scenic Rivers System.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Delaware River Study Act of 1992".

**SEC. 2. WILD AND SCENIC RIVER STUDY.**

(a) STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding at the end thereof the following new paragraph:

"( ) DELAWARE RIVER, PENNSYLVANIA AND NEW JERSEY.—(A) The approximately 3.6-mile segment from the Erie Lackawanna Railroad Bridge to the southern tip of Dildine Island.

"(B) The approximately 2-mile segment from the southern tip of Mack Island to the northern border of the town of Belvidere, New Jersey.

"(C) The approximately 12.5-mile segment from the southern border of the town of Belvidere, New Jersey, to the northern border of the city of Easton, Pennsylvania.

"(D) The approximately 9.5-mile segment from the southern border of the town of Phillipsburg, New Jersey, to a point just north of the Gilbert Generating Station.

"(E) The approximately 14.2-mile segment from a point just south of the Gilbert Generating Station to a point just north of the Point Pleasant Pumping Station.

"(F) The approximately 6.5-mile segment from a point just south of the Point Pleasant Pumping Station to the north side of the Route 202 bridge.

"(G) The approximately 6-mile segment from the southern boundary of the town of New Hope, Pennsylvania, to the town of Washington Crossing, Pennsylvania.

"(H) The Cook's Creek tributary.

"(I) The Tinicum Creek tributary.

"(J) The Tohickon Creek tributary.".

(b) ELIGIBILITY STUDY AND REPORT.—Section 5(b) of the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1276(b)) is amended by adding at the end the following new paragraph:

"( )(A) The study of the Delaware River segments and tributaries designated for potential addition to the National Wild and Scenic Rivers System by the amendment made by section 3(a) of this Act shall be completed and the report submitted to Congress not later than 1 year after the date of enactment of this paragraph.

"(B) The Secretary shall—

"(i) prepare the study in cooperation and consultation with appropriate Federal, State, regional, and local agencies, including but not limited to, the Pennsylvania Department of Environmental Resources, the New Jersey Department of Environmental Protection and Energy, the Delaware and Lehigh Navigational Canal National Heritage Corridor Commission, and the Delaware and Raritan Canal Commission; and

"(ii) consider previous plans for the protection of affected cultural, recreational, and natural resources (including water supply and water quality) and existing State and local regulations, so as to avoid unnecessary duplication.

"(C) Pursuant to section 11(b)(1) of this Act, the Secretary shall undertake a river conservation plan for the segment of the Delaware River from the northern city limits of Trenton, New Jersey, to the southern boundary of Bucks County, Pennsylvania.".

**SEC. 3. EXISTING FACILITIES AND POSSIBLE ADDITIONS THERETO.**

The study of the river segments and tributaries designated for potential addition to the National Wild and Scenic Rivers System under section 2 of this Act shall not be used in any proceeding or otherwise to preclude, prevent, restrict, or interfere with the completion, continued or changed operation, maintenance, repair, construction, reconstruction, replacement, or modification of the Gilbert Generating Station and associated facilities, the Point Pleasant Pumping Station and associated facilities, the Portland Generating Station and associated facilities, or the Merrill Creek Reservoir Project and associated facilities, or with the licensing, permitting, relicensing, or repermitting of such projects, stations, and associated facilities. Such study designation shall not preclude or interfere with the licensing, permitting, construction, operation, maintenance, repair, relicensing, or repermitting of any additions to any such facilities, so long as such additions are outside the segments of the Delaware River designated for study by this Act and impounded backwater from any such addition does not intrude on any such segment, and so long as the values present in such segments on the date of enactment of this Act are not unreasonably diminished thereby.

**SEC. 4. TRANSMISSION AND DISTRIBUTION FACILITIES.**

The study of the river segments and tributaries designated for potential addition to the National Wild and Scenic Rivers System under section 2 of this Act shall not be used in any proceeding or otherwise to preclude, prevent, restrict, or interfere with the present or future access to or operation, maintenance, repair, construction, reconstruction, replacement, or modification of electric or gas transmission or distribution lines across or adjacent to such segments, or with the licensing, permitting, relicensing, or repermitting of such lines across such segments: *Provided, however,* That during the administration of the study of such segments, each new electric or gas transmission or distribution line across any such segment shall be located no further than ½ mile from the center line of any transmission or distribution line across any such segment in existence on the date of enactment of this Act.

**SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this Act.

AMENDMENT NO. 3425

Mr. FORD. Mr. President, on behalf of Senator BUMPERS, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] for Mr. BUMPERS proposes an amendment numbered 3425.

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

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

The amendment is as follows:

On page 7, line 6, strike "Pennsylvania." and insert in lieu thereof, "Pennsylvania, excluding river mile 196.0 to 193.8.".

On page 8, line 4, strike "3(a)" and insert in lieu thereof, "5(a)".

On page 9, line 14, strike "or" and insert in lieu thereof, "the Martins Creek Steam Electric Station and associated facilities, or".

On page 10, line 14, strike "the administration of".

The ACTING PRESIDENT pro tempore. Without objection, the amendment is agreed to.

So the amendment (No. 3425) was agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the committee substitute amendment, as amended, is agreed to.

So the committee amendment, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the bill is considered read a third time and passed.

So the bill (H.R. 3457), as amended, was deemed read the third time and passed.

The title was amended so as to read: "A bill to amend the Wild and Scenic Rivers Act to designate certain segments and tributaries of the Delaware River in Pennsylvania and New Jersey for study for potential addition to the National Wild and Scenic Rivers System.".

Mr. BRADLEY. Mr. President, I want to applaud the Senate's action today on passing H.R. 3457, which begins the effort to preserve 55 miles of the Delaware River. This legislation calls for a formal study of the river by the National Park Service to determine which river segments merit inclusion in the Nation's Wild and Scenic River System.

This study will allow for an assessment of detailed data on the historic and ecological values. It will allow for the public meetings and comments that are so necessary to the development of a feasible and effective management plan. Such a plan, which forms the heart of an overall preservation effort, must be based in the understanding and commitment of the local citizens. It is on them that much of the responsibility for protection falls.

These stretches of the Delaware River are within an hour or two drive of roughly 25 million Americans, and it must be considered in this context. This is not Idaho or Montana. People have been settled in the Delaware River valley for over 300 years. Yet it is hard to travel this riverway and not feel compelled by its lasting beauty and rustic nature. Along its banks, are still rolling hills and forests, farms, and sleepy country towns. It may not be completely undeveloped, but it is largely unspoiled.

This river should not be overlooked or disregarded because of its long history. On the contrary, its situation and history provide the rationale for preservation and protection.

Mr. President, it would not be appropriate to close this statement without a special acknowledgement. My friend and colleague, Congressman KOSTMAYER, has played an enormous role in this effort to protect this river. Since coming to Congress, he has stood up for the Delaware River, its beauty and its preservation. That we act today is a testament to his ability and tenacity.

My colleagues are to be commended for the actions taken today. My constituents and I thank them for their support and vision.

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

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

The motion to lay on the table was agreed to.

## ARMED FORCES WORLD WAR II MEMORIAL ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 712, S. 2244, relating to a memorial for World War II Armed Forces, that the committee substitute amendment be agreed to; and that the bill be deemed read a third time.

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

So the committee substitute amendment was agreed to as follows:

**SECTION 1. AUTHORITY TO ESTABLISH MEMORIAL.**

(a) IN GENERAL.—The American Battle Monuments Commission (hereinafter in this Act referred to as the "Commission") is authorized to establish a memorial on Federal land in the District of Columbia or its environs to honor members of the Armed Forces who served in World War II and to commemorate the participation of the United States in that war.

(b) COMPLIANCE WITH STANDARDS FOR COMMEMORATIVE WORKS.—The establishment of the memorial shall be in accordance with the Act entitled "An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes" approved November 14, 1986 (40 U.S.C. 1001, et seq.).

(c) HANDICAPPED ACCESS.—The plan, design, construction, and operation of the memorial pursuant to this section shall provide fro accessibility by, and accommodations for, the physically handicapped.

**SEC. 2. ADVISORY BOARD.**

(a) ESTABLISHMENT OF BOARD.—There is hereby established a World War II Memorial Advisory Board, consisting of 12 members, who shall be appointed by the President from among veterans of World War II, historians of World War II, and representatives of veterans organizations, historical associations, and groups knowledgeable about World War II.

(b) APPOINTMENTS.—Members of the Board shall be appointed not later than 3 months after the date of the enactment of this Act and shall serve for the life of the Board. The President shall make appointments to fill such vacancies as may occur on the Board.

(c) RESPONSIBILITIES OF BOARD.—The Board shall—

(1) in the manner specified by the Commission, promote establishment of the memorial and encourage donation of private contributions for the memorial; and

(2) upon the request of the Commission, advise the Commission on the site and design for the memorial.

(d) TERMINATION.—The Board shall cease to exist on the last day of the third month after the month in which the memorial is completed or the month of the expiration of the authority for the memorial under section 10(b) of the Act referred to in section 1(b), whichever first occurs.

**SEC. 3 PRIVATE CONTRIBUTIONS.**

The Commission shall solicit and accept private contributions for the memorial.

**SEC. 4. FUND IN THE TREASURY FOR THE MEMORIAL.**

(a) IN GENERAL.—There is hereby created in the Treasury of fund which shall be available to the American Battle Monuments Commission for the expenses of establishing the memorial. The fund shall consist of—

(1) amounts deposited, and interest and proceeds credited, under subsection (b);

(2) obligations obtained under subsection (c); and

(3) the amount of surcharges paid to the Commission for the memorial under the World War II 50th Anniversary Commemorative Coins Act.

(b) DEPOSITS AND CREDITS.—The Chairman of the Commission shall deposit in the fund the amounts accepted as contributions under subsection (a). The Secretary of the Treasury shall credit to the fund the interest on, and the proceeds from sale or redemption of, obligations held in the fund.

(c) OBLIGATIONS.—The Secretary of the Treasury shall invest any portion of the fund that, as determined by the Chairman of the Commission, is not required to meet current expenses. Each investment shall be made in an interest bearing obligation of the United States or an obligation guaranteed as to principal and interest by the United States that, as determined by the Chairman of the Commission, has a maturity suitable for the fund.

(d) ABOLITION.—Upon the final settlement of the accounts of the fund, the Secretary of the Treasury shall submit to the Congress a draft of legislation (including technical and conforming provisions) recommended by the Secretary for the abolition of the fund.

**SEC. 5. DEPOSIT OF EXCESS FUNDS.**

If, upon payment of all expenses of the establishment of the memorial (including the maintenance and preservation amount provided for in section 8(b) of the Act referred to in section 1(b)), or upon expiration of the authority for the memorial under section 10(b) of that Act, there remains a balance in the fund created by section 4, the Chairman of the Commission shall transmit the amount of the balance to the Secretary of the Treasury for deposit in the account provided for in section 8(b)(1) of that Act.

## THE ESTABLISHMENT OF A WORLD WAR II MEMORIAL IN WASHINGTON, DC

Mr. THURMOND. Mr. President, as a veteran of World War II, it is a pleasure to rise today to support S. 2244, a bill, which I introduced, that would establish a memorial to honor members of the Armed Forces who served in World War II and to commemorate the U.S. participation in that conflict.

World War II was one of the most significant wars in all of history. Involving more than 16 million Americans, it was the war which preserved freedom for the Western World. Yet, it was not without a heavy toll. The damage and the human suffering were extreme. More than 670,000 Americans were wounded and over 400,000 made the ultimate sacrifice by giving their lives. A tribute to these Americans is richly deserved.

World War II memorials are located all over the world. However, there is no single monument that honors the American veterans of World War II as a group. Our Nation's Capital would be an especially fitting location for such a monument, and the legislation I have introduced would provide for such a location.

Mr. President, I introduced S. 2244 on February 20, 1992. The Senate Committee on Energy and Natural Resources held a hearing on August 6, 1992 and unanimously approved it on September 22, 1992.

S. 1244, as introduced, would have authorized a private group to raise the funds necessary to plan, design and oversee the construction of the memorial with no Federal funds involved. The House of Representatives companion bill, H.R. 1624, as introduced by Congresswoman KAPTUR on March 22, 1991, would have appropriated to the American Battle Monuments Commission [ABMC] "such funds as are necessary" to build the memorial. After many negotiations concerning the differences between the two bills, I believe the bill, as reported by the Senate Committee on Energy and Natural Resources, has been revised and amended to better reflect a bipartisan effort to honor the American veterans of World War II.

According to the compromise legislation, the ABMC will be authorized to plan, design, and oversee the construction of the Memorial. The necessary funds will be raised through the sale of commemorative coins, as provided in S. 3195, the World War II Commemorative Coin Act of 1992, and private donations, as passed by Congress.

While S. 2244 is nearly identical to H.R. 1624 as passed by the House on June 22, 1992, there is one difference. Section 3, of S. 2244 directs the ABMC to actively seek private contributions.

My concern is that no Federal tax dollars should be used for construction of the memorial in this time of scarce Federal resources. I want to emphasize this point. The taxpayer should not be stuck with having to rescue a failed attempt to raise enough money through the sale of commemorative coins alone. I strongly feel that this memorial should be funded through private donations and not be placed as a burden on the taxpayer. I believe that the ABMC has proven its ability in raising private donations and I encourage the ABMC to do so.

Mr. President, I urge my colleagues to join me in support of this worthy measure for our faithful and deserving veterans.

So the bill was deemed read the third time.

Mr. FORD. Mr. President, I ask unanimous consent that the Rules Committee be discharged from further consideration of H.R. 1624; that the Senate proceed to its immediate consideration; that all after the enacting clause be stricken and the text of S. 2244, as amended be inserted in lieu thereof, that the bill be deemed read a third time, passed; and that the motion to reconsider be laid upon the table.

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

So the bill (H.R. 1624), as amended, was deemed read the third time and passed.

Mr. FORD. Mr. President, I ask unanimous consent that the Calendar No. 712 be indefinitely postponed.

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

## U.S. HOLOCAUST MEMORIAL COUNCILS

Mr. FORD. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further con-

sideration of H.R. 2660, a bill authorizing appropriations for the U.S. Holocaust Memorial Councils and that the Senate proceed to its immediate consideration; that the bill be deemed read a third time, passed; and that the motion to reconsider be laid upon the table.

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

So the bill (H.R. 2660) was deemed read the third time and passed.

## LOWER MERCED RIVER WILD AND SCENIC RIVERS ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2431.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House agree to the amendment of the Senate to the bill (H.R. 2431) entitled "An Act to amend the Wild and Scenic Rivers Act by designating a segment of the Lower Merced River in California as a component of the National Wild and Scenic Rivers System," with the following amendment: Strike out all after the enacting clause, and insert:

**SECTION 1. DESIGNATION OF THE LOWER MERCED RIVER FOR INCLUSION IN THE WILD AND SCENIC RIVERS SYSTEM.**

Section 3(a)(62) of the Wild and Scenic Rivers Act (16 U.S.C. 127(a)(62)) is hereby amended—

(1) by striking "The main stem" and inserting in lieu thereof, "(A) The main stem";

(2) by striking "paragraph" whenever it appears and inserting in lieu thereof "subparagraph"; and

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

"(B)(i) The main stem from a point 300 feet upstream of the confluence with Bear Creek downstream to the normal maximum operating pool water surface level of Lake McClure (elevation 867 feet mean sea level) consisting of approximately 8 miles, as generally depicted on the map entitled 'Merced Wild and Scenic River', dated April, 1990. The Secretary of the Interior shall administer the segment as recreational, from a point 300 feet upstream of the confluence with Bear Creek downstream to a point 300 feet west of the boundary of the Mountain King Mine, and as wild, from a point 300 feet west of the boundary of the Mountain King Mine to the normal maximum operating pool water surface level of Lake McClure. The requirements of subsection (b) of this section shall be fulfilled by the Secretary of the Interior through appropriate revisions to the Sierra Management Framework Plan for the Sierra Planning Area of the Folsom Resource Area, Bakersfield District, Bureau of Land Management. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subparagraph.

"(ii) To the extent permitted by, and in a manner consistent with section 7 of this Act (16 U.S.C. 1278), and in accordance with other applicable law, the Secretary of the Interior shall permit the construction and operation of such pumping facilities and associated pipelines as identified in the Bureau of Land Management right-of-way application CACA 26084, filed by the Mariposa County Water Agency on November 7, 1989, and known as the 'Saxon Creek Project', to assure an adequate supply of water from the Merced River to Mariposa County.

"(C) With respect to the segments of the main stem of the Merced River and the South Fork Merced River designated as recreational or scenic pursuant to this paragraph or by the appropriate agency pursuant to subsection (b), the minerals to Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.".

**SEC. 2. STUDY OF THE NORTH FORK OF THE MERCED RIVER.**

Section 5(a) of the Wild and Scenic Rivers Act, as amended, (16 U.S.C. 1276(a)), is further amended by adding the following new paragraph at the end thereof:

"( ) NORTH FORK MERCED, CALIFORNIA.—The segment from its headwaters to its confluence with the Merced River, by the Secretary of Agriculture and the Secretary of the Interior.".

**SEC. 8. NEW EXCHEQUER PROJECT.**

The designation of the river segments referred to in section 1 of this Act as components of the Wild and Scenic Rivers System shall not affect the continued operation and maintenance (including flood control operations) of the New Exchequer Project (Project No. 2179) as licensed by the Federal Energy Regulatory Commission on the date of enactment of this Act or the Commission's authority to issue a new license to the existing license for such project within the project boundaries set forth in the license on the date of enactment of this Act: *Provided* that if the Commission issues a new license to the existing licensee for such a project, the normal maximum operating pool water surface level authorized in the project's license shall not exceed elevation 867.0 mean sea level.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment.

The ACTING PRESIDENT pro tempore. Without objection, the motion is agreed to.

So the motion was agreed to.

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

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

The motion to lay on the table was agreed to.

## ARKANSAS-IDAHO LAND EXCHANGE ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2572.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 2572) entitled "An Act to authorize an exchange of lands in the States of Arkansas and Idaho," do pass with the following amendment: Strike out all after the enacting clause, and insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Arkansas-Idaho Land Exchange Act of 1992".*

***SEC. 2. FINDINGS AND PURPOSE.***

*(a) FINDINGS.—Congress finds that—*

*(1) the Potlatch Corporation has offered to the United States Government an exchange of lands under which Potlatch would receive approximately 17,625 acres of scattered tracts of Federal lands in the State of Idaho in return for conveying to the United States lands owned by Potlatch consisting of approximately 40,922 acres of undisturbed bottomland hardwood lands in the State of Arkansas and approximately 1,170 acres of lands with important recreational and fisheries values in the State of Idaho;*

*(2) the lands in Arkansas that Potlatch has offered to convey to the United States are surrounded by Federal and State lands on the Cache and White Rivers which are designated as a "Wetland of International Importance" under the Convention on Wetlands of International Importance (commonly referred to as the "Ramsar Convention"), one of only 10 areas in the United States so designated;*

*(3) acquisition of these lands by the United States will remove the lands from sustained timber production and other development in the heart of this critical wetland ecosystem;*

*(4) the lands Potlatch has offered to convey to the United States will qualify for inclusion as a Wetland of International Importance under the Ramsar Convention;*

*(5) the lands Potlach has offered to convey to the United States are outstanding fish and wildlife habitat and should continue to be made available for activities such as public hunting, fishing, trapping, nature observation, enjoyment, and education;*

*(6) the lands the United States would convey to Potlatch do not contain comparable fish, wildlife, or wetland values;*

*(7) appraisals of all lands to be conveyed in the exchange have been completed; and*

*(8) the United States and Potlatch have agreed to the values and boundaries of all lands to be conveyed in the exchange and concur that the lands to be conveyed by Potlatch and the lands to be conveyed by the United States are of equal value.*

*(b) PURPOSE.—The purpose of this Act is to authorize and require the Secretary and the Secretary of Agriculture to participate in an exchange of lands that will provide environmental and economic benefits to the States of Arkansas and Idaho and to the Nation.*

***SEC. 3. EXCHANGE.***

*(a) INTER-AGENCY LAND TRANSFERS.—*

*(1) TRANSFERS BETWEEN SECRETARY AND SECRETARY OF AGRICULTURE.—*

*(A) TRANSFER TO SECRETARY OF AGRICULTURE.—Notwithstanding the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), not later than 30 days after the date of the enactment of this Act, the Secretary shall transfer to the jurisdiction of the Secretary of Agriculture for inclusion in the National Forest System approximately 9,114 acres of public lands in the State of Idaho, as identified upon a map entitled "Arkansas-Idaho Exchange—Idaho Lands", dated July 1992 and available for inspection in appropriate offices of the Secretary.*

*(B) TRANSFER TO SECRETARY OF AGRICULTURE.—Subsequent to the exchange required by subsection (b), the Secretary shall transfer to the Secretary of Agriculture for inclusion in the National Forest System approximately 891 acres of public lands in the State of Idaho identified for postexchange transfer upon the map referenced in subparagraph (A).*

*(2) TRANSFER TO SECRETARY.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Agriculture shall transfer*

*to the Secretary for conveyance to Potlatch pursuant to subsection (b), approximately 7,979 acres of lands within the National Forest System in the State of Idaho, as identified upon the map referenced in subparagraph (A).*

*(b) EXCHANGE OF LANDS.—*

*(1) IN GENERAL.—Notwithstanding the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), within 60 days after the date of the enactment of this Act, the Secretary shall convey to Potlatch, in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) and subject to paragraph (2) and any valid existing rights, approximately 17,625 acres of public lands in the State of Idaho identified for transfer to Potlatch on the map referenced in subsection (a)(1)(A) in exchange for lands owned by Potlatch consisting of—*

*(A) approximately 40,921 acres in the State of Arkansas, as depicted for transfer to the United States upon a map entitled "Arkansas-Idaho Land Exchange—Arkansas Lands," dated July 1992 and available for inspection in appropriate offices of the Secretary, and*

*(B) approximately 1,170 acres in the State of Idaho, as identified for transfer to the United States upon the map referenced in subsection (a)(1)(A).*

*(2) LIMITATION.—The Secretary may not convey any lands to Potlatch under this subsection unless title to the lands to be conveyed by Potlatch in exchange is in accordance with the Department of Justice standards for the preparation of title evidence in land acquisitions by the United States.*

*(c) GENERAL PROVISIONS.—*

*(1) MAPS CONTROLLING.—To ensure the management benefits of consolidating isolated tracts of lands, any conflict between a number of acres of lands referred to in this Act and a depiction of the lands on a map referenced in this Act shall be resolved in favor of the map.*

*(2) CANCELLATION.—Prior to implementation of the exchange required by subsection (b), if Potlatch notifies the Secretary in writing that it no longer intends to complete the exchange, the lands referenced in subsection (a) shall revert to their status as of the day before the date of enactment of this Act, and shall be managed in accordance with applicable management plans.*

*(3) FINAL MAPS.—Not later than 6 months after the conclusion of the exchange required by subsection (b), the Secretary shall transmit maps accurately depicting the lands transferred and conveyed pursuant to this Act and the acreages and legal descriptions of such lands to the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the Senate.*

*(4) WITHDRAWAL.—Subject to valid existing rights, the lands depicted for conveyance to Potlatch on the map referenced in subsection (a)(1)(A) are withdrawn from all forms of entry and appropriation under the public land laws (including the mining laws) and from operation of the mineral leasing and geothermal leasing laws effective upon the date of the enactment of this Act. Such withdrawal shall terminate on the date of completion of the exchange required by subsection (b) or on the date of any notification by Potlatch of a decision not to complete the exchange pursuant to paragraph (2).*

*(5) POWER SITE RESERVATIONS.—The following Executive Orders shall have no effect insofar as they involve the following described lands:*

*(A) The Executive order dated July 2, 1910, which established Powersite Reserve No. 91, with respect to those lands at Boise Meridian, T. 45 N., R. 4 E., Sec. 18, SW¼NE¼, comprising approximately 40 acres.*

*(B) The Executive order dated July 2, 1910, which established Powersite Reserve No. 106, with respect to those lands at Boise Meridian, T. 32 N., R. 5 E., Sec. 14, W½NE¼NE and SE¼NE¼NE¼, comprising approximately 30 acres.*

*(C) The Executive order dated August 31, 1917, which established Power Reservation No. 654, with respect to those lands at Boise Meridian, T. 48 N., R. 1 W., Sec. 3, SE¼NE¼, comprising approximately forty acres, and T. 46 N., R. 2 W., Sec. 14, lot 1, comprising approximately 28.15 acres.*

*(6) INDEMNITY LIST CLASSIFICATION ORDER.—Bureau of Land Management Indemnity List Classification Orders on public lands to be conveyed to Potlatch as required by subsection (b) are hereby removed from such classification.*

*(7) CONVEYANCE DOCUMENTS; BEFORE SURVEY.—Lands to be conveyed by the United States pursuant to subsection (b) on which any boundary is required to be surveyed in order to describe remaining public lands shall be conveyed by an interim conveyance. An interim conveyance under this paragraph shall convey to and vest in the recipient the same right, title, and interest in and to such lands as the recipient would have received in a patent issued pursuant to this Act. Upon completion of the survey, the Secretary shall issue a patent for such lands. The boundaries of such lands shall be those which were defined in and conveyed by the interim conveyance, except that the boundaries shall be corrected and redescribed in the patent, where necessary, as a result of the survey of such lands.*

***SEC. 4. USE OF ACQUIRED LANDS.***

*(a) NATIONAL WILDLIFE REFUGE SYSTEM.—*

*(1) ADDITION TO THE SYSTEM.—The Secretary shall add the lands conveyed to the United States in Arkansas pursuant to section 3(b), to the Cache River and White River National Wildlife Refuges, as depicted upon the map described in such section. The Secretary shall manage such lands in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee).*

*(2) PLAN PREPARATION.—Within 24 months after the completion of the exchange required by section 3(b), the Secretary shall prepare and implement a single refuge management plan for the Cache River and White River Refuges, as expanded by this Act. Such plan shall recognize the important public purposes served by nonconsumptive activities, other recreational activities, and wildlife-related public use, including hunting, fishing, and trapping. The plan shall permit, to the maximum extent practicable, such uses to the extent that they are consistent with sound wildlife management and in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) and other applicable law. Any regulations promulgated by the Secretary with respect to fishing, hunting, and trapping on those lands shall, to the extent practicable, be consistent with State fish and wildlife laws and regulations. In preparing the management plan and regulations, the Secretary shall consult with the Arkansas Game and Fish Commission.*

*(3) INTERIM USE OF LANDS.—*

*(A) IN GENERAL.—Except as provided in subparagraph (B), during the period beginning on the date of the completion of the exchange of lands under subsection 3(b) and ending on the first date of the implementation of the plan prepared under paragraph (2), the Secretary shall administer all lands added to the Cache River and White River National Wildlife Refuges pursuant to this Act in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668d-668ee) and other applicable law.*

*(B) HUNTING SEASONS.—During the period described in subparagraph (A), the duration of any hunting seasons on the lands referred to in subsection (a) shall comport with State law.*

*(b) PUBLIC LANDS.—*

*(1) STATUS.—Except as provided in section 3(a)(1)(B), the lands referred to in section 3(b)(1)(B) shall be public lands, as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and shall be managed in accordance with the provisions of such Act.*

*(2) GRANDMOTHER MOUNTAIN AREA.—Subject to valid existing rights, those Federal and non-Federal lands within the Grandmother Mountain Wilderness Study Area which are transferred to the jurisdiction of the Forest Service pursuant to section 3(b) shall be managed so as to preserve their suitability for designation as wilderness, pursuant to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)), until the Congress determines otherwise. Nothing in this Act shall be construed as permitting or prohibiting continued use of motorized vehicles on existing routes within such area at the level of such use as was permitted on August 1, 1992.*

*(3) PLAN AMENDMENTS AND ENVIRONMENTAL ANALYSIS.—Within 24 months after the completion of the exchange under section 3(b), the Secretary and the Secretary of Agriculture shall prepare amendments to applicable resource management plans and accompanying documents pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712), section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604), and section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) for lands in Idaho conveyed to the United States pursuant to section 3(b).*

***SEC. 5. DEFINITIONS.***

*For purposes of this Act, the term—*

*(1) "Potlatch" means the Potlatch Corporation, chartered in the State of Delaware;*

*(2) "Secretary" means the Secretary of the Interior; and*

*(3) "lands" means both the surface and subsurface estates whenever both estates are owned by the United States or Potlatch, as applicable.*

***SEC. 6. OUACHITA NATIONAL FOREST BOUNDARY ADJUSTMENT.***

*(a) IN GENERAL.—The boundaries of the Ouachita National Forest are hereby adjusted to include those lands generally depicted on the map entitled "Proposed Proclamation Boundary Extension, East End of Lake Ouachita" and dated August 3, 1992.*

*(b) MAP AND LEGAL DESCRIPTION.—The map described in subsection (a) and a legal description of the lands depicted on the map shall be on file and available for public inspection in the appropriate offices of the Forest Service, United States Department of Agriculture. Not later than 90 days after the date of enactment of this Act, the Secretary of Agriculture shall prepare a legal description of the lands depicted on the map referred to in subsection (a). Such map and legal descriptions shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors.*

*(c) RULE OF CONSTRUCTION.—For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of the Ouachita National Forest, as adjusted by this Act, shall be considered to be the boundaries of such forest as of January 1, 1965.*

Mr. BUMPERS. Mr. President, I want to express my extreme pleasure that we are enacting the Arkansas-Idaho Land Exchange Act today. This act will cause more than 40,000 acres of rare wetlands in an area that has been designated a wetland of international

importance—one of only 10 such areas in the United States—to be transferred from a private timber company to the Fish and Wildlife Service. The Service will manage the lands to conserve and enhance their wetland and fish and wildlife values.

Mr. President, passage of this act will have an extremely beneficial impact in Arkansas. The wetlands to be transferred provide wintering habitat for approximately 10 percent of the Mississippi flyway mallard population and are also important habitat for wood ducks. A number of threatened or endangered species are located in these river basins including: The bald eagle, least tern, fat pocketbook pearly mussel, and pond berry. In addition, there are populations of native wildlife and rare animals, such as the black bear. Many species of migrant songbirds nest in the bottomland hardwoods.

Mr. CRAIG. Mr. President, I would like to engage the chairman of the Public Lands, National Parks and Forests Subcommittee, the senior Senator from Arkansas, in a brief colloquy. When S. 2572 passed the Senate and was sent to the House, the House Interior and Insular Affairs Committee made certain changes to section 4(b)(2) which governs the management of the Grandmother Mountain Area in Idaho. I would like to inquire about the Senator from Arkansas' interpretation of the meaning of these changes.

Mr. BUMPERS. Certainly.

Mr. CRAIG. The bill, as sent back from the House, states: "Nothing in this act shall be construed as permitting or prohibiting continued use of motorized vehicles on existing routes within the Grandmother Mountain Wilderness Study Area at the level of such use as was permitted on August 1, 1992." Is it your understanding that this provision maintains the status quo in the area with regard to motorized vehicle use as it existed on or before August 1, 1992?

Mr. BUMPERS. Yes; Senator, that is my understanding.

Mr. CRAIG. In addition, I have a question regarding the management of the Grandmother Mountain Wilderness Study Area following the land exchange. It is my understanding that after the exchange takes place, the Forest Service will take over the management responsibilities for the area from the Bureau of Land Management [BLM]. Will the Forest Service continue to manage the land under the same standards which governed the BLM?

Mr. BUMPERS. Yes; currently, the BLM manages the area so as not to impair its suitability for designation as wilderness, pursuant to section 603(c) of the Federal Land Policy and Management Act of 1976 [FLPMA]. Once the exchange takes place, the Forest Service will manage the area under the same FLPMA provision.

Mr. CRAIG. I thank the Senator.

Mr. SIMPSON. Mr. President, I am pleased to support S. 2572, the Arkansas-Idaho Land Exchange Act of 1992. Substantial credit for passage should be allocated in true bipartisan fashion to the administration, members of the Committee on Energy and Natural Resources, and to Senators SYMMS, CRAIG, BUMPERS, and PRYOR. Also, members of the Idaho and Arkansas delegations in the House and members of the House committees of jurisdiction—Agriculture, Merchant Marine and Fisheries, and Interior and Insular Affairs—reported the bill in an expeditious fashion on September 23. It passed the House on September 29.

I am impressed with the considerable benefits to the United States that should result from this exchange. For that reason, I cosigned a letter with Senator WALLOP 2 years ago urging that legislation authorizing the exchange be passed in the 102d Congress. Congressman JOE SKEEN of New Mexico also played an important role in securing administration support for this important environmental initiation.

Mr. President, I ask unanimous consent that a letter be printed in the RECORD.

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

U.S. SENATE,
*Washington, DC, September 20, 1990.*

Hon. MANUEL LUJAN, Jr.,
*Secretary of the Interior, Washington, DC.*

DEAR MANUEL: We would take this opportunity to comment on a proposed land exchange between the Potlatch Corporation and the Federal Government. In essence, the Potlatch Corporation has an interest in swapping a large block of forested wetlands in Arkansas and a small strip of Idaho property for scattered federally owned parcels of timberland of equal economic value in northern Idaho.

We believe that the potential acquisition of such a large continuous track of wetlands including bottom land, which bridges the gap between two extraordinary existing wildlife refuges, in exchange for scattered woodlands in Idaho would be a rare opportunity to promote both increased efficiency in management of federal lands and compelling environmental values.

While it is unlikely that any legislation will pass on the closing days of this congressional session, it is expected that there could be definite legislative action regarding this issue during the next session of Congress if the appraisals and other necessary evaluations are conducted in the coming months. We trust that you share our view that there are positive benefits to the Federal Government and the public that could accrue as a result of such a land exchange.

We are aware that you are already in receipt of a letter from Senator Bumpers and Senator McClure in support of this concept. We would like to add our support for the exchange.

We would appreciate it if you would keep us informed of any significant developments regarding this matter in the coming months.

Thank you for considering our comments with regard to the Potlatch land exchange.

Sincerely,

ALAN K. SIMPSON,
*U.S. Senator,*
MALCOLM WALLOP,
*U.S. Senator.*

Mr. FORD. Mr. President, I move the Senate concur in the House amendment.

The ACTING PRESIDENT pro tempore. Without objection, the motion is agreed to.

So the motion was agreed to.

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

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

The motion to lay on the table was agreed to.

## TACOMA, WA, LAND EXCHANGE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4489, relating to a Tacoma, WA land exchange, just received from the House; that the bill be deemed read a third time and passed; and that the motion to reconsider be laid upon the table.

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

So the bill (H.R. 4489) was deemed read the third time and passed.

Mr. FORD. Mr. President, I ask unanimous consent that Calendar No. 713 be indefinitely postponed.

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

## OFFICE OF GOVERNMENT ETHICS AMENDMENTS OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1145.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 1145) entitled "An Act to amend the Ethics in Government Act of 1978 to remove the limitation on the authorization of appropriations for the Office of Government Ethics", do pass with the following amendment: Strike out all after the enacting clause, and insert:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Office of Government Ethics Amendment of 1992".

**SEC. 2. REMOVAL OF THE CAP ON THE AUTHORIZATION OF APPROPRIATIONS.**

Section 405 of the Ethics in Government Act of 1978 (5. U.S.C. App.) is amended—

(1) in paragraph (1) by striking "and";

(2) in paragraph (2) by striking "each of the 5 fiscal years thereafter." and inserting "the fiscal year ending September 30, 1990; and"; and

(3) by adding after paragraph (2) the following new paragraph:

"(3) such sums as may be necessary for each of the 4 fiscal years thereafter.".

Mr. LEVIN. Mr. President, this is a very simple piece of legislation. The

Office of Government Ethics [OGE] is a freestanding agency that is charged with developing standards and promoting ethics in the Executive Branch. It began in 1978 as a component of the Office of Personnel Management, but over the years, Congress has given it more autonomy and responsibility.

Unlike most other freestanding agencies, however, OGE's authorizing legislation contains a cap on the authorization of appropriations—now set at $5 million for each of the fiscal years 1990 through 1994. This cap has caused OGE to ask Congress to raise OGE's authorization level from time to time when the administration and Congress agree that OGE needs more money to do its job.

The administration asked Congress to simply remove the cap on OGE's authorization of appropriations to avoid these periodic adjustments, and S. 1145 does that. The only difference between the Senate version and the House bill, H.R. 2828, was the date in the short title.

S. 1145 authorizes OGE to receive such sums as may be necessary. Since OGE is authorized only through 1994, Congress will have ample incentive and opportunity to oversee OGE's performance, to make sure that OGE uses its new funding wisely.

Mr. FORD. Mr. President, I move that the Senate concur in the amendment of the House.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

## U.S. INFORMATION AND EDUCATION EXCHANGE ACT AMENDMENT

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be discharged and the Senate proceed to the immediate consideration of H.R. 6047, a bill to amend the U.S. Information Educational Exchange Act of 1948 just received from the House; that the bill be deemed read a third time and passed, and the motion to reconsider be laid upon the table.

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

So the bill (H.R. 6047) was deemed read the third time and passed.

## SUPPORTING THE PLANTING OF 500 REDWOOD TREES FROM CALIFORNIA IN SPAIN

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 529, a joint resolution supporting the planting of 500 California redwood trees in Spain as a commemorative of the quincentenary of the voyage of Christopher Columbus, just received from the House.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows.

A Joint Resolution (H.J. Res. 529) supporting the planting of 500 redwood trees from California in Spain in commemoration of the quincentenary of the voyage of Christopher Columbus and designating the trees as a gift to the people of Spain.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The ACTING PRESIDENT pro tempore. Without objection, the joint resolution is deemed read three times and passed.

Without objection, the preamble is agreed to.

So the joint resolution (H.J. Res. 529), with its preamble, was deemed read three times and passed.

Mr. FORD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

## RIDGEFIELD NATIONAL WILDLIFE REFUGE INTERPRETIVE CENTER

Mr. FORD. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of H.R. 5809 regarding the Ridgefield National Wildlife Refuge in Clark County, WA; that the Senate then proceed to its immediate consideration; that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table; and a statement by Senator ADAMS relating to this bill appear in the RECORD at the appropriate place.

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

So the bill (H.R. 5809) was deemed read three times and passed.

Mr. ADAMS. Mr. President, H.R. 5809, introduced by Representative UNSOELD, urges the U.S. Fish and Wildlife Service to work with local sponsors and the public on a proposal for an interpretive center at the Ridgefield National Wildlife Refuge.

Showcasing the natural history of the Columbia River wetlands and the rich human history of native Americans, the center would also highlight the activities of explorers, including the 1804 Lewis and Clark Expedition, and early settlers at the site. The refuge, located less than 5 miles from the Interstate-5 corridor, north of the Portland-Vancouver metropolitan area, would be accessible to the region's students and to the millions of visitors who travel to other natural attractions in the area—Mount St. Helens, the Columbia River Gorge, and Mount Rainier.

One of the unique and important features of this legislation is the willingness of local sponsors, who view the center as an important means of diversifying the local economy, to share in the costs of the facility. Local sponsors would cover a large part of the construction costs and virtually all of the maintenance costs of the facility. The interpretive center would also provide offices for refuge staff, saving the cost of leased office space.

At a time when Federal deficits and tight budgets make investments in new facilities difficult, the kind of cost-sharing partnership embodied in H.R. 5809 is the way of the future. I applaud Representative UNSOELD for taking the initiative with this project, and appreciate the assistance of the Environment and Public Works Committee in moving this bill. I urge the Senate to approve this legislation.

## INDIAN HEALTH AMENDMENTS OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2481, the Indian health care amendments.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 2481) entitled "An Act to amend the Indian Health Care Improvement Act to authorize appropriations for Indian health programs, and for other purposes", do pass with the following amendment: Strike out all after the enacting clause, and insert:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Indian Health Amendments of 1992".

**SEC. 2. AMENDMENTS TO INDIAN HEALTH CARE IMPROVEMENT ACT.**

Except as otherwise specifically provided, whenever in this Act a section or other provision is amended or repealed, such amendment or repeal shall be considered to be made to that section or other provision of the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

**SEC. 3. FINDINGS; POLICY; AND DEFINITIONS.**

(a) FINDINGS.—Section 2 of the Act (25 U.S.C. 1601) is amended—

(1) in the matter preceding paragraph (a), by striking "finds that—" and inserting "finds the following:";

(2) in paragraph (d), by striking out the second sentence; and

(3) by striking out paragraphs (e), (f), and (g).

(b) DECLARATION OF POLICY.—Section 3 of the Act (25 U.S.C. 1602) is amended to read as follows:

"DECLARATION OF HEALTH OBJECTIVES

"SEC. 3. (a) The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to assure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy.

"(b) It is the intent of the Congress that the Nation meet the following health status objectives with respect to Indians and urban Indians by the year 2000:

"(1) Reduce coronary heart disease deaths to a level of no more than 100 per 100,000.

"(2) Reduce the prevalence of overweight individuals to no more than 30 percent.

"(3) Reduce the prevalence of anemia to less than 10 percent among children aged 1 through 5.

"(4) Reduce the level of cancer deaths to a rate of no more than 130 per 100,000.

"(5) Reduce the level of lung cancer deaths to a rate of no more than 42 per 100,000.

"(6) Reduce the level of chronic obstructive pulmonary disease related deaths to a rate of no more than 25 per 100,000.

"(7) Reduce deaths among men caused by alcohol-related motor vehicle crashes to no more than 44.8 per 100,000.

"(8) Reduce cirrhosis deaths to no more than 13 per 100,000.

"(9) Reduce drug-related deaths to no more than 3 per 100,000.

"(10) Reduce pregnancies among girls aged 17 and younger to no more than 50 per 1,000 adolescents.

"(11) Reduce suicide among men to no more than 12.8 per 100,000.

"(12) Reduce by 15 percent the incidence of injurious suicide attempts among adolescents aged 14 through 17.

"(13) Reduce to less than 10 percent the prevalence of mental disorders among children and adolescents.

"(14) Reduce the incidence of child abuse or neglect to less than 25.2 per 1,000 children under age 18.

"(15) Reduce physical abuse directed at women by male partners to no more than 27 per 1,000 couples.

"(16) Increase years of healthy life to at least 65 years.

"(17) Reduce deaths caused by unintentional injuries to no more than 66.1 per 100,000.

"(18) Reduce deaths caused by motor vehicle crashes to no more than 39.2 per 100,000.

"(19) Among children aged 6 months through 5 years, reduce the prevalence of blood lead levels exceeding 15 ug/dl and reduce to zero the prevalence of blood lead levels exceeding 25 ug/dl.

"(20) Reduce dental caries (cavities) so that the proportion of children with one or more caries (in permanent or primary teeth) is no more than 45 percent among children aged 6 through 8 and no more than 60 percent among adolescents aged 15.

"(21) Reduce untreated dental caries so that the proportion of children with untreated caries (in permanent or primary teeth) is no more than 20 percent among children aged 6 through 8 and no more than 40 percent among adolescents aged 15.

"(22) Reduce to no more than 20 percent the proportion of individuals aged 65 and older who have lost all of their natural teeth.

"(23) Increase to at least 45 percent the proportion of individuals aged 35 to 44 who have never lost a permanent tooth due to dental caries or periodontal disease.

"(24) Reduce destructive periodontal disease to a prevalence of no more than 15 percent among individuals aged 35 to 44.

"(25) Increase to at least 50 percent the proportion of children who have received protective sealants on the occlusal (chewing) surfaces of permanent molar teeth.

"(26) Reduce the prevalence of gingivitis among individuals aged 35 to 44 to no more than 50 percent.

"(27) Reduce the infant mortality rate to no more than 8.5 per 1,000 live births.

"(28) Reduce the fetal death rate (20 or more weeks of gestation) to no more than 4 per 1,000 live births plus fetal deaths.

"(29) Reduce the maternal mortality rate to no more than 3.3 per 100,000 live births.

"(30) Reduce the incidence of fetal alcohol syndrome to no more than 2 per 1,000 live births.

"(31) Reduce stroke deaths to no more than 20 per 100,000.

"(32) Reverse the increase in end-stage renal disease (requiring maintenance dialysis or transplantation) to attain an incidence of no more than 13 per 100,000.

"(33) Reduce breast cancer deaths to no more than 20.6 per 100,000 women.

"(34) Reduce deaths from cancer of the uterine cervix to no more than 1.3 per 100,000 women.

"(35) Reduce colorectal cancer deaths to no more than 13.2 per 100,000.

"(36) Reduce to no more than 11 percent the proportion of individuals who experience a limitation in major activity due to chronic conditions.

"(37) Reduce significant hearing impairment to a prevalence of no more than 82 per 1,000.

"(38) Reduce significant visual impairment to a prevalence of no more than 30 per 1,000.

"(39) Reduce diabetes-related deaths to no more than 48 per 100,000.

"(40) Reduce diabetes to an incidence of no more than 2.5 per 1,000 and a prevalence of no more than 62 per 1,000.

"(41) Reduce the most severe complications of diabetes as follows:

"(A) End-stage renal disease, 1.9 per 1,000.

"(B) Blindness, 1.4 per 1,000.

"(C) Lower extremity amputation, 4.9 per 1,000.

"(D) Perinatal mortality, 2 percent.

"(E) Major congenital malformations, 4 percent.

"(42) Confine annual incidence of diagnosed AIDS cases to no more than 1,000 cases.

"(43) Confine the prevalence of HIV infection to no more than 100 per 100,000.

"(44) Reduce gonorrhea to an incidence of no more than 225 cases per 100,000.

"(45) Reduce chlamydia trachomatis infections, as measured by a decrease in the incidence of nongonococcal urethritis to no more than 170 cases per 100,000.

"(46) Reduce primary and secondary syphilis to an incidence of no more than 10 cases per 100,000.

"(47) Reduce the incidence of pelvic inflammatory disease, as measured by a reduction in hospitalization for pelvic inflammatory disease to no more than 250 per 100,000 women aged 15 through 44.

"(48) Reduce viral hepatitis B infection to no more than 40 per 100,000 cases.

"(49) Reduce indigenous cases of vaccine-preventable diseases as follows:

"(A) Diphtheria among individuals aged 25 and younger, 0.

"(B) Tetanus among individuals aged 25 and younger, 0.

"(C) Polio (wild-type virus), 0.

"(D) Measles, 0.

"(E) Rubella, 0.

"(F) Congenital Rubella Syndrome, 0.

"(G) Mumps, 500.

"(H) Pertussis, 1,000.

"(50) Reduce epidemic-related pneumonia and influenza deaths among individuals aged 65 and older to no more than 7.3 per 100,000.

"(51) Reduce the number of new carriers of viral hepatitis B among Alaska Natives to no more than 1 case.

"(52) Reduce tuberculosis to an incidence of no more than 5 cases per 100,000.

"(53) Reduce bacterial meningitis to no more than 8 cases per 100,000.

"(54) Reduce infectious diarrhea by at least 25 percent among children.

"(55) Reduce acute middle ear infections among children aged 4 and younger, as measured by days of restricted activity or school absenteeism, to no more than 105 days per 100 children.

"(56) Reduce cigarette smoking to a prevalence of no more than 20 percent.

"(57) Reduce smokeless tobacco use by youth to a prevalence of no more than 10 percent.

"(58) Increase to at least 65 percent the proportion of parents and caregivers who use feeding practices that prevent baby bottle tooth decay.

"(59) Increase to at least 75 percent the proportion of mothers who breast feed their babies in the early postpartum period, and to at least 50 percent the proportion who continue breast feeding until their babies are 5 to 6 months old.

"(60) Increase to at least 90 percent the proportion of pregnant women who receive prenatal care in the first trimester of pregnancy.

"(61) Increase to at least 70 percent the proportion of individuals who have received, as a minimum within the appropriate interval, all of the screening and immunization services and at least one of the counseling services appropriate for their age and gender as recommended by the United States Preventive Services Task Force.

"(c) It is the intent of the Congress that the Nation increase the proportion of all degrees in the health professions and allied and associated health profession fields awarded to Indians to 0.6 percent.

"(d) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report on the progress made in each area of the Service toward meeting each of the objectives described in subsection (b).".

(c) DEFINITIONS.—Section 4 of the Act (25 U.S.C. 1603) is amended by adding at the end the following new subsections:

"(m) 'Service area' means the geographical area served by each area office.

"(n) 'Health profession' means family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, and allied health professions.

"(o) 'Substance abuse' includes inhalant abuse.

"(p) 'FAE' means fetal alcohol effect.

"(q) 'FAS' means fetal alcohol syndrome.".

## TITLE I—INDIAN HEALTH PROFESSIONALS

**SEC. 101. PURPOSE.**

Section 101 of the Act (25 U.S.C. 1611) is amended to read as follows:

"PURPOSE

"SEC. 101. The purpose of this title is to increase the number of Indians entering the

health professions and to assure an adequate supply of health professionals to the Service, Indian tribes, tribal organizations, and urban Indian organizations involved in the provision of health care to Indian people.".

**SEC. 102. HEALTH PROFESSIONS.**

(a) RECRUITMENT PROGRAM.—Section 102(a) of the Act (25 U.S.C. 1612(a)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) identifying Indians with a potential for education or training in the health professions and encouraging and assisting them—

"(A) to enroll in courses of study in such health professions; or

"(B) if they are not qualified to enroll in any such courses of study, to undertake such postsecondary education or training as may be required to qualify them for enrollment;";

(2) in paragraph (2)—

(A) by striking out "school" both places it appears and inserting in lieu thereof the following: "course of study"; and

(B) by striking out "clause (1)(A)" and inserting in lieu thereof the following: "paragraph (1)"; and

(3) in paragraph (3)—

(A) by striking out "Indians," and inserting in lieu thereof "Indians in,";

(B) by inserting a comma before "courses";

(C) by striking out ", in any school"; and

(D) by striking out "clause (1)(A)" and inserting in lieu thereof the following: "paragraph (1)".

(b) PREPARATORY SCHOLARSHIP PROGRAM.—Section 103 of the Act (25 U.S.C. 1613) is amended—

(1) by amending subsection (a)(2) to read as follows:

"(2) have demonstrated the capability to successfully complete courses of study in the health professions.";

(2) in subsection (b)(1), by inserting before the period at the end the following: "on a full-time basis (or the part-time equivalent thereof, as determined by the Secretary)";

(3) by amending subsection (b)(2) to read as follows:

"(2) Pregraduate education of any grantee leading to a baccalaureate degree in an approved course of study preparatory to a field of study in a health profession, such scholarship not to exceed 4 years (or the part-time equivalent thereof, as determined by the Secretary).";

(4) in subsection (c), by striking out "full time"; and

(5) by amending subsection (e) to read as follows:

"(e) The Secretary shall not deny scholarship assistance to an eligible applicant under this section solely by reason of such applicant's eligibility for assistance or benefits under any other Federal program.".

(c) HEALTH PROFESSIONS SCHOLARSHIPS.—Section 104 of the Act (25 U.S.C. 1613a) is amended—

(1) in subsection (a)—

(A) by striking out "Indian communities" and inserting in lieu thereof the following: "Indians, Indian tribes, tribal organizations, and urban Indian organizations";

(B) by striking out "full time" and inserting in lieu thereof the following: "full or part time"; and

(C) by striking out "of medicine" and all that follows through "social work" and inserting in lieu thereof the following: "and pursuing courses of study in the health professions";

(2) in subsection (b)—

(A) in paragraph (2)—

(i) by striking out "full time" and inserting in lieu thereof "full or part time"; and

(ii) by striking out "health profession school" and inserting in lieu thereof "course of study";

(B) in paragraph (3)—

(i) by striking "(3)" and inserting "(3)(A)";

(ii) by redesignating subparagraphs (A), (B), (C), and (D) as clauses (i), (ii), (iii), and (iv), respectively; and

(iii) by inserting at the end the following new subparagraphs:

"(B) A recipient of an Indian Health Scholarship may, at the election of the recipient, meet the active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) by service in a program specified in subparagraph (A) that—

"(i) is located on the reservation of the tribe in which the recipient is enrolled; or

"(ii) serves the tribe in which the recipient is enrolled.

"(C) Subject to subparagraph (B), the Secretary, in making assignments of Indian Health Scholarship recipients required to meet the active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m), shall give priority to assigning individuals to service in those programs specified in subparagraph (A) that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section."; and

(C) by adding at the end the following new paragraph:

"(4) In the case of an individual receiving a scholarship under this section who is enrolled part time in an approved course of study—

"(A) such scholarship shall be for a period of years not to exceed the part-time equivalent of 4 years, as determined by the Secretary;

"(B) the period of obligated service specified in section 338A(f)(1)(B)(iv) of the Public Health Service Act (42 U.S.C. 254m(f)(1)(B)(iv)) shall be equal to the greater of—

"(i) the part-time equivalent of one year for each year for which the individual was provided a scholarship (as determined by the Secretary); or

"(ii) two years; and

"(C) the amount of the monthly stipend specified in section 338A(g)(1)(B) of the Public Health Service Act (42 U.S.C. 254m(g)(1)(B)) shall be reduced pro rata (as determined by the Secretary) based on the number of hours such student is enrolled.";

(3) by amending subsection (c) to read as follows:

"(c) The Secretary shall, acting through the Service, establish a Placement Office to develop and implement a national policy for the placement, to available vacancies within the Service, of Indian Health Scholarship recipients required to meet the active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) without regard to any competitive personnel system, agency personnel limitation, or Indian preference policy."; and

(4) by striking out subsection (d).

(d) EFFECTIVE DATE.—The amendments made by subsection (c)(1)(C) and subsection (c)(2)(B) shall apply with respect to scholarships granted under section 104 of the Indian Health Care Improvement Act after the date of the enactment of this Act.

(e) EXTERN PROGRAM.—Section 105 of the Act (25 U.S.C. 1614) is amended—

(1) in subsection (a), by striking out "section 757 of the Public Health Service Act" and inserting in lieu thereof "section 104"; and

(2) in subsection (b), by striking out "school of medicine" and all that follows through "health professions" and inserting in lieu thereof "course of study in the health professions".

**SEC. 103. BREACH OF CONTRACT PROVISIONS RELATING TO INDIAN HEALTH SCHOLARSHIPS.**

Section 104(b) of the Act (25 U.S.C. 1613a(b)) (as amended by section 102(c) of this Act) is amended by adding at the end the following new paragraph:

"(5)(A) An individual who has, on or after the date of the enactment of this paragraph, entered into a written contract with the Secretary under this section and who—

"(i) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),

"(ii) is dismissed from such educational institution for disciplinary reasons,

"(iii) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract before the completion of such training, or

"(iv) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

"(B) If for any reason not specified in subparagraph (A) an individual breaches his written contract by failing either to begin such individual's service obligation under this section or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula specified in subsection (l) of section 108 in the manner provided for in such subsection.".

**SEC. 104. NURSING.**

(a) CONTINUING EDUCATION ALLOWANCES.—Section 106(a) of the Act (25 U.S.C. 1615(a)) is amended by inserting "nurses," after "dentists,".

(b) QUENTIN N. BURDICK AMERICAN INDIANS INTO NURSING PROGRAM.—Section 112 of the Act (25 U.S.C. 1616e) is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following new subsection:

"(e) The Secretary shall provide one of the grants authorized under subsection (a) to establish and maintain a program at the University of North Dakota to be known as the 'Quentin N. Burdick American Indians Into Nursing Program'. Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick Indian Health Programs established under section 114(b) and the Quentin N. Burdick American Indians Into Psychology Program established under section 217(b).".

(c) TRAINING FOR NURSE MIDWIVES, NURSE ANESTHETISTS, AND NURSE PRACTITIONERS.—Section 112(g) of the Act (25 U.S.C. 1616e(g)) (as redesignated by subsection (b)(1) of this section) is amended to read as follows:

"(g) Beginning with fiscal year 1993, of the amounts appropriated under the authority of this title for each fiscal year to be used to carry out this section, not less than $1,000,000 shall be used to provide grants under sub-

section (a) for the training of nurse midwives, nurse anesthetists, and nurse practitioners.".

(d) RETENTION BONUS FOR NURSES.—Section 117 (25 U.S.C. 1616j) of the Act is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively;

(2) by adding after subsection (a) the following new subsection (b):

"(b) Beginning with fiscal year 1993, not less than 25 percent of the retention bonuses awarded each year under subsection (a) shall be awarded to nurses."; and

(3) by amending subsection (f) (as amended by paragraph (1)) to read as follows:

"(f) The Secretary may pay a retention bonus to any physician or nurse employed by an organization providing health care services to Indians pursuant to a contract under the Indian Self-Determination Act if such physician or nurse is serving in a position which the Secretary determines is—

"(1) a position for which recruitment or retention is difficult; and

"(2) necessary for providing health care services to Indians.".

(e) RESIDENCY PROGRAM.—Title I of the Act is amended by adding at the end the following new section:

"NURSING RESIDENCY PROGRAM

"SEC. 118. (a) The Secretary, acting through the Service, shall establish a program to enable licensed practical nurses, licensed vocational nurses, and registered nurses who are working in an Indian health program (as defined in section 108(a)(2)(A)), and have done so for a period of not less than one year, to pursue advanced training.

"(b) Such program shall include a combination of education and work study in an Indian health program (as defined in section 108(a)(2)(A)) leading to an associate or bachelor's degree (in the case of a licensed practical nurse or licensed vocational nurse) or a bachelor's degree (in the case of a registered nurse).

"(c) An individual who participates in a program under subsection (a), where the educational costs are paid by the Service, shall incur an obligation to serve in an Indian health program for a period of obligated service equal to at least three times the period of time during which the individual participates in such program. In the event that the individual fails to complete such obligated service, the United States shall be entitled to recover from such individual an amount determined in accordance with the formula specified in subsection (l) of section 108 in the manner provided for in such subsection.".

(f) GRANTS FOR THE PROVISION OF PRIMARY CARE SERVICES ON OR NEAR INDIAN COUNTRY.—Title I of the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) is amended by adding immediately after section 112 the following new section:

"NURSING SCHOOL CLINICS

"SEC. 112A. (a) GRANTS.—In addition to the authority of the Secretary under section 112(a)(1), the Secretary, acting through the Service, is authorized to provide grants to public or private schools of nursing for the purpose of establishing, developing, operating, and administering clinics to address the health care needs of Indians, and to provide primary health care services to Indians who reside on or within 50 miles of Indian country, as defined in section 1151 of title 18, United States Code.

"(b) PURPOSES.—Grants provided under subsection (a) may be used to—

"(1) establish clinics, to be run and staffed by the faculty and students of a grantee school, to provide primary care services in areas in or within 50 miles of Indian country (as defined in section 1151 of title 18, United States Code);

"(2) provide clinical training, program development, faculty enhancement, and student scholarships in a manner that would benefit such clinics; and

"(3) carry out any other activities determined appropriate by the Secretary.

"(c) AMOUNT AND CONDITIONS.—The Secretary may award grants under this section in such amounts and subject to such conditions as the Secretary deems appropriate.

"(d) DESIGN.—The clinics established under this section shall be designed to provide nursing students with a structured clinical experience that is similar in nature to that provided by residency training programs for physicians.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

"(f) AUTHORIZATION TO USE AMOUNTS.—Out of amounts appropriated to carry out this title for each of the fiscal years 1993 through 2000 not more than $5,000,000 may be used to carry out this section.".

**SEC. 105. MAINTENANCE OF COMMUNITY HEALTH REPRESENTATIVE PROGRAM.**

Section 107(b) of the Act (25 U.S.C. 1616(b)) is amended—

(1) in paragraph (2), in the material preceding subparagraph (A), by inserting "and maintain" after "develop";

(2) in paragraph (2)(B), by adding at the end the following: "with appropriate consideration given to lifestyle factors that have an impact on Indian health status, such as alcoholism, family dysfunction, and poverty,";

(3) in paragraphs (3) and (5), by striking out "develop" each place it appears and inserting in lieu thereof "maintain"; and

(4) in paragraph (4), by striking out "develop and".

**SEC. 106. CHANGES TO INDIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM.**

(a) ELIGIBILITY REQUIREMENTS.—Section 108 of the Act (25 U.S.C. 1616a(b)) is amended—

(1) in subsection (a)(1), by striking out "physicians," and all that follows through "professionals" and inserting in lieu thereof "health professionals"; and

(2) in subsection (b)—

(A) in paragraph (1)(A)—

(i) by amending clause (i) to read as follows:

"(i) in a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or"; and

(ii) in clause (ii), by striking out "medicine" and all that follows through "health profession" and inserting in lieu thereof the following: "a health profession";

(B) in paragraph (1)(B)—

(i) by inserting "and" at the end of clause (i), by striking out clause (ii), and by redesignating clause (iii) as clause (ii);

(ii) in clause (i), by striking out "medicine, osteopathy, dentistry, or other health profession" and inserting in lieu thereof the following: "a health profession"; and

(iii) in clause (ii) (as redesignated by clause (i) of this subparagraph), by striking out "medicine, osteopathy, dentistry, or other health profession" and inserting in lieu thereof the following: "a health profession"; and

(C) in paragraph (2), by inserting "and" at the end of subparagraph (D), by striking out paragraphs (3) and (4), and by inserting after paragraph (2) the following:

"(3) submit to the Secretary an application for a contract described in subsection (f).".

(b) PRIORITY.—Section 108(d) of the Act (25 U.S.C. 1616a(d)) is amended—

(1) in paragraph (1), by striking out "The" and inserting "Consistent with paragraph (3), the"; and

(2) by adding at the end the following new paragraph:

"(3)(A) Subject to subparagraph (B), of the total amounts appropriated for each of the fiscal years 1993, 1994, and 1995 for loan repayment contracts under this section, the Secretary shall provide that—

"(i) not less than 25 percent be provided to applicants who are nurses, nurse practitioners, or nurse midwives; and

"(ii) not less than 10 percent be provided to applicants who are mental health professionals (other than applicants described in clause (i)).

"(B) The requirements specified in clause (i) or clause (ii) of subparagraph (A) shall not apply if the Secretary does not receive the number of applications from the individuals described in clause (i) or clause (ii), respectively, necessary to meet such requirements.".

(c) BECOMING A PARTICIPANT.—Paragraph (1) of section 108(e) (25 U.S.C. 1616a(e)) is amended to read as follows:

"(1) An individual becomes a participant in the Loan Repayment Program only upon the Secretary and the individual entering into a written contract described in subsection (f).".

(d) EXTENSION OF OBLIGATED SERVICE.—Paragraph (2)(A) of section 108(e) (25 U.S.C. 1616a(e)) is amended by inserting before the semicolon the following: ", including extensions resulting in an aggregate period of obligated service in excess of 4 years".

(e) CLARIFICATION REGARDING UNDERGRADUATE LOANS.—Paragraph (1) of section 108(g) (25 U.S.C. 1616a(g)) is amended in the matter preceding subparagraph (A) by striking out "loans received by the individual for—" and inserting in lieu thereof "loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for—".

(f) PAYMENT.—Section 108(g)(2)(A) (25 U.S.C. 1616a(g)(2)(A)) is amended to read as follows:

"(2)(A) For each year of obligated service that an individual contracts to serve under subsection (f) the Secretary may pay up to $35,000 (or an amount equal to the amount specified in section 338B(g)(2)(A) of the Public Health Service Act) on behalf of the individual for loans described in paragraph (1). In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—

"(i) affects the ability of the Secretary to maximize the number of contracts that can be provided under the Loan Repayment Program from the amounts appropriated for such contracts;

"(ii) provides an incentive to serve in Indian health programs with the greatest shortages of health professionals; and

"(iii) provides an incentive with respect to the health professional involved remaining in an Indian health program with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the Loan Repayment Program.".

(g) TAX LIABILITY.—(1) Paragraph (3) of section 108(g) (25 U.S.C. 1616a(g)(3)) is amended to read as follows:

"(3) For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual, the Secretary—

"(A) in addition to such payments, may make payments to the individual in an amount not less than 20 percent and not more than 39 percent of the total amount of loan repayments made for the taxable year involved; and

"(B) may make such additional payments as the Secretary determines to be appropriate with respect to such purpose.".

(2) The amendment made by paragraph (1) shall apply only with respect to contracts under section 108 of the Indian Health Care Improvement Act entered into on or after the date of enactment of this Act.

(h) STAFFING NEEDS.—Section 108(k) (25 U.S.C. 1616a(k)) is amended to read as follows:

"(k) The Secretary, in assigning individuals to serve in Indian health programs pursuant to contracts entered into under this section, shall—

"(1) ensure that the staffing needs of Indian health programs administered by an Indian tribe or tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and

"(2) give priority to assigning individuals to Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section.".

(i) ANNUAL REPORT.—Subsection (n) of section 108 is amended to read as follows:

"(n) The Secretary shall submit to the President, for inclusion in each report required to be submitted to the Congress under section 801, a report concerning the previous fiscal year which sets forth—

"(1) the health professional positions maintained by the Service or by tribal or Indian organizations for which recruitment or retention is difficult;

"(2) the number of Loan Repayment Program applications filed with respect to each type of health profession;

"(3) the number of contracts described in subsection (f) that are entered into with respect to each health profession;

"(4) the amount of loan payments made under this section, in total and by health profession;

"(5) the number of scholarship grants that are provided under section 104 with respect to each health profession;

"(6) the amount of scholarship grants provided under section 104, in total and by health profession;

"(7) the number of providers of health care that will be needed by Indian health programs, by location and profession, during the three fiscal years beginning after the date the report is filed; and

"(8) the measures the Secretary plans to take to fill the health professional positions maintained by the Service or by tribes or tribal or Indian organizations for which recruitment or retention is difficult.".

**SEC. 107. RECRUITMENT ACTIVITIES.**

Section 109 of the Act (25 U.S.C. 1616b) is amended—

(1) by amending the heading to read as follows:

"RECRUITMENT ACTIVITIES"; AND

(2) by amending subsection (b) to read as follows:

"(b) The Secretary, acting through the Service, shall assign one individual in each area office to be responsible on a full-time basis for recruitment activities.".

**SEC. 108. ADVANCED TRAINING AND RESEARCH.**

Section 111 of the Act (25 U.S.C. 1616d) is amended—

(1) in subsection (b), by amending the last sentence to read as follows: "In such event, with respect to individuals entering the program after the date of the enactment of the Indian Health Amendments of 1992, the United States shall be entitled to recover from such individual an amount to be determined in accordance with the formula specified in subsection (1) of section 108 in the manner provided for in such subsection."; and

(2) by striking out subsection (d).

**SEC. 109. INMED PROGRAM.**

Section 114(b) of the Act (25 U.S.C. 1616g(b)) is amended—

(1) by inserting after "North Dakota," the following: "to be known as the 'Quentin N. Burdick Indian Health Programs',"; and

(2) by adding at the end the following: "Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick American Indians Into Psychology Program established under section 217(b) and the Quentin N. Burdick American Indians Into Nursing Program established under section 112(e).".

**SEC. 110. SCHOLARSHIP AND LOAN REPAYMENT RECOVERY FUND.**

Title I of the Act is amended by inserting after section 108 the following new section:

"SCHOLARSHIP AND LOAN REPAYMENT RECOVERY FUND

"SEC. 108A. (a) There is established in the Treasury of the United States a fund to be known as the Indian Health Scholarship and Loan Repayment Recovery Fund (hereafter in this section referred to as the 'Fund'). The Fund shall consist of such amounts as may be appropriated to the Fund under subsection (b). Amounts appropriated for the Fund shall remain available until expended.

"(b) For each fiscal year, there is authorized to be appropriated to the Fund an amount equal to the sum of—

"(1) the amount collected during the preceding fiscal year by the Federal Government pursuant to—

"(A) the liability of individuals under subparagraph (A) or (B) of section 104(b)(5) for the breach of contracts entered into under section 104; and

"(B) the liability of individuals under section 108(l) for the breach of contracts entered into under section 108; and

"(2) the aggregate amount of interest accruing during the preceding fiscal year on obligations held in the Fund pursuant to subsection (d) and the amount of proceeds from the sale or redemption of such obligations during such fiscal year.

"(c)(1) Amounts in the Fund and available pursuant to appropriation Acts may be expended by the Secretary, acting through the Service, to make payments to an Indian tribe or tribal organization administering a health care program pursuant to a contract entered into under the Indian Self-Determination Act—

"(A) to which a scholarship recipient under section 104 or a loan repayment program participant under section 108 has been assigned to meet the obligated service requirements pursuant to sections; and

"(B) that has a need for a health professional to provide health care services as a result of such recipient or participant having breached the contract entered into under section 104 or section 108.

"(2) An Indian tribe or tribal organization receiving payments pursuant to paragraph (1) may expend the payments to recruit and employ, directly or by contract, health professionals to provide health care services.

"(d)(1) The Secretary of the Treasury shall invest such amounts of the Fund as such Secretary determines are not required to meet current withdrawals from the Fund. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price.

"(2) Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.".

**SEC. 111. COMMUNITY HEALTH AIDE PROGRAM.**

Title I of the Act (as amended by section 104 of this Act) is amended by adding at the end the following new section:

"COMMUNITY HEALTH AIDE PROGRAM FOR ALASKA

"SEC. 119. (a) Under the authority of the Act of November 2, 1921 (25 U.S.C. 13; popularly known as the Snyder Act), the Secretary shall maintain a Community Health Aide Program in Alaska under which the Service—

"(1) provides for the training of Alaska Natives as health aides or community health practitioners;

"(2) uses such aides or practitioners in the provision of health care, health promotion, and disease prevention services to Alaska Natives living in villages in rural Alaska; and

"(3) provides for the establishment of teleconferencing capacity in health clinics located in or near such villages for use by community health aides or community health practitioners.

"(b) The Secretary, acting through the Community Health Aide Program of the Service, shall—

"(1) using trainers accredited by the Program, provide a high standard of training to community health aides and community health practitioners to ensure that such aides and practitioners provide quality health care, health promotion, and disease prevention services to the villages served by the Program;

"(2) in order to provide such training, develop a curriculum that—

"(A) combines education in the theory of health care with supervised practical experience in the provision of health care;

"(B) provides instruction and practical experience in the provision of acute care, emergency care, health promotion, disease prevention, and the efficient and effective management of clinic pharmacies, supplies, equipment, and facilities; and

"(C) promotes the achievement of the health status objectives specified in section 3(b);

"(3) establish and maintain a Community Health Aide Certification Board to certify as community health aides or community health practitioners individuals who have successfully completed the training described in paragraph (1) or can demonstrate equivalent experience;

"(4) develop and maintain a system which identifies the needs of community health aides and community health practitioners for continuing education in the provision of health care, including the areas described in paragraph (2)(B), and develop programs that meet the needs for such continuing education;

"(5) develop and maintain a system that provides close supervision of community

health aides and community health practitioners; and

"(6) develop a system under which the work of community health aides and community health practitioners is reviewed and evaluated to assure the provision of quality health care, health promotion, and disease prevention services.".

**SEC. 112. MATCHING GRANTS TO TRIBES.**

Title I of the Act (as amended by section 111 of this Act) is amended by adding at the end the following new section:

"MATCHING GRANTS TO TRIBES FOR SCHOLARSHIP PROGRAMS

"SEC. 120. (a)(1) The Secretary shall make grants to Indian tribes and tribal organizations for the purpose of assisting such tribes and tribal organizations in educating Indians to serve as health professionals in Indian communities.

"(2) Amounts available for grants under paragraph (1) for any fiscal year shall not exceed 5 percent of amounts available for such fiscal year for Indian Health Scholarships under section 104.

"(3) An application for a grant under paragraph (1) shall be in such form and contain such agreements, assurances, and information as the Secretary determines are necessary to carry out this section.

"(b)(1) An Indian tribe or tribal organization receiving a grant under subsection (a) shall agree to provide scholarships to Indians pursuing education in the health professions in accordance with the requirements of this section.

"(2) With respect to the costs of providing any scholarship pursuant to paragraph (1)—

"(A) 80 percent of the costs of the scholarship shall be paid from the grant made under subsection (a) to the Indian tribe or tribal organization; and

"(B) 20 percent of such costs shall be paid from non-Federal contributions by the Indian tribe or tribal organization through which the scholarship is provided.

"(3) In determining the amount of non-Federal contributions that have been provided for purposes of subparagraph (B) of paragraph (2), any amounts provided by the Federal Government to the Indian tribe or tribal organization involved or to any other entity shall not be included.

"(4) Non-Federal contributions required by subparagraph (B) of paragraph (2) may be provided directly by the Indian tribe or tribal organization involved or through donations from public and private entities.

"(c) An Indian tribe or tribal organization shall provide scholarships under subsection (b) only to Indians enrolled or accepted for enrollment in a course of study (approved by the Secretary) in one of the health professions described in section 104(a).

"(d) In providing scholarships under subsection (b), the Secretary and the Indian tribe or tribal organization shall enter into a written contract with each recipient of such scholarship. Such contract shall—

"(1) obligate such recipient to provide service in an Indian health program (as defined in section 108(a)(2)(A)), in the same service area where the Indian tribe or tribal organization providing the scholarship is located, for—

"(A) a number of years equal to the number of years for which the scholarship is provided (or the part-time equivalent thereof, as determined by the Secretary), or for a period of 2 years, whichever period is greater; or

"(B) such greater period of time as the recipient and the Indian tribe or tribal organization may agree;

"(2) provide that the amount of such scholarship—

"(A) may be expended only for—

"(i) tuition expenses, other reasonable educational expenses, and reasonable living expenses incurred in attendance at the educational institution; and

"(ii) payment to the recipient of a monthly stipend of not more than the amount authorized by section 338A(g)(1)(B) of the Public Health Service Act (42 U.S.C. 254m(g)(1)(B)), such amount to be reduced pro rata (as determined by the Secretary) based on the number of hours such student is enrolled; and

"(B) may not exceed, for any year of attendance for which the scholarship is provided, the total amount required for the year for the purposes authorized in subparagraph (A);

"(3) require the recipient of such scholarship to maintain an acceptable level of academic standing (as determined by the educational institution in accordance with regulations issued by the Secretary); and

"(4) require the recipient of such scholarship to meet the educational and licensure requirements necessary to be a physician, certified nurse practitioner, certified nurse midwife, or physician assistant.

"(e)(1) An individual who has entered into a written contract with the Secretary and an Indian tribe or tribal organization under subsection (d) and who—

"(A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),

"(B) is dismissed from such educational institution for disciplinary reasons,

"(C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract before the completion of such training, or

"(D) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the Federal share of the amount which has been paid to him, or on his behalf, under the contract.

"(2) If for any reason not specified in paragraph (1), an individual breaches his written contract by failing either to begin such individual's service obligation required under such contract or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula specified in subsection (l) of section 108 in the manner provided for in such subsection.

"(3) The Secretary may carry out this subsection on the basis of information submitted by the tribes or tribal organizations involved, or on the basis of information collected through such other means as the Secretary determines to be appropriate.

"(f) The recipient of a scholarship under subsection (b) shall agree, in providing health care pursuant to the requirements of subsection (d)(1)—

"(1) not to discriminate against an individual seeking such care on the basis of the ability of the individual to pay for such care or on the basis that payment for such care will be made pursuant to the program established in title XVIII of the Social Security Act or pursuant to the program established in title XIX of such Act; and

"(2) to accept assignment under section 1842(b)(3)(B)(ii) of the Social Security Act for all services for which payment may be made under part B of title XVIII of such Act, and to enter into an appropriate agreement with the State agency that administers the State plan for medical assistance under title XIX of such Act to provide service to individuals entitled to medical assistance under the plan.

"(g) The Secretary may not make any payments under subsection (a) to an Indian tribe or tribal organization for any fiscal year subsequent to the first fiscal year of such payments unless the Secretary determines that, for the immediately preceding fiscal year, the Indian tribe or tribal organization has complied with requirements of this section.".

**SEC. 113. TRIBAL HEALTH PROGRAM ADMINISTRATION.**

Title I of the Act (as amended by section 112 of this Act) is amended by adding at the end the following new section:

"TRIBAL HEALTH PROGRAM ADMINISTRATION

"SEC. 121. The Secretary shall, by contract or otherwise, provide training for individuals in the administration and planning of tribal health programs.".

**SEC. 114. TRIBALLY CONTROLLED VOCATIONAL INSTITUTIONS.**

(a) NURSING PROGRAM GRANTS.—Section 112(a)(2) of the Act (25 U.S.C. 1616e(a)(2)) is amended by inserting before the comma the following: "and tribally controlled postsecondary vocational institutions (as defined in section 390(2) of the Tribally Controlled Vocational Institutions Support Act of 1990 (20 U.S.C. 2397h(2))".

(b) TRIBAL CULTURE AND HISTORY PROGRAMS.—Section 113(b)(1) of the Act (25 U.S.C. 1616f(b)(1) is amended by inserting before the comma "and tribally controlled postsecondary vocational institutions (as defined in section 390(2) of the Tribally Controlled Vocational Institutions Support Act of 1990 (20 U.S.C. 2397h(2))".

**SEC. 115. CONTINUING EDUCATION ALLOWANCES.**

Section 106(b) of the Act (25 U.S.C. 1615(b)) is amended to read as follows:

"(b) Of amounts appropriated under the authority of this title for each fiscal year to be used to carry out this section, not more than $1,000,000 may be used to establish postdoctoral training programs for health professionals.".

**SEC. 116. UNIVERSITY OF SOUTH DAKOTA MODEL HEALTH PROGRAM.**

Title I of the Act (as amended by section 113 of this Act) is amended by adding at the end the following new section:

"UNIVERSITY OF SOUTH DAKOTA PILOT PROGRAM

"SEC. 122. (a) The Secretary may make a grant to the School of Medicine of the University of South Dakota (hereafter in this section referred to as 'USDSM') to establish a pilot program on an Indian reservation at one or more service units in South Dakota to address the chronic manpower shortage in the Aberdeen Area of the Service.

"(b) The purposes of the program established pursuant to a grant provided under subsection (a) are—

"(1) to provide direct clinical and practical experience at a service unit to medical students and residents from USDSM and other medical schools;

"(2) to improve the quality of health care for Indians by assuring access to qualified health care professionals; and

"(3) to provide academic and scholarly opportunities for physicians, physician assistants, nurse practitioners, nurses, and other allied health professionals serving Indian people by identifying and utilizing all academic and scholarly resources of the region.

"(c) The pilot program established pursuant to a grant provided under subsection (a) shall—

"(1) incorporate a program advisory board composed of representatives from the tribes and communities in the area which will be served by the program; and

"(2) shall be designated as an extension of the USDSM campus and program participants shall be under the direct supervision and instruction of qualified medical staff serving at the service unit who shall be members of the USDSM faculty.

"(d) The USDSM shall coordinate the program established pursuant to a grant provided under subsection (a) with other medical schools in the region, nursing schools, tribal community colleges, and other health professional schools.

"(e) The USDSM, in cooperation with the Service, shall develop additional professional opportunities for program participants on Indian reservations in order to improve the recruitment and retention of qualified health professionals in the Aberdeen Area of the Service.".

**SEC. 117. AUTHORIZATION OF APPROPRIATIONS.**

(a) AUTHORIZATION.—Title I of the Act (as amended by section 116 of this Act) is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 123. There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

(b) CONFORMING AMENDMENTS.—Title I of the Act is amended—

(1) in section 102, by striking out subsection (c);

(2) in section 105, by striking out subsection (d);

(3) in section 108, by striking out subsection (o);

(4) in section 110, by striking out subsection (c);

(5) in section 113, by striking out subsection (c);

(6) in section 114, by striking out subsection (e);

(7) in section 115, by striking out subsection (f); and

(8) in section 116, by striking out subsection (e).

## TITLE II—HEALTH SERVICES

**SEC. 201. INDIAN HEALTH CARE IMPROVEMENT FUND.**

(a) IN GENERAL.—Section 201 of the Act (25 U.S.C. 1621) is amended—

(1) in subsection (a)—

(A) in the material preceding paragraph (1), by striking out "subsection (h)" and inserting in lieu thereof "this section";

(B) by amending paragraph (1) to read as follows:

"(1) eliminating the deficiencies in health status and resources of all Indian tribes,"; and

(C) in paragraph (4), in the material preceding subparagraph (A)—

(i) by inserting after "responsibilities" the following: ", either through direct or contract care or through contracts entered into pursuant to the Indian Self-Determination Act,"; and

(ii) by striking out "resources deficiency" and inserting in lieu thereof the following: "status and resource deficiencies";

(2) in subsection (b)—

(A) in paragraph (1), by striking out "subsection (h)" and inserting in lieu thereof "this section";

(B) by striking out paragraph (2) and redesignating paragraph (3) as paragraph (2); and

(C) in paragraph (2)(A) (as redesignated by subparagraph (B))—

(i) by striking out "subsection (h)" and inserting in lieu thereof "this section";

(ii) in the first sentence, by striking out "but such allocation" through "met";

(iii) in the second sentence—

(I) by striking out "(in accordance with paragraph (2))"; and

(II) by striking out "raise the deficiency level" and inserting in lieu thereof the following: "reduce the health status and resource deficiency"; and

(D) in paragraph (2)(B) (as redesignated by subparagraph (B)), by inserting after "consultation with" the following: ", and with the active participation of,";

(3) in subsection (c)—

(A) by striking out paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively;

(B) by amending paragraph (1) (as redesignated by subparagraph (A) above) to read as follows:

"(1) The term 'health status and resource deficiency' means the extent to which—

"(A) the health status objectives set forth in section 3(b) are not being achieved; and

"(B) the Indian tribe does not have available to it the health resources it needs, taking into account the actual cost of providing health care services given local geographic, climatic, rural, or other circumstances."; and

(C) in paragraph (3) (as redesignated by subparagraph (A) above)—

(i) by striking out "Under regulations, the" and inserting in lieu thereof "The"; and

(ii) by striking out "health resources deficiency level" and inserting in lieu thereof "extent of the health status and resource deficiency";

(4) in subsection (d)(1), by striking out "subsection (h)" and inserting in lieu thereof "this section";

(5) in subsection (e)—

(A) in the material preceding paragraph (1)—

(i) by striking out "60 days" and inserting in lieu thereof "3 years";

(ii) by striking out "Indian Health Care Amendments of 1988" and inserting in lieu thereof "Indian Health Amendments of 1992"; and

(iii) by striking out "health services priority system" and inserting in lieu thereof "health status and resource deficiency";

(B) in paragraph (1), by striking out "health resources deficiencies" and inserting in lieu thereof "health status and resource deficiencies";

(C) in paragraph (2), by striking out "the level of health resources deficiency for" and inserting in lieu thereof the following: "the extent of the health status and resource deficiency of";

(D) in paragraph (3), by striking "raise all" and all that follows through the semicolon and insert in lieu thereof the following: "eliminate the health status and resource deficiencies of all Indian tribes served by the Service; and"; and

(E) by striking out paragraphs (4) and (5) and redesignating paragraph (6) as paragraph (4); and

(6) in subsection (f), by striking out "(f)(1)" and all that follows through the paragraph designation for paragraph (2) and inserting in lieu thereof "(f)".

(b) EFFECTIVE DATE.—Except with respect to the amendments made by subsection (a)(5), the amendments made by subsection (a) shall take effect three years after the date of the enactment of this Act. The amendments made by subsection (a)(5) shall take effect upon the date of the enactment of this Act.

(c) TECHNICAL AMENDMENT.—The heading for section 201 of the Act (25 U.S.C. 1621) is amended to read as follows:

"INDIAN HEALTH CARE IMPROVEMENT FUND".

**SEC. 202. CATASTROPHIC HEALTH EMERGENCY FUND.**

(a) IN GENERAL.—Section 202 of the Act (25 U.S.C. 1621a) is amended—

(1) in subsection (a)(1)(B), by striking out "under subsection (e)" and inserting in lieu thereof "to the Fund under this section";

(2) in subsection (b)(2), by striking out "shall establish at not less than $10,000 or not more than $20,000;" and inserting in lieu thereof the following: "shall establish at—

"(A) for 1993, not less than $15,000 or not more than $25,000; and

"(B) for any subsequent year, not less than the threshold cost of the previous year increased by the percentage increase in the medical care expenditure category of the consumer price index for all urban consumers (United States city average) for the 12-month period ending with December of the previous year;"; and

(3) in subsection (c), by striking out "Funds appropriated under subsection (e)" and inserting in lieu thereof "Amounts appropriated to the Fund under this section".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(2) shall take effect January 1, 1993.

**SEC. 203. HEALTH PROMOTION AND DISEASE PREVENTION.**

Section 203 of the Act (25 U.S.C. 1621b) is amended—

(1) in subsection (a), by inserting before the period at the end the following: "so as to achieve the health status objectives set forth in section 3(b)";

(2) in subsection (b), in the material preceding paragraph (1), by striking out "section 201(f)" and inserting in lieu thereof "section 801"; and

(3) by striking out subsection (c).

**SEC. 204. DIABETES PREVENTION, TREATMENT, AND CONTROL.**

Section 204 of the Act (25 U.S.C. 1621c) is amended—

(1) by amending subsection (c) to read as follows:

"(c)(1) The Secretary shall continue to maintain through fiscal year 2000 each model diabetes project in existence on the date of the enactment of the Indian Health Amendments of 1992 and located—

"(A) at the Claremore Indian Hospital in Oklahoma;

"(B) at the Fort Totten Health Center in North Dakota;

"(C) at the Sacaton Indian Hospital in Arizona;

"(D) at the Winnebago Indian Hospital in Nebraska;

"(E) at the Albuquerque Indian Hospital in New Mexico;

"(F) at the Perry, Princeton, and Old Town Health Centers in Maine;

"(G) at the Bellingham Health Center in Washington;

"(H) at the Fort Berthold Reservation;

"(I) at the Navajo Reservation;

"(J) at the Papago Reservation;

"(K) at the Zuni Reservation; or

"(L) in the States of Alaska, California, Minnesota, Montana, Oregon, or Utah.

"(2) The Secretary may establish new model diabetes projects under this section taking into consideration applications received under this section from all service areas, except that the Secretary may not es-

tablish a greater number of such projects in one service area than in any other service area until there is an equal number of such projects established with respect to all service areas from which the Secretary receives qualified applications during the application period (as determined by the Secretary).''; and

(2) in subsection (d)—

(A) in paragraph (2), by striking out ''and'' after the semicolon;

(B) in paragraph (3), by striking out the period and inserting in lieu thereof the following: ''; and''; and

(C) by adding at the end the following new paragraph:

''(4) evaluate the effectiveness of services provided through model diabetes projects established under this section.''.

**SEC. 205. MENTAL HEALTH PREVENTION AND TREATMENT SERVICES.**

Section 209 of the Act (25 U.S.C. 1621h) is amended—

(1) in subsection (j) (as redesignated by section 902(3)(B) of this Act), by striking out ''submit to the Congress an annual report'' and inserting in lieu thereof the following: ''submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report''; and

(2) by adding at the end the following new subsections:

''(l) LICENSING REQUIREMENT FOR MENTAL HEALTH CARE WORKERS.—Any person employed as a psychologist, social worker, or marriage and family therapist for the purpose of providing mental health care services to Indians in a clinical setting under the authority of this Act or through a contract pursuant to the Indian Self-Determination Act shall—

''(1) in the case of a person employed as a psychologist, be licensed as a clinical psychologist or working under the direct supervision of a licensed clinical psychologist;

''(2) in the case of a person employed as a social worker, be licensed as a social worker or working under the direct supervision of a licensed social worker; or

''(3) in the case of a person employed as a marriage and family therapist, be licensed as a marriage and family therapist or working under the direct supervision of a licensed marriage and family therapist.

''(m) INTERMEDIATE ADOLESCENT MENTAL HEALTH SERVICES.—(1) The Secretary, acting through the Service, may make grants to Indian tribes and tribal organizations to provide intermediate mental health services to Indian children and adolescents, including—

''(A) inpatient and outpatient services;

''(B) emergency care;

''(C) suicide prevention and crisis intervention; and

''(D) prevention and treatment of mental illness, and dysfunctional and self-destructive behavior, including child abuse and family violence.

''(2) Funds provided under this subsection may be used—

''(A) to construct or renovate an existing health facility to provide intermediate mental health services;

''(B) to hire mental health professionals;

''(C) to staff, operate, and maintain an intermediate mental health facility, group home, or youth shelter where intermediate mental health services are being provided; and

''(D) to make renovations and hire appropriate staff to convert existing hospital beds into adolescent psychiatric units.

''(3) Funds provided under this subsection may not be used for the purposes described in section 216(b)(1).

''(4) An Indian tribe or tribal organization receiving a grant under this subsection shall ensure that intermediate adolescent mental health services are coordinated with other tribal, Service, and Bureau of Indian Affairs mental health, alcohol and substance abuse, and social services programs on the reservation of such tribe or tribal organization.

''(5) The Secretary shall establish criteria for the review and approval of applications for grants made pursuant to this subsection.

''(6) There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.''.

**SEC. 206. NEW STUDIES AND DEMONSTRATION PROGRAM.**

(a) HOSPICE CARE.—Title II of the Act is amended by inserting after section 204 the following:

''HOSPICE CARE FEASIBILITY STUDY

''SEC. 205. (a) The Secretary, acting through the Service and in consultation with representatives of Indian tribes, tribal organizations, Indian Health Service personnel, and hospice providers, shall conduct a study—

''(1) to assess the feasibility and desirability of furnishing hospice care to terminally ill Indians; and

''(2) to determine the most efficient and effective means of furnishing such care.

''(b) Such study shall—

''(1) assess the impact of Indian culture and beliefs concerning death and dying on the provision of hospice care to Indians;

''(2) estimate the number of Indians for whom hospice care may be appropriate and determine the geographic distribution of such individuals;

''(3) determine the most appropriate means to facilitate the participation of Indian tribes and tribal organizations in providing hospice care;

''(4) identify and evaluate various means for providing hospice care, including—

''(A) the provision of such care by the personnel of a Service hospital pursuant to a hospice program established by the Secretary at such hospital; and

''(B) the provision of such care by a community-based hospice program under contract to the Service; and

''(5) identify and assess any difficulties in furnishing such care and the actions needed to resolve such difficulties.

''(c) Not later than the date which is 12 months after the date of the enactment of this section, the Secretary shall transmit to the Congress a report containing—

''(1) a detailed description of the study conducted pursuant to this section; and

''(2) a discussion of the findings and conclusions of such study.

''(d) For the purposes of this section—

''(1) the term 'terminally ill' means any Indian who has a medical prognosis (as certified by a physician) of a life expectancy of six months or less; and

''(2) the term 'hospice program' means any program which satisfies the requirements of section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2)); and

''(3) the term 'hospice care' means the items and services specified in subparagraphs (A) through (H) of section 1861(dd)(1) of the Social Security Act (42 U.S.C. 1395x(dd)(1)).''.

(b) MANAGED CARE.—Title II of the Act is amended by adding at the end the following new section:

''MANAGED CARE FEASIBILITY STUDY

''SEC. 210. (a) The Secretary, acting through the Service, shall conduct a study to assess the feasibility of allowing an Indian tribe to purchase, directly or through the Service, managed care coverage for all members of the tribe from—

''(1) a tribally owned and operated managed care plan; or

''(2) a State licensed managed care plan.

''(b) Not later than the date which is 12 months after the date of the enactment of this section, the Secretary shall transmit to the Congress a report containing—

''(1) a detailed description of the study conducted pursuant to this section; and

''(2) a discussion of the findings and conclusions of such study.''.

(c) CONTRACT CARE.—Title II of the Act (as amended by subsection (b) of this Act) is amended by adding at the end the following new section:

''CALIFORNIA CONTRACT HEALTH SERVICES DEMONSTRATION PROGRAM

''SEC. 211. (a) The Secretary shall establish a demonstration program to evaluate the use of a contract care intermediary to improve the accessibility of health services to California Indians.

''(b)(1) In establishing such program, the Secretary shall enter into an agreement with the California Rural Indian Health Board to reimburse the Board for costs (including reasonable administrative costs) incurred, during the period of the demonstration program, in providing medical treatment under contract to California Indians described in section 809(b) throughout the California contract health services delivery area described in section 810 with respect to high-cost contract care cases.

''(2) Not more than 5 percent of the amounts provided to the Board under this section for any fiscal year may be for reimbursement for administrative expenses incurred by the Board during such fiscal year.

''(3) No payment may be made for treatment provided under the demonstration program to the extent payment may be made for such treatment under the Catastrophic Health Emergency Fund described in section 202 or from amounts appropriated or otherwise made available to the California contract health service delivery area for a fiscal year.

''(c) There is hereby established an advisory board which shall advise the California Rural Indian Health Board in carrying out the demonstration pursuant to this section. The advisory board shall be composed of representatives, selected by the California Rural Indian Health Board, from not less than 8 tribal health programs serving California Indians covered under such demonstration, at least one half of whom are not affiliated with the California Rural Indian Health Board.

''(d) The demonstration program described in this section shall begin on January 1, 1993, and shall terminate on September 30, 1997.

''(e) Not later than July 1, 1998, the California Rural Indian Health Board shall submit to the Secretary a report on the demonstration program carried out under this section, including a statement of its findings regarding the impact of using a contract care intermediary on—

''(1) access to needed health services;

''(2) waiting periods for receiving such services; and

''(3) the efficient management of high-cost contract care cases.

''(f) For the purposes of this section, the term 'high-cost contract care cases' means those cases in which the cost of the medical treatment provided to an individual—

''(1) would otherwise be eligible for reimbursement from the Catastrophic Health

Emergency Fund established under section 202, except that the cost of such treatment does not meet the threshold cost requirement established pursuant to section 202(b)(2); and

"(2) exceeds $1,000.

"(g) There are authorized to be appropriated for each of the fiscal years 1993, 1994, 1995, 1996, and 1997 such sums as may be necessary to carry out the purposes of this section.".

**SEC. 207. COVERAGE OF SCREENING MAMMOGRAPHY.**

(a) IN GENERAL.—Title II of the Act (as amended by section 206(c) of this Act) is amended by adding at the end the following new section:

"COVERAGE OF SCREENING MAMMOGRAPHY

"SEC. 212. The Secretary, through the Service, shall provide for screening mammography (as defined in section 1861(jj) of the Social Security Act) for Indian and urban Indian women 35 years of age or older at a frequency, determined by the Secretary (in consultation with the Director of the National Cancer Institute), appropriate to such women, and under such terms and conditions as are consistent with standards established by the Secretary to assure the safety and accuracy of screening mammography under part B of title XVIII of the Social Security Act.".

(b) CONFORMING AMENDMENT.—Section 201(a)(4)(B) of the Act (25 U.S.C. 1621(a)(4)(B)) is amended by striking the semicolon at the end and inserting the following: ", including screening mammography in accordance with section 212;".

**SEC. 208. PATIENT TRAVEL COSTS.**

Title II of the Act (as amended by section 207 of this Act) is amended by adding at the end the following new section:

"PATIENT TRAVEL COSTS

"SEC. 213. (a) The Secretary, acting through the Service, shall provide funds for the following patient travel costs associated with receiving health care services provided (either through direct or contract care or through contracts entered into pursuant to the Indian Self-Determination Act) under this Act—

"(1) emergency air transportation; and

"(2) nonemergency air transportation where ground transportation is infeasible.

"(b) There are authorized to be appropriated to carry out this section $15,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.".

**SEC. 209. THIRD PARTY REIMBURSEMENT.**

(a) RECOVERY BY INDIAN TRIBE.—Section 206 of the Act (25 U.S.C. 1621e) is amended—

(1) by inserting ", an Indian tribe, or a tribal organization" after "United States" each place it appears;

(2) in subsection (a), by inserting ", an Indian tribe, or a tribal organization" after "Service";

(3) in subsection (a) and subsection (e)(1)(A), by inserting ", an Indian tribe, or a tribal organization" after "Secretary" each place it appears; and

(4) in subsection (b), by striking ", or any political subdivision of a State,".

(b) SPECIAL RULE WITH RESPECT TO SELF-INSURANCE PLAN.—Section 206 of the Act (25 U.S.C. 1621e) is amended—

(1) by striking "(a) The" and inserting the following: "(a) Except as provided in subsection (f), the"; and

(2) by adding at the end the following new subsection:

"(f) The United States shall not have a right of recovery under this section if the injury, illness, or disability for which health services were provided is covered under a self-insurance plan funded by an Indian tribe or tribal organization.".

**SEC. 210. EPIDEMIOLOGY CENTERS.**

Title II of the Act (as amended by section 208 of this Act) is amended by adding at the end the following new section:

"EPIDEMIOLOGY CENTERS

"SEC. 214. (a)(1) The Secretary shall establish an epidemiology center in each Service area to carry out the functions described in paragraph (3).

"(2) To assist such centers in carrying out such functions, the Secretary shall perform the following:

"(A) In consultation with the Centers for Disease Control and Indian tribes, develop sets of data (which to the extent practicable, shall be consistent with the uniform data sets used by the States with respect to the year 2000 health objectives) for uniformly defining health status for purposes of the objectives specified in section 3(b). Such sets shall consist of one or more categories of information. The Secretary shall develop formats for the uniform collecting and reporting of information on such categories.

"(B) Establish and maintain a system for monitoring the progress made toward meeting each of the health status objectives described in section 3(b).

"(3) In consultation with Indian tribes and urban Indian communities, each area epidemiology center established under this subsection shall, with respect to such area—

"(A) collect data relating to, and monitor progress made toward meeting, each of the health status objectives described in section 3(b) using the data sets and monitoring system developed by the Secretary pursuant to paragraph (2);

"(B) evaluate existing delivery systems, data systems, and other systems that impact the improvement of Indian health;

"(C) assist tribes and urban Indian communities in identifying their highest priority health status objectives and the services needed to achieve such objectives, based on epidemiological data;

"(D) make recommendations for the targeting of services needed by tribal, urban, and other Indian communities;

"(E) make recommendations to improve health care delivery systems for Indians and urban Indians;

"(F) work cooperatively with tribal providers of health and social services in order to avoid duplication of existing services; and

"(G) provide technical assistance to Indian tribes and urban Indian organizations in the development of local health service priorities and incidence and prevalence rates of disease and other illness in the community.

"(4) Epidemiology centers established under this subsection shall be subject to the provisions of the Indian Self-Determination Act (25 U.S.C. 450f et seq.).

"(5) The director of the Centers for Disease Control shall provide technical assistance to the centers in carrying out the requirements of this subsection.

"(6) The Service shall assign one epidemiologist from each of its area offices to each area epidemiology center to provide such center with technical assistance necessary to carry out this subsection.

"(b)(1) The Secretary may make grants to Indian tribes, tribal organizations, and eligible intertribal consortia or Indian organizations to conduct epidemiological studies of Indian communities.

"(2) An intertribal consortia or Indian organization is eligible to receive a grant under this subsection if—

"(A) it is incorporated for the primary purpose of improving Indian health; and

"(B) it is representative of the tribes or urban Indian communities in which it is located.

"(3) An application for a grant under this subsection shall be submitted in such manner and at such time as the Secretary shall prescribe.

"(4) Applicants for grants under this subsection shall—

"(A) demonstrate the technical, administrative, and financial expertise necessary to carry out the functions described in paragraph (5);

"(B) consult and cooperate with providers of related health and social services in order to avoid duplication of existing services; and

"(C) demonstrate cooperation from Indian tribes or urban Indian organizations in the area to be served.

"(5) A grant awarded under paragraph (1) may be used to—

"(A) carry out the functions described in subsection (a)(3);

"(B) provide information to and consult with tribal leaders, urban Indian community leaders, and related health staff, on health care and health services management issues; and

"(C) provide, in collaboration with tribes and urban Indian communities, the Service with information regarding ways to improve the health status of Indian people.

"(6) There are authorized to be appropriated to carry out the purposes of this subsection not more than $12,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.".

**SEC. 211. COMPREHENSIVE SCHOOL HEALTH EDUCATION PROGRAMS.**

Title II of the Act (as amended by section 210 of this Act) is amended by adding at the end the following new section:

"COMPREHENSIVE SCHOOL HEALTH EDUCATION PROGRAMS

"SEC. 215. (a) The Secretary, acting through the Service and in consultation with the Secretary of the Interior, may award grants to Indian tribes to develop comprehensive school health education programs for children from preschool through grade 12 in schools located on Indian reservations.

"(b) Grants awarded under this section may be used to—

"(1) develop health education curricula;

"(2) train teachers in comprehensive school health education curricula;

"(3) integrate school-based, community-based, and other public and private health promotion efforts;

"(4) encourage healthy, tobacco-free school environments;

"(5) coordinate school-based health programs with existing services and programs available in the community;

"(6) develop school programs on nutrition education, personal health, and fitness;

"(7) develop mental health wellness programs;

"(8) develop chronic disease prevention programs;

"(9) develop substance abuse prevention programs;

"(10) develop accident prevention and safety education programs;

"(11) develop activities for the prevention and control of communicable diseases; and

"(12) develop community and environmental health education programs.

"(c) The Secretary shall provide technical assistance to Indian tribes in the development of health education plans, and the dis-

semination of health education materials and information on existing health programs and resources.

"(d) The Secretary shall establish criteria for the review and approval of applications for grants made pursuant to this section.

"(e) Recipients of grants under this section shall submit to the Secretary an annual report on activities undertaken with funds provided under this section. Such reports shall include a statement of—

"(1) the number of preschools, elementary schools, and secondary schools served;

"(2) the number of students served;

"(3) any new curricula established with funds provided under this section;

"(4) the number of teachers trained in the health curricula; and

"(5) the involvement of parents, members of the community, and community health workers in programs established with funds provided under this section.

"(f)(1) The Secretary of the Interior, acting through the Bureau of Indian Affairs and in cooperation with the Secretary, shall develop a comprehensive school health education program for children from preschool through grade 12 in schools operated by the Bureau of Indian Affairs.

"(2) Such program shall include—

"(A) school programs on nutrition education, personal health, and fitness;

"(B) mental health wellness programs;

"(C) chronic disease prevention programs;

"(D) substance abuse prevention programs;

"(E) accident prevention and safety education programs; and

"(F) activities for the prevention and control of communicable diseases.

"(3) The Secretary of the Interior shall—

"(A) provide training to teachers in comprehensive school health education curricula;

"(B) ensure the integration and coordination of school-based programs with existing services and health programs available in the community; and

"(C) encourage healthy, tobacco-free school environments.

"(g) There are authorized to be appropriated to carry out this section $15,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.".

**SEC. 212. INDIAN YOUTH GRANT PROGRAM.**

Title II of the Act (as amended by section 211 of this Act) is amended by adding at the end the following new section:

"INDIAN YOUTH GRANT PROGRAM

"SEC. 216. (a) The Secretary, acting through the Service, is authorized to make grants to Indian tribes, tribal organizations, and urban Indian organizations for innovative mental and physical disease prevention and health promotion and treatment programs for Indian preadolescent and adolescent youths.

"(b)(1) Funds made available under this section may be used to—

"(A) develop prevention and treatment programs for Indian youth which promote mental and physical health and incorporate cultural values, community and family involvement, and traditional healers; and

"(B) develop and provide community training and education.

"(2) Funds made available under this section may not be used to provide services described in section 209(m).

"(c) The Secretary shall—

"(1) disseminate to Indian tribes information regarding models for the delivery of comprehensive health care services to Indian and urban Indian adolescents;

"(2) encourage the implementation of such models; and

"(3) at the request of an Indian tribe, provide technical assistance in the implementation of such models.

"(d) The Secretary shall establish criteria for the review and approval of applications under this section.

"(e) There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.".

**SEC. 213. AMERICAN INDIANS INTO PSYCHOLOGY PROGRAM.**

Title II of the Act (as amended by section 212 of this Act) is amended by adding at the end the following new section:

"AMERICAN INDIANS INTO PSYCHOLOGY PROGRAM

"SEC. 217. (a) The Secretary may provide grants to at least 3 colleges and universities for the purpose of developing and maintaining American Indian psychology career recruitment programs as a means of encouraging Indians to enter the mental health field.

"(b) The Secretary shall provide one of the grants authorized under subsection (a) to develop and maintain a program at the University of North Dakota to be known as the 'Quentin N. Burdick American Indians Into Psychology Program'. Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick Indian Health Programs authorized under section 114(b), the Quentin N. Burdick American Indians Into Nursing Program authorized under section 112(e), and existing university research and communications networks.

"(c)(1) The Secretary shall issue regulations for the competitive awarding of the grants provided under this section.

"(2) Applicants for grants under this section shall agree to provide a program which, at a minimum—

"(A) provides outreach and recruitment for health professions to Indian communities including elementary, secondary and community colleges located on Indian reservations that will be served by the program;

"(B) incorporates a program advisory board comprised of representatives from the tribes and communities that will be served by the program;

"(C) provides summer enrichment programs to expose Indian students to the varied fields of psychology through research, clinical, and experiential activities;

"(D) provides stipends to undergraduate and graduate students to pursue a career in psychology;

"(E) develops affiliation agreements with tribal community colleges, the Service, university affiliated programs, and other appropriate entities to enhance the education of Indian students;

"(F) to the maximum extent feasible, utilizes existing university tutoring, counseling and student support services; and

"(G) to the maximum extent feasible, employs qualified Indians in the program.

"(d) The active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) shall be met by each graduate student who receives a stipend described in subsection (c)(2)(D) that is funded by a grant provided under this section. Such obligation shall be met by service—

"(1) in the Indian Health Service;

"(2) in a program conducted under a contract entered into under the Indian Self-Determination Act;

"(3) in a program assisted under title V of this Act; or

"(4) in the private practice of psychology if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.".

**SEC. 214. PREVENTION, CONTROL, AND ELIMINATION OF TUBERCULOSIS.**

Title II of the Act (as amended by section 213 of this Act) is amended by adding at the end the following new section:

"PREVENTION, CONTROL, AND ELIMINATION OF TUBERCULOSIS

"SEC. 218. (a) The Secretary, acting through the Service after consultation with the Centers for Disease Control, may make grants to Indian tribes and tribal organizations for—

"(1) projects for the prevention, control, and elimination of tuberculosis;

"(2) public information and education programs for the prevention, control, and elimination of tuberculosis; and

"(3) education, training, and clinical skills improvement activities in the prevention, control, and elimination of tuberculosis for health professionals, including allied health professionals.

"(b) The Secretary may make a grant under subsection (a) only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains the assurances required by subsection (c) and such other agreements, assurances, and information as the Secretary may require.

"(c) To be eligible for a grant under subsection (a), an applicant must provide assurances satisfactory to the Secretary that—

"(1) the applicant will coordinate its activities for the prevention, control, and elimination of tuberculosis with activities of the Centers for Disease Control, and State and local health agencies; and

"(2) the applicant will submit to the Secretary an annual report on its activities for the prevention, control, and elimination of tuberculosis.

"(d) In carrying out this section, the Secretary—

"(1) shall establish criteria for the review and approval of applications for grants under subsection (a), including requirement of public health qualifications of applicants;

"(2) shall, subject to available appropriations, make at least one grant under subsection (a) within each area office;

"(3) may, at the request of an Indian tribe or tribal organization, provide technical assistance; and

"(4) shall prepare and submit a report to the Committee on Energy and Commerce and the Committee on Interior and Insular Affairs of the House and the Select Committee on Indian Affairs of the Senate not later than February 1, 1994, and biennially thereafter, on the use of funds under this section and on the progress made toward the prevention, control, and elimination of tuberculosis among Indian tribes and tribal organizations.

"(e) The Secretary may, at the request of a recipient of a grant under subsection (a), reduce the amount of such grant by—

"(1) the fair market value of any supplies or equipment furnished the grant recipient; and

"(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.".

**SEC. 215. CONTRACT HEALTH SERVICES.**

Title II of the Act (as amended by section 214 of this Act) is amended by adding at the end the following new sections:

"CONTRACT HEALTH SERVICES PAYMENT STUDY

"SEC. 219. (a) The Secretary, acting through the Service and in consultation with representatives of Indian tribes and tribal organizations operating contract health care programs under the Indian Self-Determination Act (25 U.S.C. 450f et seq.) or under self-governance compacts, Service personnel, private contract health services providers, the Indian Health Service Fiscal Intermediary, and other appropriate experts, shall conduct a study—

"(1) to assess and identify administrative barriers that hinder the timely payment for services delivered by private contract health services providers to individual Indians by the Service and the Indian Health Service Fiscal Intermediary;

"(2) to assess and identify the impact of such delayed payments upon the personal credit histories of individual Indians who have been treated by such providers; and

"(3) to determine the most efficient and effective means of improving the Service's contract health services payment system and ensuring the development of appropriate consumer protection policies to protect individual Indians who receive authorized services from private contract health services providers from billing and collection practices, including the development of materials and programs explaining patients' rights and responsibilities.

"(b) The study required by subsection (a) shall—

"(1) assess the impact of the existing contract health services regulations and policies upon the ability of the Service and the Indian Health Service Fiscal Intermediary to process, on a timely and efficient basis, the payment of bills submitted by private contract health services providers;

"(2) assess the financial and any other burdens imposed upon individual Indians and private contract health services providers by delayed payments;

"(3) survey the policies and practices of collection agencies used by contract health services providers to collect payments for services rendered to individual Indians;

"(4) identify appropriate changes in Federal policies, administrative procedures, and regulations, to eliminate the problems experienced by private contract health services providers and individual Indians as a result of delayed payments; and

"(5) compare the Service's payment processing requirements with private insurance claims processing requirements to evaluate the systemic differences or similarities employed by the Service and private insurers.

"(c) Not later than 12 months after the date of the enactment of this section, the Secretary shall transmit to the Congress a report that includes—

"(1) a detailed description of the study conducted pursuant to this section; and

"(2) a discussion of the findings and conclusions of such study.

"PROMPT ACTION ON PAYMENT OF CLAIMS

"SEC. 220. (a) The Service shall respond to a notification of a claim by a provider of a contract care service with either an individual purchase order or a denial of the claim within 5 working days after the receipt of such notification.

"(b) If the Service fails to respond to a notification of a claim in accordance with subsection (a), the Service shall accept as valid the claim submitted by the provider of a contract care service.

"(c) The Service shall pay a completed contract care service claim within 30 days after completion of the claim.

"DEMONSTRATION OF ELECTRONIC CLAIMS PROCESSING

"SEC. 221. (a) Not later than June 15, 1993, the Secretary shall develop and implement, directly or by contract, 2 projects to demonstrate in a pilot setting the use of claims processing technology to improve the accuracy and timeliness of the billing for, and payment of, contract health services.

"(b) The Secretary shall conduct one of the projects authorized in subsection (a) in the Service area served by the area office located in Phoenix, Arizona.

"LIABILITY FOR PAYMENT

"SEC. 222. (a) A patient who receives contract health care services that are authorized by the Service shall not be liable for the payment of any charges or costs associated with the provision of such services.

"(b) The Secretary shall notify a contract care provider and any patient who receives contract health care services authorized by the Service that such patient is not liable for the payment of any charges or costs associated with the provision of such services.".

**SEC. 216. OFFICE OF INDIAN WOMEN'S HEALTH CARE.**

Title II of the Act (as amended by section 215 of this Act) is amended by adding at the end the following new section:

"OFFICE OF INDIAN WOMEN'S HEALTH CARE

"SEC. 223. There is established within the Service an Office of Indian Women's Health Care to oversee efforts of the Service to monitor and improve the quality of health care for Indian women of all ages through the planning and delivery of programs administered by the Service, in order to improve and enhance the treatment models of care for Indian women.".

**SEC. 217. AUTHORIZATION OF APPROPRIATIONS.**

(a) AUTHORIZATION.—Title II of the Act (as amended by section 216 of this Act) is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 224. Except as provided in sections 209(m), 211, 213, 214(b)(5), 215, and 216, there are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

(b) CONFORMING AMENDMENTS.—Title II of the Act is amended—

(1) in section 201(h), by striking out the first sentence and striking out "subsection" and inserting in lieu thereof "section".

(2) in section 202, by striking out subsection (e);

(3) in section 204(e), by striking out the first sentence and striking out "subsection (c)" and inserting in lieu thereof "this section"; and

(4) in section 209 (as amended by section 902(3)(B) of this Act)—

(A) by striking out subsections (c)(5), (d)(6), (f)(4), and (g)(5);

(B) in subsection (h)—

(i) by striking out paragraph (2) and by striking out "(1)";

(ii) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively;

(iii) by striking out "subparagraph (A)" and inserting "paragraph (1)"; and

(iv) by striking out "subparagraph (B)" and inserting "paragraph (2)";

(C) in subsection (i), by striking out paragraph (2) and by striking out "(1)";

(D) in subsection (d)(3)(B), by striking out "this subsection" and inserting in lieu thereof "this section"; and

(E) in subsection (k)(6), by striking out the first sentence and in the second sentence by striking out "subsection" and inserting in lieu thereof "section".

## TITLE III—HEALTH FACILITIES

**SEC. 301. HEALTH FACILITIES CLOSURE AND PRIORITIES.**

Section 301 of the Act (25 U.S.C. 1631) is amended—

(1) in subsection (a)(2), by striking out "Hospitals" and inserting "Health Care Organizations";

(2) in subsection (b)(1)—

(A) in the material preceding subparagraph (A), by striking out "other" before "outpatient";

(B) by striking out "and" at the end of subparagraph (D);

(C) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a semicolon; and

(D) by adding at the end the following new subparagraphs:

"(F) the level of utilization of such hospital or facility by all eligible Indians; and

"(G) the distance between such hospital or facility and the nearest operating Service hospital.";

(3) by striking out subsection (c) and redesignating subsections (d) and (e) as subsections (c) and (d), respectively;

(4) in subsection (c)(1) (as redesignated by paragraph (2) of this subsection), by amending the material preceding subparagraph (A) to read as follows:

"(c)(1) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report which sets forth—"; and

(5) by striking out paragraph (2) of subsection (c) (as redesignated by paragraph (2)) and redesignating paragraphs (3), (4), and (5) of such subsection as paragraphs (2), (3), and (4), respectively.

**SEC. 302. SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES.**

Section 302 of the Act (25 U.S.C. 1632) is amended—

(1) by amending subsection (e) to read as follows:

"(e)(1) The Secretary is authorized to provide financial assistance to Indian tribes and communities in an amount equal to the Federal share of the costs of operating, managing, and maintaining the facilities provided under the plan described in subsection (c).

"(2) For the purposes of paragraph (1), the term 'Federal share' means 80 percent of the costs described in paragraph (1).

"(3) With respect to Indian tribes with fewer than 1,000 enrolled members, the non-Federal portion of the costs of operating, managing, and maintaining such facilities may be provided, in part, through cash donations or in kind property, fairly evaluated.";

(2) in subsection (f)(1), by striking out "subsection (h)" and inserting in lieu thereof "this section"; and

(3) in subsection (g)—

(A) in paragraph (1), by striking out "The Secretary" through "report" and inserting in lieu thereof the following: "The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report"; and

(B) by striking out paragraph (2) and redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively.

**SEC. 303. AMBULATORY CARE FACILITIES GRANT PROGRAM.**

Section 306 of the Act (25 U.S.C. 1636) is amended to read as follows:

"GRANT PROGRAM FOR THE CONSTRUCTION, EXPANSION, AND MODERNIZATION OF SMALL AMBULATORY CARE FACILITIES

"SEC. 306. (a)(1) The Secretary, acting through the Service, shall make grants to tribes and tribal organizations for the construction, expansion, or modernization of facilities for the provision of ambulatory care services to eligible Indians (and noneligible persons as provided in subsection (c)(1)(C)). A grant made under this section may cover up to 100 percent of the costs of such construction, expansion, or modernization. For the purposes of this section, the term 'construction' includes the replacement of an existing facility.

"(2) A grant under paragraph (1) may only be made to a tribe or tribal organization operating an Indian health facility (other than a facility owned or constructed by the Service, including a facility originally owned or constructed by the Service and transferred to a tribe or tribal organization) pursuant to a contract entered into under the Indian Self-Determination Act.

"(b)(1) A grant provided under this section may be used only for the construction, expansion, or modernization (including the planning and design of such construction, expansion, or modernization) of an ambulatory care facility—

"(A) located apart from a hospital;

"(B) not funded under section 301 or section 307; and

"(C) which, upon completion of such construction, expansion, or modernization will—

"(i) have a total capacity appropriate to its projected service population;

"(ii) serve no less than 500 eligible Indians annually; and

"(iii) provide ambulatory care in a service area (specified in the contract entered into under the Indian Self-Determination Act) with a population of not less than 2,000 eligible Indians.

"(2) The requirements of clauses (ii) and (iii) of paragraph (1)(C) shall not apply to a tribe or tribal organization applying for a grant under this section whose tribal government offices are located on an island.

"(c)(1) No grant may be made under this section unless an application for such a grant has been submitted to and approved by the Secretary. An application for a grant under this section shall be submitted in such form and manner as the Secretary shall by regulation prescribe and shall set forth reasonable assurance by the applicant that, at all times after the construction, expansion, or modernization of a facility carried out pursuant to a grant received under this section—

"(A) adequate financial support will be available for the provision of services at such facility;

"(B) such facility will be available to eligible Indians without regard to ability to pay or source of payment; and

"(C) such facility will, as feasible without diminishing the quality or quantity of services provided to eligible Indians, serve noneligible persons on a cost basis.

"(2) In awarding grants under this section, the Secretary shall give priority to tribes and tribal organizations that demonstrate—

"(A) a need for increased ambulatory care services; and

"(B) insufficient capacity to deliver such services.

"(d) If any facility (or portion thereof) with respect to which funds have been paid under this section, ceases, at any time after completion of the construction, expansion, or modernization carried out with such funds, to be utilized for the purposes of providing ambulatory care services to eligible Indians, all of the right, title, and interest in and to such facility (or portion thereof) shall transfer to the United States.".

**SEC. 304. INDIAN HEALTH CARE DELIVERY DEMONSTRATION PROJECT.**

(a) AWARDING OF GRANTS.—Section 307(c) of the Act (25 U.S.C. 1637(c)(3)) is amended—

(1) in paragraph (1)(A), by inserting "or program" immediately after "facility" each place it appears;

(2) in paragraph (3)(A)—

(A) by striking "The" and inserting "On or before September 30, 1995, the"; and

(B) by adding before the colon the following: "and for which a completed application has been received by the Secretary"; and

(3) by striking subparagraph (B) and inserting the following:

"(B) The Secretary may also enter into contracts or award grants under this section taking into consideration applications received under this section from all service areas. The Secretary may not award a greater number of such contracts or grants in one service area than in any other service area until there is an equal number of such contracts or grants awarded with respect to all service areas from which the Secretary receives applications during the application period (as determined by the Secretary) which meet the criteria specified in paragraph (1).".

(b) REPORTS.—Section 307(h) of the Act (25 U.S.C. 1637(h)) is amended to read as follows:

"(h)(1) The Secretary shall submit to the President, for inclusion in the report which is required to be submitted to the Congress under section 801 for fiscal year 1997, an interim report on the findings and conclusions derived from the demonstration projects established under this section.

"(2) The Secretary shall submit to the President, for inclusion in the report which is required to be submitted to the Congress under section 801 for fiscal year 1999, a final report on the findings and conclusions derived from the demonstration projects established under this section, together with legislative recommendations.".

**SEC. 305. EXPENDITURE OF NONSERVICE FUNDS FOR RENOVATION.**

Section 305 of the Act (25 U.S.C. 1634) is amended to read as follows:

"EXPENDITURE OF NONSERVICE FUNDS FOR RENOVATION

"SEC. 305. (a)(1) Notwithstanding any other provision of law, the Secretary is authorized to accept any major renovation or modernization by any Indian tribe of any Service facility, or of any other Indian health facility operated pursuant to a contract entered into under the Indian Self-Determination Act, including—

"(A) any plans or designs for such renovation or modernization; and

"(B) any renovation or modernization for which funds appropriated under any Federal law were lawfully expended,

but only if the requirements of subsection (b) are met.

"(2) The Secretary shall maintain a separate priority list to address the needs of such facilities for personnel or equipment.

"(3) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, the priority list maintained pursuant to paragraph (2).

"(b) The requirements of this subsection are met with respect to any renovation or modernization if—

"(1) the tribe or tribal organization—

"(A) provides notice to the Secretary of its intent to renovate or modernize; and

"(B) applies to the Secretary to be placed on a separate priority list to address the needs of such new facilities for personnel or equipment; and

"(2) the renovation or modernization—

"(A) is approved by the appropriate area director of the Service; and

"(B) is administered by the tribe in accordance with the rules and regulations prescribed by the Secretary with respect to construction or renovation of Service facilities.

"(c) If any Service facility which has been renovated or modernized by an Indian tribe under this section ceases to be used as a Service facility during the 20-year period beginning on the date such renovation or modernization is completed, such Indian tribe shall be entitled to recover from the United States an amount which bears the same ratio to the value of such facility at the time of such cessation as the value of such renovation or modernization (less the total amount of any funds provided specifically for such facility under any Federal program that were expended for such renovation or modernization) bore to the value of such facility at the time of the completion of such renovation or modernization.".

**SEC. 306. LAND TRANSFER.**

Title III of the Act is amended by adding at the end the following new section:

"LAND TRANSFER

"SEC. 308. The Bureau of Indian Affairs is authorized to transfer, at no cost, up to 5 acres of land at the Chemawa Indian School, Salem, Oregon, to the Service for the provision of health care services. The land authorized to be transferred by this section is that land adjacent to land under the jurisdiction of the Service and occupied by the Chemawa Indian Health Center.".

**SEC. 307. AUTHORIZATION OF APPROPRIATIONS.**

(a) AUTHORIZATION.—Title III of the Act (as amended by section 306 of this Act) is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 309. There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

(b) CONFORMING AMENDMENTS.—Title III of the Act is amended—

(1) in section 302, by striking out subsection (h); and

(2) in section 307, by striking out subsection (i).

**SEC. 308. BUY AMERICAN REQUIREMENT.**

Title III of the Act (as amended by section 307 of this Act) is amended by adding at the end the following new section:

"APPLICABILITY OF BUY AMERICAN REQUIREMENT

"SEC. 310. (a) The Secretary shall ensure that the requirements of the Buy American Act apply to all procurements made with funds provided pursuant to the authorization contained in section 309.

"(b) The Secretary shall submit to the Congress a report on the amount of procurements from foreign entities made in fiscal years 1993 and 1994 with funds provided pursuant to the authorization contained in section 309. Such report shall separately indicate the dollar value of items procured with such funds for which the Buy American Act was waived pursuant to the Trade Agreement Act of 1979 or any international agreement to which the United States is a party.

"(c) If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a 'Made in America' inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or subcontract made with funds provided pursuant to the authorization contained in section 309, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

"(d) For purposes of this section, the term "Buy American Act" means title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933 (41 U.S.C. 10a et seq.).".

## TITLE IV—ACCESS TO HEALTH SERVICES

**SECTION 401. TREATMENT OF PAYMENTS TO INDIAN HEALTH SERVICE FACILITIES UNDER MEDICARE AND MEDICAID PROGRAMS.**

(a) MEDICARE PROGRAM.—Section 401 of the Act (42 U.S.C. 1395qq note) is amended to read as follows:

"TREATMENT OF PAYMENTS UNDER MEDICARE PROGRAM

"SEC. 401. (a) Any payments received by a hospital or skilled nursing facility of the Service (whether operated by the Service or by an Indian tribe or tribal organization pursuant to a contract under the Indian Self-Determination Act) for services provided to Indians eligible for benefits under title XVIII of the Social Security Act shall not be considered in determining appropriations for health care and services to Indians.

"(b) Nothing in this Act authorizes the Secretary to provide services to an Indian beneficiary with coverage under title XVIII of the Social Security Act, as amended, in preference to an Indian beneficiary without such coverage.".

(b) MEDICAID PROGRAM.—(1) Section 402 of the Act is amended to read as follows:

"TREATMENT OF PAYMENTS UNDER MEDICAID PROGRAM

"SEC. 402. (a) Notwithstanding any other provision of law, payments to which any facility of the Service (including a hospital, nursing facility, intermediate care facility for the mentally retarded, or any other type of facility which provides services for which payment is available under title XIX of the Social Security Act) is entitled under a State plan by reason of section 1911 of such Act shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of such title. In making payments from such fund, the Secretary shall ensure that each service unit of the Service receives at least 80 percent of the amounts to which the facilities of the Service, for which such service unit makes collections, are entitled by reason of section 1911 of the Social Security Act.

"(b) Any payments received by such facility for services provided to Indians eligible for benefits under title XIX of the Social Security Act shall not be considered in determining appropriations for the provision of health care and services to Indians.".

(2) The increase (from 50 percent) in the percentage of the payments from the fund to be made to each service unit of the Service specified in the amendment made by paragraph (1) shall take effect beginning with payments made on January 1, 1993.

**SEC. 402. REPORT.**

Section 403 of the Act (25 U.S.C. 1671 note) is amended by striking out "The Secretary" and all that follows through "section 701" and inserting in lieu thereof the following: "The Secretary shall submit to the President, for inclusion in the report required to be transmitted to the Congress under section 801,".

**SEC. 403. APPLICATION ASSISTANCE.**

Section 404 of the Act (25 U.S.C. 1622) is amended—

(1) by amending subsection (b)(4) to read as follows:

"(4) develop and implement—

"(A) a schedule of income levels to determine the extent of payments of premiums by such organizations for coverage of needy individuals; and

"(B) methods of improving the participation of Indians in receiving the benefits provided under titles XVIII and XIX of the Social Security Act."; and

(2) by amending subsection (c) to read as follows:

"(c) The Secretary, acting through the Service, may enter into an agreement with an Indian tribe, tribal organization, or urban Indian organization which provides for the receipt and processing of applications for medical assistance under title XIX of the Social Security Act and benefits under title XVIII of the Social Security Act at a Service facility or a health care facility administered by such tribe or organization pursuant to a contract under the Indian Self-Determination Act.".

**SEC. 404. EXTENSION OF DEMONSTRATION PROGRAM.**

Section 405 of the Act (42 U.S.C. 1395qq note) is amended—

(1) in subsection (c)(2), by striking "1995" and inserting "1996"; and

(2) in subsection (e), by striking "1995" and inserting "1996".

**SEC. 405. AUTHORIZATION FOR EMERGENCY CONTRACT HEALTH SERVICES.**

Title IV of the Act is amended by adding at the end the following new section:

"AUTHORIZATION FOR EMERGENCY CONTRACT HEALTH SERVICES

"SEC. 406. With respect to an elderly or disabled Indian receiving emergency medical care or services from a non-Service provider or in a non-Service facility under the authority of this Act, the time limitation (as a condition of payment) for notifying the Service of such treatment or admission shall be 30 days.".

**SEC. 406. AUTHORIZATION OF APPROPRIATIONS.**

Title IV of the Act is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 407. There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

## TITLE V—HEALTH SERVICES FOR URBAN INDIANS

**SEC. 501. GRANT AUTHORITY.**

(a) IN GENERAL.—Section 502 of the Act (25 U.S.C. 1652) is amended—

(1) by striking "contracts with" and inserting the following: "contracts with, or make grants to,";

(2) by inserting after "enters into with" the following: ", or in any grant the Secretary makes to,"; and

(3) by amending the heading to read as follows:

"CONTRACTS WITH, AND GRANTS TO, URBAN INDIAN ORGANIZATIONS".

(b) CONFORMING AMENDMENTS.—(1) Section 503 of the Act (25 U.S.C. 1653) is amended—

(A) in subsection (a), in the material preceding paragraph (1)—

(i) by inserting ", or make grants to," after "contracts with"; and

(ii) by inserting "or grant" after "such contract";

(B) in subsection (b)—

(i) in the material preceding paragraph (1), by inserting "or receive grants" after "enter into contracts"; and

(ii) in paragraph (5), by inserting "or to meet the requirements for receiving a grant" after "Secretary";

(C) in subsection (c)(1), by inserting before the period at the end the following: "or receiving grants under subsection (a)";

(D) in subsection (d)(1), by inserting before the period at the end the following: "or receiving grants under subsection (a)";

(E) in subsection (e)(1), by inserting before the period at the end the following: "or receiving grants under subsection (a)";

(F) in subsection (f), by inserting "or receiving grants under subsection (a)" after "this section"; and

(G) by amending the heading to read as follows:

"CONTRACTS AND GRANTS FOR THE PROVISION OF HEALTH CARE AND REFERRAL SERVICES".

(2) Section 504 of the Act (25 U.S.C. 1654) is amended—

(A) by striking "SEC. 504." and all that follows through the end of subsection (a) and inserting the following:

"SEC. 504. (a) Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, may enter into contracts with, or make grants to, urban Indian organizations situated in urban centers for which contracts have not been entered into, or grants have not been made, under section 503. The purpose of a contract or grant made under this section shall be the determination of the matters described in subsection (b)(1) in order to assist the Secretary in assessing the health status and health care needs of urban Indians in the urban center involved and determining whether the Secretary should enter into a contract or make a grant under section 503 with respect to the urban Indian organization which the Secretary has entered into a contract with, or made a grant to, under this section.";

(B) in subsection (b)—

(i) in the material preceding paragraph (1), by inserting ", or grant made," after "contract entered into"; and

(ii) in paragraph (2), by striking "within one year" and all that follows through the period at the end and inserting the following:

", or carry out the requirements of the grant, within one year after the date on which the Secretary and such organization enter into such contract, or within one year after such organization receives such grant, whichever is applicable.";

(C) in subsection (c), by inserting ", or grant made," after "entered into"; and

(D) by amending the heading to read as follows:

"CONTRACTS AND GRANTS FOR THE DETERMINATION OF UNMET HEALTH CARE NEEDS".

(3) Section 505 of the Act (25 U.S.C. 1655) is amended—

(A) in subsection (a), by inserting "compliance with grant requirements under this title and" before "compliance with,";

(B) in subsection (b)—

(i) by inserting "or received a grant" after "entered into a contract"; and

(ii) by inserting before the period at the end the following: "or the terms of such grant";

(C) in subsection (c)—

(i) by inserting "the requirements of a grant or complied with" after "complied with";

(ii) by inserting "or grant" after "such contract" each place it appears;

(iii) by inserting "or make a grant" after "enter into a contract"; and

(iv) by inserting "or grant" after "whose contract";

(D) in subsection (d), by inserting "or grant" after "a contract" each place it appears; and

(E) by amending the heading to read as follows:

"EVALUATIONS; RENEWALS".

(4) Section 506 of the Act (25 U.S.C. 1656) is amended—

(A) in subsection (b), by inserting "or grants" after "any contracts";

(B) in subsection (d), by inserting "or grant" after "contract" each place it appears;

(C) in subsection (e)—

(i) by inserting ", or grants to," after "Contracts with"; and

(ii) by inserting "or grants" after "such contracts"; and

(D) by amending the heading to read as follows:

"OTHER CONTRACT AND GRANT REQUIREMENTS".

(5) Section 507 of the Act (25 U.S.C. 1657) is amended—

(A) in subsection (a)—

(i) in the material preceding paragraph (1), by inserting ", or a grant received," after "entered into"; and

(ii) in paragraphs (1) and (2), by inserting "or grant" after "contract" each place it appears; and

(B) in subsections (b) and (c), by inserting "or grant" after "contract" each place it appears.

(6) Section 509 of the Act (25 U.S.C. 1659) (as amended by section 902(5)(A) of this Act) is amended by inserting "or grant recipients" after "contractors" each place it appears.

(7) Section 510(a) of the Act (25 U.S.C. 1660(a)) (as amended by section 902(5)(B) of this Act) is amended by inserting before the period at the end the following: "and for providing central oversight of the programs and services authorized under this title".

**SEC. 502. ALCOHOL AND SUBSTANCE ABUSE.**

Title V of the Act is amended by inserting after section 510 (as redesignated by section 902(5)(B) of this Act) the following new section:

"GRANTS FOR ALCOHOL AND SUBSTANCE ABUSE RELATED SERVICES

"SEC. 511. (a) GRANTS.—The Secretary may make grants for the provision of health-related services in prevention of, treatment of, rehabilitation of, or school and community-based education in, alcohol and substance abuse in urban centers to those urban Indian organizations with whom the Secretary has entered into a contract under this title or under section 201.

"(b) GOALS OF GRANT.—Each grant made pursuant to subsection (a) shall set forth the goals to be accomplished pursuant to the grant. The goals shall be specific to each grant as agreed to between the Secretary and the grantee.

"(c) CRITERIA.—The Secretary shall establish criteria for the grants made under subsection (a), including criteria relating to the—

"(1) size of the urban Indian population;

"(2) accessibility to, and utilization of, other health resources available to such population;

"(3) duplication of existing Service or other Federal grants or contracts;

"(4) capability of the organization to adequately perform the activities required under the grant;

"(5) satisfactory performance standards for the organization in meeting the goals set forth in such grant, which standards shall be negotiated and agreed to between the Secretary and the grantee on a grant-by-grant basis; and

"(6) identification of need for services.

"The Secretary shall develop a methodology for allocating grants made pursuant to this section based on such criteria.

"(d) TREATMENT OF FUNDS RECEIVED BY URBAN INDIAN ORGANIZATIONS.—Any funds received by an urban Indian organization under this Act for substance abuse prevention, treatment, and rehabilitation shall be subject to the criteria set forth in subsection (c).".

**SEC. 503. TREATMENT OF DEMONSTRATION PROJECTS.**

Title V of the Act (as amended by section 502 of this Act) is amended by adding at the end the following new section:

"TREATMENT OF CERTAIN DEMONSTRATION PROJECTS

"SEC. 512. (a) Notwithstanding any other provision of law, the Oklahoma City Clinic demonstration project and the Tulsa Clinic demonstration project shall be treated as service units in the allocation of resources and coordination of care and shall not be subject to the provisions of the Indian Self-Determination Act for the term of such projects. The Secretary shall provide assistance to such projects in the development of resources and equipment and facility needs.

"(b) The Secretary shall submit to the President, for inclusion in the report required to be submitted to the Congress under section 801 for fiscal year 1999, a report on the findings and conclusions derived from the demonstration projects specified in subsection (a).".

**SEC. 504. URBAN NIAAA TRANSFERRED PROGRAMS.**

Title V of the Act (as amended by section 503 of this Act) is amended by adding at the end the following new section:

"URBAN NIAAA TRANSFERRED PROGRAMS

"SEC. 513. (a) The Secretary shall, within the Branch of Urban Health Programs of the Service, make grants or enter into contracts for the administration of urban Indian alcohol programs that were originally established under the National Institute on Alcoholism and Alcohol Abuse (hereafter in this section referred to as 'NIAAA') and transferred to the Service.

"(b) Grants provided or contracts entered into under this section shall be used to provide support for the continuation of alcohol prevention and treatment services for urban Indian populations and such other objectives as are agreed upon between the Service and a recipient of a grant or contract under this section.

"(c) Urban Indian organizations that operate Indian alcohol programs originally funded under NIAAA and subsequently transferred to the Service are eligible for grants or contracts under this section.

"(d) For the purpose of carrying out this section, the Secretary may combine NIAAA alcohol funds with other substance abuse funds currently administered through the Branch of Urban Health Programs of the Service.

"(e) The Secretary shall evaluate and report to the Congress on the activities of programs funded under this section at least every two years.".

**SEC. 505. AUTHORIZATION OF APPROPRIATIONS.**

(a) AUTHORIZATION.—Title V of the Act (as amended by section 504 of this Act) is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 514. There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

(b) CONFORMING AMENDMENTS.—Title V of the Act (25 U.S.C. 1650 et seq.) is amended—

(1) in section 503—

(A) in subsection (c), by striking out "(c)(1)" and inserting "(c)" and by striking out paragraph (2);

(B) in subsection (d), by striking out paragraph (4);

(C) in subsection (e), by striking out paragraph (4); and

(D) in subsection (f), by striking out paragraph (5); and

(2) in section 509 (as redesignated by section 902(5)(A) of this Act), by striking out the last sentence.

## TITLE VI—ORGANIZATIONAL IMPROVEMENTS

**SEC. 601. INDIAN HEALTH SERVICE.**

Section 601(c) of the Act (15 U.S.C. 1661(c)) is amended—

(1) in paragraph (2), by striking out "and" after the semicolon;

(2) in paragraph (3), by striking out the period at the end and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(4) all scholarship and loan functions carried out under title I.".

**SEC. 602. DIRECTOR OF INDIAN HEALTH SERVICE.**

(a) CONFIRMATION BY SENATE.—

(1) IN GENERAL.—Section 601(a) of the Act (25 U.S.C. 1661(a)) is amended in the second sentence by striking "Secretary" and inserting "President, by and with the advice and consent of the Senate".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect January 1, 1993.

(b) INTERIM APPOINTMENT.—The President may appoint an individual to serve as Interim Director of the Service from January 1, 1993, until such time as a Director is appointed and confirmed as provided in section 601(a) of the Indian Health Care Improve-

ment Act (25 U.S.C. 1601 et seq.) (as amended by subsection (a) of this section).

(c) TERM.—Section 601(a) of the Act (25 U.S.C. 1661(a)) is amended by adding at the end the following: "Effective with respect to an individual appointed by the President, by and with the advice and consent of the Senate, after January 1, 1993, the term of service of the Director shall be 4 years. A Director may serve more than 1 term.".

**SEC. 603. AUTHORIZATION OF APPROPRIATIONS.**

Title VI of the Act (25 U.S.C. 1661 et seq.) is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 603. There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

## TITLE VII—SUBSTANCE ABUSE PROGRAMS

**SEC. 701. REDESIGNATION OF EXISTING TITLE VII.**

(a) TITLE HEADING.—Title VII of the Act (25 U.S.C. 1671 et seq.) is redesignated as title VIII and the title heading is amended to read as follows:

"TITLE VIII—MISCELLANEOUS"

(b) REDESIGNATION OF SECTIONS.—Sections 701 through 720 of the Act (25 U.S.C. 1671 et seq.) are hereby redesignated as sections 801 through 820, respectively.

(c) CONFORMING AMENDMENTS.—The Act is amended—

(1) in section 207(a), by striking out "section 713" and inserting in lieu thereof "section 813";

(2) in section 307(e), by striking out "section 713" and inserting in lieu thereof "section 813"; and

(3) in section 405(b)—

(A) in paragraph (1), by striking out "sections 402(c) and 713(b)(2)(A)" and inserting in lieu thereof "sections 402(a) and 813(b)(2)(A)"; and

(B) in paragraph (4), by striking out "section 402(c)" each place it appears and inserting in lieu thereof "section 402(a)".

(d) REFERENCES.—Any reference in a provision of law other than the Indian Health Care Improvement Act to sections redesignated by subsection (b) shall be deemed to refer to the section as so redesignated.

**SEC. 702. SUBSTANCE ABUSE PROGRAMS.**

(a) IN GENERAL.—The Act is amended by inserting after title VI the following new title:

"TITLE VII—SUBSTANCE ABUSE PROGRAMS

"INDIAN HEALTH SERVICE RESPONSIBILITIES

"SEC. 701. The Memorandum of Agreement entered into pursuant to section 4205 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2411) shall include specific provisions pursuant to which the Service shall assume responsibility for—

"(1) the determination of the scope of the problem of alcohol and substance abuse among Indian people, including the number of Indians within the jurisdiction of the Service who are directly or indirectly affected by alcohol and substance abuse and the financial and human cost;

"(2) an assessment of the existing and needed resources necessary for the prevention of alcohol and substance abuse and the treatment of Indians affected by alcohol and substance abuse; and

"(3) an estimate of the funding necessary to adequately support a program of prevention of alcohol and substance abuse and treatment of Indians affected by alcohol and substance abuse.

"INDIAN HEALTH SERVICE PROGRAM

"SEC. 702. (a) COMPREHENSIVE PREVENTION AND TREATMENT PROGRAM.—(1) The Secretary, acting through the Service, shall provide a program of comprehensive alcohol and substance abuse prevention and treatment which shall include—

"(A) prevention, through educational intervention, in Indian communities;

"(B) acute detoxification and treatment;

"(C) community-based rehabilitation;

"(D) community education and involvement, including extensive training of health care, educational, and community-based personnel; and

"(E) residential treatment programs for pregnant and post partum women and their children.

"(2) The target population of such program shall be members of Indian tribes. Efforts to train and educate key members of the Indian community shall target employees of health, education, judicial, law enforcement, legal, and social service programs.

"(b) CONTRACT HEALTH SERVICES.—(1) The Secretary, acting through the Service, may enter into contracts with public or private providers of alcohol and substance abuse treatment services for the purpose of assisting the Service in carrying out the program required under subsection (a).

"(2) In carrying out this subsection, the Secretary shall provide assistance to Indian tribes to develop criteria for the certification of alcohol and substance abuse service providers and accreditation of service facilities which meet minimum standards for such services and facilities as may be determined pursuant to section 4205(a)(3) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2411(a)(3)).

"(c) GRANTS FOR MODEL PROGRAM.—(1) The Secretary, acting through the Service shall make a grant to the Standing Rock Sioux Tribe to develop a community-based demonstration project to reduce drug and alcohol abuse on the Standing Rock Sioux Reservation and to rehabilitate Indian families afflicted by such abuse.

"(2) Funds shall be used by the Tribe to—

"(A) develop and coordinate community-based alcohol and substance abuse prevention and treatment services for Indian families;

"(B) develop prevention and intervention models for Indian families;

"(C) conduct community education on alcohol and substance abuse; and

"(D) coordinate with existing Federal, State, and tribal services on the reservation to develop a comprehensive alcohol and substance abuse program that assists in the rehabilitation of Indian families that have been or are afflicted by alcoholism.

"(3) The Secretary shall submit to the President for inclusion in the report to be transmitted to the Congress under section 801 for fiscal year 1995 an evaluation of the demonstration project established under paragraph (1).

"INDIAN WOMEN TREATMENT PROGRAMS

"SEC. 703. (a) The Secretary may make grants to Indian tribes and tribal organizations to develop and implement a comprehensive alcohol and substance abuse program of prevention, intervention, treatment, and relapse prevention services that specifically addresses the cultural, historical, social, and child care needs of Indian women, regardless of age.

"(b) Grants made pursuant to this section may be used to—

"(1) develop and provide community training, education, and prevention programs for Indian women relating to alcohol and substance abuse issues, including fetal alcohol syndrome and fetal alcohol effect;

"(2) identify and provide appropriate counseling, advocacy, support, and relapse prevention to Indian women and their families; and

"(3) develop prevention and intervention models for Indian women which incorporate traditional healers, cultural values, and community and family involvement.

"(c) The Secretary shall establish criteria for the review and approval of applications for grants under this section.

"(d)(1) There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

"(2) Twenty percent of the funds appropriated pursuant to this subsection shall be used to make grants to urban Indian organizations funded under title V.

"INDIAN HEALTH SERVICE YOUTH PROGRAM

"SEC. 704. (a) DETOXIFICATION AND REHABILITATION.—The Secretary shall develop and implement a program for acute detoxification and treatment for Indian youth who are alcohol and substance abusers. The program shall include regional treatment centers designed to include detoxification and rehabilitation for both sexes on a referral basis. These regional centers shall be integrated with the intake and rehabilitation programs based in the referring Indian community.

"(b) TREATMENT CENTERS OR FACILITIES.—(1) The Secretary shall construct, renovate, or, as necessary, purchase, and appropriately staff and operate, a youth regional treatment center in each area under the jurisdiction of an area office. For the purposes of this subsection, the area offices of the Service in Tucson and Phoenix, Arizona, shall be considered one area office and the area office in California shall be considered to be two area offices, one office whose jurisdiction shall be considered to encompass the northern area of the State of California, and one office whose jurisdiction shall be considered to encompass the remainder of the State of California.

"(2) For the purpose of staffing and operating such centers or facilities, funding shall be pursuant to the Act of November 2, 1921 (25 U.S.C. 13).

"(3) A youth treatment center constructed or purchased under this subsection shall be constructed or purchased at a location within the area described in paragraph (1) agreed upon (by appropriate tribal resolution) by a majority of the tribes to be served by such center.

"(4)(A) Notwithstanding any other provision of this title, the Secretary may, from amounts authorized to be appropriated for the purposes of carrying out this section, make funds available to—

"(i) the Tanana Chiefs Conference, Incorporated, for the purpose of leasing, constructing, renovating, operating and maintaining a residential youth treatment facility in Fairbanks, Alaska; and

"(ii) the Southeast Alaska Regional Health Corporation to staff and operate a residential youth treatment facility without regard to the proviso set forth in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)).

"(B) Until additional residential youth treatment facilities are established in Alaska pursuant to this section, the facilities specified in subparagraph (A) shall make

every effort to provide services to all eligible Indian youth residing in such State.

"(c) FEDERALLY OWNED STRUCTURES.—

"(1) The Secretary, acting through the Service, shall, in consultation with Indian tribes—

"(A) identify and use, where appropriate, federally owned structures suitable as local residential or regional alcohol and substance abuse treatment centers for Indian youth; and

"(B) establish guidelines for determining the suitability of any such federally owned structure to be used as a local residential or regional alcohol and substance abuse treatment center for Indian youth.

"(2) Any structure described in paragraph (1) may be used under such terms and conditions as may be agreed upon by the Secretary and the agency having responsibility for the structure.

"(d) REHABILITATION AND AFTERCARE SERVICES.—

"(1) The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each Service service unit community-based rehabilitation and follow-up services for Indian youth who are alcohol or substance abusers which are designed to integrate long-term treatment and to monitor and support the Indian youth after their return to their home community.

"(2) Services under paragraph (1) shall be administered within each service unit by trained staff within the community who can assist the Indian youth in continuing development of self-image, positive problem-solving skills, and nonalcohol or substance abusing behaviors. Such staff shall include alcohol and substance abuse counselors, mental health professionals, and other health professionals and paraprofessionals, including community health representatives.

"(e) INCLUSION OF FAMILY IN YOUTH TREATMENT PROGRAM.—In providing the treatment and other services to Indian youth authorized by this section, the Secretary shall provide for the inclusion of family members of such youth in the treatment programs or other services as may be appropriate. Not less than 10 percent of the funds appropriated for the purposes of carrying out subsection (d) shall be used for outpatient care of adult family members related to the treatment of an Indian youth under that subsection.

"(f) MULTIDRUG ABUSE STUDY.—(1) The Secretary shall conduct a study to determine the incidence and prevalence of the abuse of multiple forms of drugs, including alcohol, among Indian youth residing on Indian reservations and in urban areas and the interrelationship of such abuse with the incidence of mental illness among such youth.

"(2) The Secretary shall submit a report detailing the findings of such study, together with recommendations based on such findings, to the Congress no later than two years after the date of the enactment of this section.

"TRAINING AND COMMUNITY EDUCATION

"SEC. 705. (a) COMMUNITY EDUCATION.—The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each service unit a program of community education and involvement which shall be designed to provide concise and timely information to the community leadership of each tribal community. Such program shall include education in alcohol and substance abuse to political leaders, tribal judges, law enforcement personnel, members of tribal health and education boards, and other critical members of each tribal community.

"(b) TRAINING.—The Secretary shall, either directly or by contract, provide instruction in the area of alcohol and substance abuse, including instruction in crisis intervention and family relations in the context of alcohol and substance abuse, youth alcohol and substance abuse, and the causes and effects of fetal alcohol syndrome to appropriate employees of the Bureau of Indian Affairs and the Service, and to personnel in schools or programs operated under any contract with the Bureau of Indian Affairs or the Service, including supervisors of emergency shelters and halfway houses described in section 4213 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2433).

"(c) COMMUNITY-BASED TRAINING MODELS.—In carrying out the education and training programs required by this section, the Secretary, acting through the Service and in consultation with tribes and Indian alcohol and substance abuse prevention experts, shall develop and provide community-based training models. Such models shall address—

"(1) the elevated risk of alcohol and substance abuse faced by children of alcoholics;

"(2) the cultural and multigenerational aspects of alcohol and substance abuse prevention and recovery; and

"(3) community-based and multidisciplinary strategies for preventing and treating alcohol and substance abuse.

"GALLUP ALCOHOL AND SUBSTANCE ABUSE TREATMENT CENTER

"SEC. 706. (a) GRANTS FOR RESIDENTIAL TREATMENT.—The Secretary shall make grants to the Navajo Nation for the purpose of providing residential treatment for alcohol and substance abuse for adult and adolescent members of the Navajo Nation and neighboring tribes.

"(b) PURPOSES OF GRANTS.—Grants made pursuant to this section shall (to the extent appropriations are made available) be used to—

"(1) provide at least 15 residential beds each year for adult long-term treatment, including beds for specialized services such as polydrug abusers, dual diagnosis, and specialized services for women with fetal alcohol syndrome children;

"(2) establish clinical assessment teams consisting of a clinical psychologist, a part-time addictionologist, a master's level assessment counselor, and a certified medical records technician which shall be responsible for conducting individual assessments and matching Indian clients with the appropriate available treatment;

"(3) provide at least 12 beds for an adolescent shelterbed program in the city of Gallup, New Mexico, which shall serve as a satellite facility to the Acoma/Canoncito/Laguna Hospital and the adolescent center located in Shiprock, New Mexico, for emergency crisis services, assessment, and family intervention;

"(4) develop a relapse program for the purposes of identifying sources of job training and job opportunity in the Gallup area and providing vocational training, job placement, and job retention services to recovering substance abusers; and

"(5) provide continuing education and training of treatment staff in the areas of intensive outpatient services, development of family support systems, and case management in cooperation with regional colleges, community colleges, and universities.

"(c) CONTRACT FOR RESIDENTIAL TREATMENT.—The Navajo Nation, in carrying out the purposes of this section, shall enter into a contract with an institution in the Gallup, New Mexico, area which is accredited by the Joint Commission of the Accreditation of Health Care Organizations to provide comprehensive alcohol and drug treatment as authorized in subsection (b).

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

"(1) to carry out the purposes of subsection (b)(1)—

"(A) $400,000 for fiscal year 1993;

"(B) $400,000 for fiscal year 1994; and

"(C) $500,000 for fiscal year 1995;

"(2) to carry out the purposes of subsection (b)(2)—

"(A) $100,000 for fiscal year 1993;

"(B) $125,000 for fiscal year 1994; and

"(C) $150,000 for fiscal year 1995;

"(3) to carry out the purposes of subsection (b)(3)—

"(A) $75,000 for fiscal year 1993;

"(B) $85,000 for fiscal year 1994; and

"(C) $100,000 for fiscal year 1995;

"(4) to carry out the purposes of subsection (b)(4), $150,000 for each of fiscal years 1993, 1994, and 1995; and

"(5) to carry out the purposes of subsection (b)(5)—

"(A) $75,000 for fiscal year 1993;

"(B) $90,000 for fiscal year 1994; and

"(C) $100,000 for fiscal year 1995.

"REPORTS

"SEC. 707. (a) COMPILATION OF DATA.—The Secretary, with respect to the administration of any health program by a service unit, directly or through contract, including a contract under the Indian Self-Determination Act, shall require the compilation of data relating to the number of cases or incidents in which any Service personnel or services were involved and which were related, either directly or indirectly, to alcohol or substance abuse. Such report shall include the type of assistance provided and the disposition of these cases.

"(b) REFERRAL OF DATA.—The data compiled under subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan under section 4206 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2471 et seq.).

"(c) COMPREHENSIVE REPORT.—Each service unit director shall be responsible for assembling the data compiled under this section and section 4214 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2434) into an annual tribal comprehensive report. Such report shall be provided to the affected tribe and to the Director of the Service who shall develop and publish a biennial national report based on such tribal comprehensive reports.

"FETAL ALCOHOL SYNDROME AND FETAL ALCOHOL EFFECT GRANTS

"SEC. 708. (a)(1) The Secretary may make grants to Indian tribes and tribal organizations to establish fetal alcohol syndrome and fetal alcohol effect programs as provided in this section for the purposes of meeting the health status objectives specified in section 3(b).

"(2) Grants made pursuant to this section shall be used to—

"(A) develop and provide community and in-school training, education, and prevention programs relating to FAS and FAE;

"(B) identify and provide alcohol and substance abuse treatment to high-risk women;

"(C) identify and provide appropriate educational and vocational support, counseling, advocacy, and information to FAS and FAE affected persons and their families or caretakers;

"(D) develop and implement counseling and support programs in schools for FAS and FAE affected children;

"(E) develop prevention and intervention models which incorporate traditional healers, cultural values and community involvement;

"(F) develop, print, and disseminate education and prevention materials on FAS and FAE; and

"(G) develop and implement, through the tribal consultation process, culturally sensitive assessment and diagnostic tools for use in tribal and urban Indian communities.

"(3) The Secretary shall establish criteria for the review and approval of applications for grants under this section.

"(b) The Secretary, acting through the Service, shall—

"(1) develop an annual plan for the prevention, intervention, treatment, and aftercare for those affected by FAS and FAE in Indian communities;

"(2) conduct a study, directly or by contract with any organization, entity, or institution of higher education with significant knowledge of FAS and FAE and Indian communities, of the special educational, vocational, school-to-work transition, and independent living needs of adolescent and adult Indians and Alaska Natives with FAS or FAE; and

"(3) establish a national clearinghouse for prevention and educational materials and other information on FAS and FAE effect in Indian and Alaska Native communities and ensure access to clearinghouse materials by any Indian tribe or urban Indian organization.

"(c) The Secretary shall establish a task force to be known as the FAS/FAE Task Force to advise the Secretary in carrying out subsection (b). Such task force shall be composed of representatives from the National Institute on Drug Abuse, the National Institute on Alcohol and Alcoholism, the Office of Substance Abuse Prevention, the National Institute of Mental Health, the Service, the Office of Minority Health of the Department of Health and Human Services, the Administration for Native Americans, the Bureau of Indian Affairs, Indian tribes, tribal organizations, urban Indian communities, and Indian FAS/FAE experts.

"(d) The Secretary, acting through the Substance Abuse and Mental Health Services Administration, shall make grants to Indian tribes, tribal organizations, universities working with Indian tribes on cooperative projects, and urban Indian organizations for applied research projects which propose to elevate the understanding of methods to prevent, intervene, treat, or provide aftercare for Indians and urban Indians affected by FAS or FAE.

"(e)(1) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report on the status of FAS and FAE in the Indian population. Such report shall include, in addition to the information required under section (3)(d) with respect to the health status objective specified in section (3)(b)(27), the following:

"(A) The progress of implementing a uniform assessment and diagnostic methodology in Service and tribally based service delivery systems.

"(B) The incidence of FAS and FAE babies born for all births by reservation and urban-based sites.

"(C) The prevalence of FAS and FAE affected Indian persons in Indian communities, their primary means of support, and recommendations to improve the support system for these individuals and their families or caretakers.

"(D) The level of support received from the entities specified in subsection (c) in the area of FAS and FAE.

"(E) The number of inpatient and outpatient substance abuse treatment resources which are specifically designed to meet the unique needs of Indian women, and the volume of care provided to Indian women through these means.

"(F) Recommendations regarding the prevention, intervention, and appropriate vocational, educational and other support services for FAS and FAE affected individuals in Indian communities.

"(2) The Secretary may contract the production of this report to a national organization specifically addressing FAS and FAE in Indian communities.

"(f)(1) There are authorized to be appropriated to carry out this section $22,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

"(2) Ten percent of the funds appropriated pursuant to this section shall be used to make grants to urban Indian organizations funded under title V.

"PUEBLO SUBSTANCE ABUSE TREATMENT PROJECT FOR SAN JUAN PUEBLO, NEW MEXICO

"SEC. 709. The Secretary, acting through the Service, shall continue to make grants, through fiscal year 1995, to the 8 Northern Indian Pueblos Council, San Juan Pueblo, New Mexico, for the purpose of providing substance abuse treatment services to Indians in need of such services.

"THUNDER CHILD TREATMENT CENTER

"SEC. 710. (a) The Secretary, acting through the Service, shall make a grant to the Intertribal Addictions Recovery Organization, Inc. (commonly known as the Thunder Child Treatment Center) at Sheridan, Wyoming, for the completion of construction of a multiple approach substance abuse treatment center which specializes in the treatment of alcohol and drug abuse of Indians.

"(b) For the purposes of carrying out subsection (a), there are authorized to be appropriated $2,000,000 for fiscal years 1993 and 1994. No funding shall be available for staffing or operation of this facility. None of the funding appropriated to carry out subsection (a) shall be used for administrative purposes.

"SUBSTANCE ABUSE COUNSELOR EDUCATION DEMONSTRATION PROJECT

"SEC. 711. (a) The Secretary, acting through the Service, may enter into contracts with, or make grants to, accredited tribally controlled community colleges, tribally controlled postsecondary vocational institutions, and eligible community colleges to establish demonstration projects to develop educational curricula for substance abuse counseling.

"(b) Funds provided under this section shall be used only for developing and providing educational curricula for substance abuse counseling (including paying salaries for instructors). Such curricula may be provided through satellite campus programs.

"(c) A contract entered into or a grant provided under this section shall be for a period of one year. Such contract or grant may be renewed for an additional one year period upon the approval of the Secretary.

"(d) Not later than 180 days after the date of the enactment of this section, the Secretary, after consultation with Indian tribes and administrators of accredited tribally controlled community colleges, tribally controlled postsecondary vocational institutions, and eligible community colleges, shall develop and issue criteria for the review and approval of applications for funding (including applications for renewals of funding) under this section. Such criteria shall ensure that demonstration projects established under this section promote the development of the capacity of such entities to educate substance abuse counselors.

"(e) The Secretary shall provide such technical and other assistance as may be necessary to enable grant recipients to comply with the provisions of this section.

"(f) The Secretary shall submit to the President, for inclusion in the report which is required to be submitted under section 801 for fiscal year 1999, a report on the findings and conclusions derived from the demonstration projects conducted under this section.

"(g) For the purposes of this section, the following definitions apply:

"(1) The term 'educational curriculum' means one or more of the following:

"(A) Classroom education.

"(B) Clinical work experience.

"(C) Continuing education workshops.

"(2) The term 'eligible community college' means an accredited community college that—

"(i) is located on or near an Indian reservation;

"(ii) has entered into a cooperative agreement with the governing body of such Indian reservation to carry out a demonstration project under this section; and

"(iii) has a student enrollment of not less than 10 percent Indian.

"(3) The term 'tribally controlled community college' has the meaning given such term in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(4)).

"(4) The term 'tribally controlled postsecondary vocational institution' has the meaning given such term in section 390(2) of the Tribally Controlled Vocational Institutions Support Act of 1990 (20 U.S.C. 2397h(2)).

"(h) There are authorized to be appropriated for each of the fiscal years 1993, 1994, 1995, 1996, and 1997, such sums as may be necessary to carry out the purposes of this section. Such sums shall remain available until expended.

"GILA RIVER ALCOHOL AND SUBSTANCE ABUSE TREATMENT FACILITY

"SEC. 712. (a) The Secretary, acting through the Service, shall establish a regional youth alcohol and substance abuse prevention and treatment center in Sacaton, Arizona, on the Gila River Indian Reservation. The center shall be established within facilities leased, with the consent of the Gila River Indian Community, by the Service from such Community.

"(b) The center established pursuant to this section shall be known as the 'Regional Youth Alcohol and Substance Abuse Prevention and Treatment Center'.

"(c) The Secretary, acting through the Service, shall establish, as a unit of the regional center, a youth alcohol and substance abuse prevention and treatment facility in Fallon, Nevada.

"ALASKA NATIVE DRUG AND ALCOHOL ABUSE DEMONSTRATION PROJECT

"SEC. 713. (a) The Secretary, acting through the Service, shall make grants to the Alaska Native Health Board for the conduct of a two-part community-based demonstration project to reduce drug and alcohol abuse in Alaska Native villages and to

rehabilitate families afflicted by such abuse. Sixty percent of such grant funds shall be used by the Health Board to stimulate coordinated community development programs in villages seeking to organize to combat alcohol and drug use. Forty percent of such grant funds shall be transferred to a qualified nonprofit corporation providing alcohol recovery services in the village of St. Mary's, Alaska, to enlarge and strengthen a family life demonstration program of rehabilitation for families that have been or are afflicted by alcoholism.

"(b) The Secretary shall submit to the President for inclusion in the report required to be submitted to the Congress under section 801 for fiscal year 1995 an evaluation of the demonstration project established under subsection (a).

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 714. Except as provided in sections 703, 706, 708, 710, and 711, there are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out the provisions of this title.".

(b) REDESIGNATION AND REPEAL OF EXISTING PROVISIONS.—

(1) REDESIGNATION.—The Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2401 et seq.) is amended by redesignating section 4224 as section 4208A.

(2) REPEAL.—Part 6 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2471 et seq.), as amended by paragraph (1), is hereby repealed.

**SEC. 703. INDIAN ALCOHOL AND SUBSTANCE ABUSE PREVENTION AND TREATMENT ACT OF 1986 AMENDMENTS.**

The Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2401 et seq.) is amended—

(1) in section 4206—

(A) in subsection (c)—

(i) in paragraph (2)—

(I) by striking "(2) the" and inserting "(B) the";

(II) by striking "(3) the" and inserting "(C) the";

(III) by striking "(4) the" and inserting "(D) the";

(IV) in subparagraph (D) (as redesignated by subclause (III)), by striking "and" at the end;

(V) in subparagraph (E), by striking the period at the end and inserting ", and"; and

(VI) by adding at the end the following new subparagraph:

"(F) an evaluation component to measure the success of efforts made."; and

(ii) by adding at the end the following new paragraph:

"(3) All Tribal Action Plans shall be updated every 2 years."; and

(B) in subsection (d), by amending paragraph (2) to read as follows:

"(2) There are authorized to be appropriated for grants under this subsection not more than $2,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000."; and

(C) by adding at the end the following new subsection:

"(f)(1) The Secretary of the Interior may make grants to Indian tribes adopting a resolution pursuant to subsection (a) to implement and develop community and in-school training, education, and prevention programs on alcohol and substance abuse, fetal alcohol syndrome and fetal alcohol effect.

"(2) Funds provided under this section may be used for, but are not limited to, the development and implementation of tribal programs for—

"(A) youth employment;

"(B) youth recreation;

"(C) youth cultural activities;

"(D) community awareness programs; and

"(E) community training and education programs.

"(3) There are authorized to be appropriated to carry out the provisions of this subsection $5,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.";

(2) in section 4207(b), by amending paragraph (3) to read as follows:

"(3) The Assistant Secretary of the Interior for Indian Affairs shall appoint such employees to work in the Office of Alcohol and Substance Abuse, and shall provide such funding, services, and equipment as may be necessary to enable the Office of Alcohol and Substance Abuse to carry out its responsibilities.";

(3) in section 4210, by amending subsection (b) to read as follows:

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $500,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.";

(4) in section 4212(a), by striking out "1989, 1990, 1991, and 1992" and inserting in lieu thereof "1993, 1994, 1995, 1996, 1997, 1998, 1999, and 2000";

(5) in section 4213(e), by amending paragraphs (1) and (2) to read as follows:

"(1) For the planning and design, construction, and renovation of, or purchase or lease of land or facilities for, emergency shelters and half-way houses to provide emergency care for Indian youth, there are authorized to be appropriated $10,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

"(2) For the staffing and operation of emergency shelters and half-way houses, there are authorized to be appropriated $5,000,000 for fiscal year 1993 and $7,000,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.";

(6) in section 4216(a)(1)—

(A) in subparagraph (A), by striking "and" at the end;

(B) in subparagraph (B), by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following new subparagraph:

"(C) the Makah Indian Tribe of Washington for the investigation and control of illegal narcotic traffic on the Makah Indian Reservation arising from its proximity to international waters.";

(7) by amending section 4216(a)(3) to read as follows:

"(3) For the purpose of providing the assistance required by this subsection, there are authorized to be appropriated—

"(A) $500,000 under paragraph (1)(A) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000,

"(B) $500,000 under paragraph (1)(B) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000, and

"(C) $500,000 under paragraph (1)(C) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.";

(8) by amending section 4216(b) to read as follows:

"(b)(1) MARIJUANA ERADICATION AND INTERDICTION.—The Secretary of the Interior, in cooperation with appropriate Federal, tribal, and State and local law enforcement agencies, shall establish and implement a program for the eradication of marijuana cultivation, and interdiction, investigation, and control of illegal narcotics trafficking within Indian country as defined in section 1152 of title 18, United States Code. The Secretary shall establish a priority for the use of funds appropriated under paragraph (2) for those Indian reservations where the scope of the problem is most critical, and such funds shall be available for contracting by Indian tribes pursuant to the Indian Self-Determination Act (25 U.S.C. 450f et seq.).

"(2) For the purpose of establishing the program required by paragraph (1), there are authorized to be appropriated $2,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.";

(9) in section 4218, by amending subsection (b) to read as follows:

"(b) AUTHORIZATION.—For the purposes of providing the training required by subsection (a), there are authorized to be appropriated $2,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999 and 2000."; and

(10) in section 4220(b), by amending paragraphs (1) and (2) to read as follows:

"(1) For the purpose of constructing or renovating juvenile detention centers as provided in subsection (a), there are authorized to be appropriated $10,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

"(2) For the purpose of staffing and operating juvenile detention centers, there are authorized to be appropriated $7,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.".

## TITLE VIII—MISCELLANEOUS

**SEC. 801. REPORTS.**

Section 801 of the Act (25 U.S.C. 1671) (as redesignated by section 701(b) of this Act) is amended to read as follows:

"REPORTS

"SEC. 801. The President shall, at the time the budget is submitted under section 1105 of title 31, United States Code, for each fiscal year transmit to the Congress a report containing—

"(1) a report on the progress made in meeting the objectives of this Act, including a review of programs established or assisted pursuant to this Act and an assessment and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Indians, and ensure a health status for Indians, which are at a parity with the health services available to and the health status of, the general population;

"(2) a report on whether, and to what extent, new national health care programs, benefits, initiatives, or financing systems have had an impact on the purposes of this Act and any steps that the Secretary may have taken to consult with Indian tribes to address such impact;

"(3) a report on the use of health services by Indians—

"(A) on a national and area or other relevant geographical basis;

"(B) by gender and age;

"(C) by source of payment and type of service; and

"(D) comparing such rates of use with rates of use among comparable non-Indian populations.

"(4) a separate statement which specifies the amount of funds requested to carry out the provisions of section 201;

"(5) a separate statement of the total amount obligated or expended in the most recently completed fiscal year to achieve each of the objectives described in section 814, relating to infant and maternal mortality and fetal alcohol syndrome;

"(6) the reports required by sections 3(d), 108(n), 203(b), 209(j), 301(c), 302(g), 305(a)(3), 403, 708(e), and 817(a), and 822(f);

"(7) for fiscal year 1995, the report required by sections 702(c)(3) and 713(b);

"(8) for fiscal year 1997, the interim report required by section 307(h)(1); and

"(9) for fiscal year 1999, the reports required by sections 307(h)(2), 512(b), 711(f), and 821(g).".

**SEC. 802. REGULATIONS.**

Section 802 of the Act (25 U.S.C. 1672) (as redesignated by section 701(b) of this Act) is amended to read as follows:

"REGULATIONS

"SEC. 802. Prior to any revision of or amendment to rules or regulations promulgated pursuant to this Act, the Secretary shall consult with Indian tribes and appropriate national or regional Indian organizations and shall publish any proposed revision or amendment in the Federal Register not less than sixty days prior to the effective date of such revision or amendment in order to provide adequate notice to, and receive comments from, other interested parties.".

**SEC. 803. EXTENSION OF TREATMENT OF ARIZONA AS A CONTRACT HEALTH SERVICE DELIVERY AREA.**

Section 808 of the Act (25 U.S.C. 1678) (as redesignated by section 701(b) of this Act) is amended by striking out "1991" and inserting in lieu thereof "2000".

**SEC. 804. INFANT AND MATERNAL MORTALITY; FETAL ALCOHOL SYNDROME.**

Section 814 of the Act (25 U.S.C. 1680d) (as redesignated by section 701(b) of this Act) is amended—

(1) by striking out "(a)"; and

(2) by striking out subsection (b).

**SEC. 805. REALLOCATION OF BASE RESOURCES.**

Section 817(a) of the Act (25 U.S.C. 1680(g)) (as redesignated by section 701(b) of this Act) is amended by striking out "Secretary has submitted to the Congress" and inserting in lieu thereof the following: "Secretary has submitted to the President, for inclusion in the report required to be transmitted to the Congress under section 801,".

**SEC. 806. CHILD SEXUAL ABUSE TREATMENT PROGRAMS.**

Section 819 of the Act (25 U.S.C. 1680i) (as redesignated by section 701(b) of this Act) is amended to read as follows:

"CHILD SEXUAL ABUSE TREATMENT PROGRAMS

"SEC. 819. (a) The Secretary and the Secretary of the Interior shall, for each fiscal year through fiscal year 1995, continue the demonstration programs involving treatment for child sexual abuse provided through the Hopi Tribe and the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

"(b) Beginning October 1, 1995, the Secretary and the Secretary of the Interior may establish, in any service area, demonstration programs involving treatment for child sexual abuse, except that the Secretaries may not establish a greater number of such programs in one service area than in any other service area until there is an equal number of such programs established with respect to all service areas from which the Secretary receives qualified applications during the application period (as determined by the Secretary).".

**SEC. 807. TRIBAL LEASING.**

Section 820 of the Act (25 U.S.C. 1680j) (as redesignated by section 701(b) of this Act) is amended to read as follows:

"TRIBAL LEASING

"SEC. 820. Indian tribes providing health care services pursuant to a contract entered into under the Indian Self-Determination Act may lease permanent structures for the purpose of providing such health care services without obtaining advance approval in appropriation Acts.".

**SEC. 808. EXTENSION OF TERMINATION DATE OF CERTAIN DEMONSTRATION PROJECTS; JOINT VENTURE PROJECTS.**

Section 818 of the Act (25 U.S.C. 1680h) (as redesignated by section 701(b) of this Act) is amended—

(1) in subsection (d)—

(A) in paragraph (1), by inserting before the period at the end the following: ", or, in the case of a demonstration project for which a grant is made after September 30, 1990, three years after the date on which such grant is made"; and

(B) in paragraph (2), by striking "1994" and inserting "1996"; and

(2) by amending subsection (e) to read as follows:

"(e)(1) The Secretary, acting through the Service, shall make arrangements with Indian tribes to establish joint venture demonstration projects under which an Indian tribe shall expend tribal, private, or other available nontribal funds, for the acquisition or construction of a health facility for a minimum of 20 years, under a no-cost lease, in exchange for agreement by the Service to provide the equipment, supplies, and staffing for the operation and maintenance of such a health facility. A tribe may utilize tribal funds, private sector, or other available resources, including loan guarantees, to fulfill its commitment under this subsection.

"(2) The Secretary shall make such an arrangement with an Indian tribe only if the Secretary first determines that the Indian tribe has the administrative and financial capabilities necessary to complete the timely acquisition or construction of the health facility described in paragraph (1).

"(3) An Indian tribe or tribal organization that has entered into a written agreement with the Secretary under this subsection, and that breaches or terminates without cause such agreement, shall be liable to the United States for the amount that has been paid to the tribe, or paid to a third party on the tribe's behalf, under the agreement. The Secretary has the right to recover tangible property (including supplies), and equipment, less depreciation, and any funds expended for operations and maintenance under this section. The preceding sentence does not apply to any funds expended for the delivery of health care services, or for personnel or staffing, shall be recoverable.".

**SEC. 809. HOME AND COMMUNITY BASED CARE DEMONSTRATION PROJECT.**

Title VIII of the Act (as redesignated by subsections (a) and (b) of section 701 of this Act) is amended by adding at the end the following new section:

"HOME- AND COMMUNITY-BASED CARE DEMONSTRATION PROJECT

"SEC. 821. (a) The Secretary, acting through the Service, is authorized to enter into contracts with, or make grants to, Indian tribes or tribal organizations providing health care services pursuant to a contract entered into under the Indian Self-Determination Act, to establish demonstration projects for the delivery of home- and community-based services to functionally disabled Indians.

"(b)(1) Funds provided for a demonstration project under this section shall be used only for the delivery of home- and community-based services (including transportation services) to functionally disabled Indians.

"(2) Such funds may not be used—

"(A) to make cash payments to functionally disabled Indians;

"(B) to provide room and board for functionally disabled Indians;

"(C) for the construction or renovation of facilities or the purchase of medical equipment; or

"(D) for the provision of nursing facility services.

"(c) Not later than 180 days after the date of the enactment of this section, the Secretary, after consultation with Indian tribes and tribal organizations, shall develop and issue criteria for the approval of applications submitted under this section. Such criteria shall ensure that demonstration projects established under this section promote the development of the capacity of tribes and tribal organizations to deliver, or arrange for the delivery of, high quality, culturally appropriate home- and community-based services to functionally disabled Indians;

"(d) The Secretary shall provide such technical and other assistance as may be necessary to enable applicants to comply with the provisions of this section.

"(e) At the discretion of the tribe or tribal organization, services provided under a demonstration project established under this section may be provided (on a cost basis) to persons otherwise ineligible for the health care benefits of the Service.

"(f) The Secretary shall establish not more than 24 demonstration projects under this section. The Secretary may not establish a greater number of demonstration projects under this section in one service area than in any other service area until there is an equal number of such demonstration projects established with respect to all service areas from which the Secretary receives applications during the application period (as determined by the Secretary) which meet the criteria issued pursuant to subsection (c).

"(g) The Secretary shall submit to the President, for inclusion in the report which is required to be submitted under section 801 for fiscal year 1999, a report on the findings and conclusions derived from the demonstration projects conducted under this section, together with legislative recommendations.

"(h) For the purposes of this section, the following definitions shall apply:

"(1) The term 'home- and community-based services' means one or more of the following:

"(A) Homemaker/home health aide services.

"(B) Chore services.

"(C) Personal care services.

"(D) Nursing care services provided outside of a nursing facility by, or under the supervision of, a registered nurse.

"(E) Respite care.

"(F) Training for family members in managing a functionally disabled individual.

"(G) Adult day care.

"(H) Such other home- and community-based services as the Secretary may approve.

"(2) The term 'functionally disabled' means an individual who is determined to re-

quire home- and community-based services based on an assessment that uses criteria (including, at the discretion of the tribe or tribal organization, activities of daily living) developed by the tribe or tribal organization.

"(i) There are authorized to be appropriated for each of the fiscal years 1993, 1994, 1995, 1996, and 1997 such sums as may be necessary to carry out this section. Such sums shall remain available until expended.".

**SEC. 810. SHARED SERVICES DEMONSTRATION PROJECTS.**

Title VIII of the Act (as redesignated by subsections (a) and (b) of section 701 and amended by section 809 of this Act) is amended by adding at the end the following new section:

"SHARED SERVICES DEMONSTRATION PROJECT

"SEC. 822. (a) The Secretary, acting through the Service and notwithstanding any other provision of law, is authorized to enter into contracts with Indian tribes or tribal organizations to establish not more than 6 shared services demonstration projects for the delivery of long-term care to Indians. Such projects shall provide for the sharing of staff or other services between a Service facility and a nursing facility owned and operated (directly or by contract) by such Indian tribe or tribal organization.

"(b) A contract entered into pursuant to subsection (a)—

"(1) may, at the request of the Indian tribe or tribal organization, delegate to such tribe or tribal organization such powers of supervision and control over Service employees as the Secretary deems necessary to carry out the purposes of this section;

"(2) shall provide that expenses (including salaries) relating to services that are shared between the Service facility and the tribal facility be allocated proportionately between the Service and the tribe or tribal organization; and

"(3) may authorize such tribe or tribal organization to construct, renovate, or expand a nursing facility (including the construction of a facility attached to a Service facility), except that no funds appropriated for the Service shall be obligated or expended for such purpose.

"(c) To be eligible for a contract under this section, a tribe or tribal organization, shall, as of the date of the enactment of this Act—

"(1) own and operate (directly or by contract) a nursing facility;

"(2) have entered into an agreement with a consultant to develop a plan for meeting the long-term needs of the tribe or tribal organization; or

"(3) have adopted a tribal resolution providing for the construction of a nursing facility.

"(d) Any nursing facility for which a contract is entered into under this section shall meet the requirements for nursing facilities under section 1919 of the Social Security Act.

"(e) The Secretary shall provide such technical and other assistance as may be necessary to enable applicants to comply with the provisions of this section.

"(f) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report on the findings and conclusions derived from the demonstration projects conducted under this section.".

**SEC. 811. RESULTS OF DEMONSTRATION PROJECTS.**

Title VIII of the Act (as redesignated by subsections (a) and (b) of section 701 and amended by section 810 of this Act) is amended by adding at the end the following new section:

"RESULTS OF DEMONSTRATION PROJECTS

"SEC. 823. The Secretary shall provide for the dissemination to Indian tribes of the findings and results of demonstration projects conducted under this Act.".

**SEC. 812. PRIORITY FOR INDIAN RESERVATIONS.**

Title VIII of the Act (as redesignated by subsections (a) and (b) of section 701 and amended by section 811 of this Act) is amended by adding at the end the following new section:

"PRIORITY FOR INDIAN RESERVATIONS

"SEC. 824. (a) Beginning on the date of the enactment of this section, the Bureau of Indian Affairs and the Service shall, in all matters involving the reorganization or development of Service facilities, or in the establishment of related employment projects to address unemployment conditions in economically depressed areas, give priority to locating such facilities and projects on Indian lands if requested by the Indian tribe with jurisdiction over such lands.

"(b) For purposes of this section, the term "Indian lands" means—

"(1) all lands within the limits of any Indian reservation; and

"(2) any lands title which is held in trust by the United States for the benefit of any Indian tribe or individual Indian, or held by any Indian tribe or individual Indian subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.".

**SEC. 813. AUTHORIZATION OF APPROPRIATIONS.**

(a) AUTHORIZATION.—Title VIII of the Act (as redesignated by subsections (a) and (b) of section 701 and amended by section 812 of this Act) is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 825. Except as provided in section 821, there are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

(b) CONFORMING AMENDMENTS.—Section 807 of the Act (25 U.S.C. 1677) (as redesignated by subsections (a) and (b) of section 701 of this Act) is amended by striking out subsection (f).

**SEC. 814. TRIBAL SELF-GOVERNANCE PROJECT.**

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f note) is amended—

(1) in section 301, by inserting after "Interior" the following: "and the Secretary of Health and Human Services (hereafter in this title referred to as the 'Secretaries') each";

(2) in sections 302, 303, 304, and 305, by striking "Secretary" each place it appears and inserting in lieu thereof "Secretaries";

(3) in section 303(a)(1), by inserting after "Interior" the following: "and the Indian Health Service of the Department of Health and Human Services"; and

(4) by adding after section 309 the following new section:

"SEC. 310. For the purposes of providing one year planning and negotiations grants to the Indian tribes identified by section 302, with respect to the programs, activities, functions, or services of the Indian Health Service, there are authorized to be appropriated such sums as may be necessary to carry out such purposes. Upon completion of an authorized planning activity or a comparable planning activity by a tribe, the Secretary is authorized to negotiate and implement a Compact of Self-Governance and Annual Funding Agreement with such tribe.".

## TITLE IX—TECHNICAL CORRECTIONS

**SEC. 901. REPEAL OF EXPIRED REPORTING REQUIREMENTS.**

The Act is amended—

(1) in section 116, by striking out subsection (d);

(2) in section 204(a)—

(A) by striking out paragraph (2);

(B) by striking out "(a)(1)" and inserting in lieu thereof "(a)";

(C) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(D) in paragraph (2) (as redesignated by subparagraph (C)), by striking out "subparagraph (A)" and inserting in lieu thereof "paragraph (1)";

(3) in section 602, by striking out subsection (a)(3); and

(4) by striking out section 803 (as redesignated by section 701(b) of this Act).

**SEC. 902. OTHER TECHNICAL CORRECTIONS.**

The Act is amended—

(1) in section 4(c), by striking out "sections 102, 103, and 201(c)(5)," and inserting in lieu thereof the following: "sections 102 and 103,";

(2) in title I—

(A) in section 102(b)(1), by striking ": *Provided*, That the" and inserting in lieu thereof ". The";

(B) in section 105(c), by striking out "Department of Health, Education, and Welfare" and inserting in lieu thereof "Department of Health and Human Services";

(C) in section 108(d)(1)(A), by striking out "Indian Health" and inserting in lieu thereof "Indian health"; and

(D) in section 108(i), by striking out "Service manpower programs" and inserting in lieu thereof "health professional programs of the Service".

(3) in title II—

(A) by striking out "**SEC. 209. MENTAL HEALTH PREVENTION AND TREATMENT SERVICES.**" and inserting in lieu thereof the following:

"MENTAL HEALTH PREVENTION AND TREATMENT SERVICES

"SEC. 209."; and

(B) in section 209, by redesignating subsections (c) through (l) as subsections (b) through (k), respectively;

(4) in title III—

(A) by striking out "**SEC. 307. INDIAN HEALTH CARE DELIVERY DEMONSTRATION PROJECT.**" and inserting in lieu thereof the following:

"INDIAN HEALTH CARE DELIVERY DEMONSTRATION PROJECT

"SEC. 307."; and

(B) in section 301(d) (as redesignated by section 301(2) of this Act), by striking out "sections 102 and 103(b)" and inserting in lieu thereof "section 102";

(5) in title V—

(A) by striking out "**SEC. 409. FACILITIES RENOVATION.**" and inserting in lieu thereof the following:

"FACILITIES RENOVATION

"SEC. 509."; and

(B) by striking out "**SEC. 511. URBAN HEALTH PROGRAMS BRANCH.**" and inserting in lieu thereof the following:

"URBAN HEALTH PROGRAMS BRANCH

"SEC. 510.";

(6) in section 601(c)(3)(D), by striking out "(25 U.S.C. 2005, et seq.)" and inserting in lieu thereof "(42 U.S.C. 2005 et seq.)";

(7) in section 601(d)(1)(C), by striking out "appropriate" and inserting in lieu thereof "appropriated";

(8) in section 813(b)(2)(A) (as redesignated by section 701(b) of this Act), by striking out

"section 402(c)" and inserting in lieu thereof "section 402(a)"; and

(9) by amending the heading for section 816 (as redesignated by section 701(b)) to read as follows:

"INDIAN HEALTH SERVICE AND DEPARTMENT OF VETERANS AFFAIRS HEALTH FACILITIES AND SERVICES SHARING".

Mr. INOUYE. Mr. President, I rise today to urge the prompt passage of S. 2481, a bill to amend the Indian Health Care Improvement Act. This legislation reflects the efforts of the three committees of jurisdiction in the House and Senate to assure that the provisions of both House and Senate bills are reconciled and incorporated into a substitute measure which the House of Representatives has now acted upon. I wish to commend my colleagues in the House, Chairman MILLER and Congressman RHODES of the House Interior and Insular Affairs Committee, and Chairman WAXMAN of the House Energy and Commerce Subcommittee on Health, for their leadership on this measure under somewhat difficult circumstances. I also want to take this opportunity to thank the vice-chairman of the select committee for his work on this legislation.

The major objective of this comprehensive legislation is to improve the health status of the American Indian and Alaska Native populations in the United States. S. 2481 would seek to stabilize the programs authorized by the "Indian Health Care Improvement Act through the year 2000". Specific health care objectives set forth in S. 2481 are drawn from the Surgeon General's "Healthy People 2000" report of the Department of Health and Human Services which has set forth national health promotion and disease prevention objectives. This reauthorization measure would set more stringent standards by which to measure progress toward the goal of raising the health status of American Indians and Alaska Natives to the highest possible level.

The Federal Government has a unique historical and legal relationship with the Indian people, whose health status is substantially inferior to that of the general U.S. population. According to the Indian Health Service, the mortality rates of American Indians and Alaska Natives continue to exceed that of the general U.S. population, including all races. In 1987, the Indian age-adjusted mortality rates for the following causes exceeded those for the United States all races population by the following percentages: Tuberculosis, 400 percent; alcoholism, 332 percent; diabetes mellitus, 139 percent; accidents, 139 percent; homicide, 64 percent; pneumonia and influenza, 44 percent; and, suicide, 28 percent.

In 1990, the Department of Health and Human Services noted in the report referenced above, "Healthy People 2000," that relative to other populations, the American Indian and Alaska Native population is young and impoverished, with more than one in four living below the poverty level. The Department suggested that:

One reason for the youthfulness of the population is the large proportion of the population who die before age 45. Most of the excess deaths—those that would not have occurred if American Indian death rates were comparable to those of the total population—can be traced to six causes: Unintentional injuries, cirrhosis, homicide, suicide, pneumonia, and complications of diabetes.

Since its enactment in 1976, the Health Care Improvement Act has enabled impressive progress in activities intended to enhance the quality, effectiveness, and efficiency of health care delivery services in Indian country. The Indian Health Service [IHS], the tribal health delivery system administered by tribal governments, and the urban Indian health organizations have accomplished remarkable feats in reversing epidemic infectious diseases such as tuberculosis, smallpox, hepatitis B, pneumonia, and influenza. However, the IHS data indicate that many of these disease entities are resurfacing once again and chronic degenerative diseases such as cirrhosis, cerebrovascular diseases, and diseases of the heart are on the rise. The reauthorization of the Indian Health Care Improvement Act will continue this important work, especially in the critical areas such as alcoholism and substance abuse treatment, mental health, diabetes, and tuberculosis.

During the past 18 months, the Select Committee on Indian Affairs and the two committees of jurisdiction in the House of Representatives held nine hearings on the proposed amendments to the Indian Health Care Improvement Act, here in Washington, DC, and in the States of Alaska, Arizona, North Dakota, and South Dakota. An additional hearing was held here in Washington, DC, on the subject of fetal alcohol syndrome and fetal alcohol effect. These 10 hearings represent the concerns of over 85 tribal governments and 30 Indian and other professional organizations who advocate for improved health care delivery which have helped to shape the legislation we are about to consider.

I believe that it is important to note that the administration has worked closely with the committees of jurisdiction to ensure that many of the provisions of S. 2481 are acceptable and allow for optimum effectiveness. We have been advised by the Office of Management and Budget that there is no objection to the enactment of this bill from the standpoint of the administration's program. Unfortunately, the administration strongly opposed two provisions in the Senate bill: First, the payment of Medicare premiums by the Indian Health Service; and second, a requirement that IHS enter into certain leasing arrangements. These provisions were deleted during deliberations among the committees of jurisdiction.

The Senate bill originally contained a provision which would have expanded medical coverage and medical provider options for low-income older and disabled Indians by authorizing IHS to pay Medicare Part B premiums. Many users of IHS or tribal health facilities who have Medicare Part A coverage have great difficulty in paying part B premiums because of their very limited income. The Senate provision would have, if adopted, authorized IHS to make part B premium payments for the estimated 15,000 Medicare-eligible Indians using IHS or tribal facilities who are between 100 percent and 200 percent of the Federal poverty level. I am particularly sorry that we could not secure the support of the administration because the provision would have simply expanded upon existing, but little used, Indian Health Care Improvement Act provisions which encourage additional Medicare participation by Indian people through IHS/tribal contractor payment of part B premiums. IHS already pays Medicare Part B copayments and deductibles for those with part B coverage. All we hoped to do here was to assure that all low-income Indians with Medicare Part A are able to have access to part B coverage as well.

Another Senate provision which was objected to by the Indian Health Service, and subsequently not included in the substitute bill, would have required IHS to treat more fairly those tribes and tribal organizations which own health facilities and, at the same time, contract to administer health programs in those facilities. It has been brought to the committee's attention that IHS refuses to enter into lease arrangements with tribes and tribal organizations when such organizations own their health facility. However, the Service does enter into lease arrangements for these same facilities when the IHS operates the health program directly. This disparate treatment is contrary to the policy of Indian self-determination. The select committee has urged tribal governments to seek alternate sources of revenue to fund the construction of facilities. When they do so, they should not be denied adequate funding to maintain those facilities.

Statutory language presently in the Indian Health Care Improvement Act (Public Law 94-437 and Public Law 100-713) and the Indian Self-Determination Act (Public Law 93-638) requires the IHS to fund tribally contracted programs on the same basis as IHS programs are funded. The discretionary authority to enter into leases with tribes and tribal organizations contained in section 701 of the Indian Health Care Improvement Act, should not be used by the IHS to circumvent its statutory responsibilities to fund

tribal lease-type costs of contractors on an equitable basis with IHS programs. I strongly urge the IHS to revise its leasing priority system [LPS] to permit leases with tribes and tribal organizations that own facilities and contract to administer the health program under Public Law 93-638. Unless the IHS reverses its present policy, I shall ask the committee to revisit this issue in the 103d Congress and may issue a request of the General Accounting Office to undertake a study of IHS leasing activities.

Finally, the Senate bill included an amendment to section 1880a of the Social Security Act, yet was deleted during House-Senate deliberations. This technical, but important, amendment would have permitted tribal health care providers to collect Medicare payments for outpatient services offered in tribal clinics, as it does now from Medicaid and, as IHS owned and operated clinics do. Failure to correct this inconsistency in the Medicare Program means that Indian Medicare recipients cannot benefit from this coverage without disrupting their relationship with their usual health care provider and using more expensive health services. In the coming year, I will be working closely with the Finance Committee to ensure that this importnt amendment to the Social Security Act is enacted into law.

While there were a number of other provisions which were deleted during the House-Senate negotiations, I am confident that the final legislative proposal will assist the Indian Health Service, tribal governments, and the urban Indian organizations to enhance their capacity to provide the highest level of quality health care in the decade of the 1990's.

The improvements to the Indian Health Care Improvement Act will allow the Federal Government to utilize the health care objectives contained in the bill to assess the need for adequate health resources. Under title I, a number of health professional programs have been enhanced to draw more native people into the IHS, particularly in nursing and mental health professions. The loan repayment program has been improved to comport with the National Health Service Corps Program. Provision is included to statutorily authorize the community health aide/practitioner program. There is provision for a tribal matching scholarship grant program and the IHS is encouraged to consider a tribal members' ties to their community in placement activities, to name a few of the improvements.

Title II provisions will encourage efforts to assess tribal health status based on the health objectives with the emphasis on creating a system to determine health needs based on addressing health status deficiencies rather than on historical funding. Hospice care and managed care feasibility studies are authorized. The amendments also provide for comprehensive school health education programs and an Indian youth grant program, available to tribal governments, urban and tribal organizations, to develop innovative mental and physical health programs for Indian youth. An Office of Indian Women's Programs is also established.

Language to provide tribal self-determination contractors with the right of recovery for third-party insurance purposes is included. The tribal right to recover encompasses all expenses which arose under a program administered by the tribal health contractor, including those which arose prior to the effective date of the applicable self determination contract. This provides an incentive for the collection of existing claims, and prevents insurance companies from receiving a windfall from past discrimination against Indian policyholders.

Section 209 of the Indian Health Care Improvement Act Amendments of 1992 takes effect November 23, 1988. November 23, 1988, is the effective date of section 206 of the act, which section 209 of the 1992 amendments clarifies, to further carry out the intent of the Congress. Although original section 206 has not raised problems for most third-party payors, in a few instances such payors have refused to meet their statutory obligation to pay, resulting in many accumulated claims. The section 209 clarifying amendment will assure that these payors do not escape their obligations under the law.

Title III amendments authorize the IHS to provide financial assistance to tribal governments for safe water and sanitary waste disposal facilities program covering up to 80 percent for the operation and maintenance of safe water and sanitation facilities. An ambulatory grant program is authorized to allow tribal governments to construct, renovate, or modernize on Indian health facilities to provide ambulatory care services to eligible Indians.

Under title IV, the bill exempts payments received by a hospital or skilled nursing facility operated by the IHS, or Indian tribe, or tribal organization from consideration in determining appropriations for services to Indians. As amended, the IHS may enter into an agreement with any tribal government to provide for the receipt and processing of Medicare/Medicaid assistance at tribally operated facilities. Finally, the IHS is to not deny contract health services coverage to Indian recipients, if they are 65 or older or disabled if they apply for care within 30 days of emergency care. The time limit is now 72 hours.

Improvements to title V, will provide that urban Indian program funding may be issued under grants, as well as contracts. Language is also provided to protect the funding originally awarded to urban Indian programs by the National Institute of Alcoholism and Alcohol Abuse, and now managed by the IHS, in future budget distribution activities.

An amendment offered under title VI by Senator MCCAIN would provide that after January 1, 1993, the position of the Director of the Indian Health Service shall be subject to confirmation with the advice and consent of the Senate.

The amendments to the Indian Health Care Improvement Act redesignate title VII as title VIII. The new title VII includes a series of amendments to continue the Omnibus Anti-Drug Abuse Act Programs contained in Public Law 99-570 and Public Law 100-690. The amendments will require the IHS to address inhalant abuse in the context of substance abuse. Aside from continuing the basic alcohol and substance abuse prevention and treatment programs, a number of tribal specific programs are included to provide for alcohol and drug abuse treatment at Gallup, NM; continuation of the pueblo substance abuse project, in San Juan Pueblo, NM; continuation of the Gila River Indian Youth Treatment Center in Arizona and development of the satellite facility at Fallon, NV; development of the Alaska Native drug and alcohol demonstration project; and a provision to address the construction needs of the Thunderchild Treatment Center in Wyoming, to name a few.

A series of new programs are authorized to address fetal alcohol syndrome and fetal alcohol effect prevention and treatment. Provision is made to establish substance abuse counselor training in colleges, universities and tribally controlled community colleges.

Under title VIII, a variety of reports required under the act will be required for presentation in the President's budget request each year. Language is included to continue child sexual abuse treatment programs on the Hopi and Ft. Peck Reservations and includes additional authority to expand the availability of these model programs in other areas. The amendments will provide that tribal governments and tribal organizations may lease permanent structures without obtaining advance approval under the Interior Appropriations Acts. This allows tribal contractors additional flexibility in leasing program facilities.

Two of the new provisions address vitally needed long-term care needs of the elderly and disabled. The first would authorize the IHS to make grants or to enter into contracts for home- and community-based health care services on a demonstration basis. At least 24 demonstration programs are authorized to be established. The second demonstration program would authorize the IHS to enter into shared services agreements with tribal governments whereby the IHS may agree to

share staff and other services with long-term care facilities operated by a tribal government. At least six demonstrations are authorized to be established.

S. 2481 definitively authorizes tribal governments participating in the self-governance project to receive planning grants from the IHS for self-governance purposes as is authorized in the Bureau of Indian Affairs.

Another of the amendments included in title VIII authorizes the IHS to establish a joint venture demonstration project under which tribal governments may expend tribal, private, and other resources for the acquisition or construction of a health facility. In return, the IHS will provide equipment, supplies, and staffing for operation and maintenance of such health centers.

The above mentioned amendments to the Indian Health Care Improvement Act are only a few of those contained in this very comprehensive bill. A number of new categorical program authorities and requirements are included in this 170-page bill, many of which are meritorious and certain to improve the health status of American Indians and Alaska Natives through the year 2000.

In conclusion, I again want to urge my colleagues in the Senate to concur in the House amendments. The administration has indicated its willingness to support this bill and I hope that the President will act at the earliest date possible to give it final approval. This year, 1992, has been declared the "Year of the American Indian." I am certain that my colleagues will want to ensure the Nation's first Americans that we are doing our best to raise their health status to the highest level possible by the year 2000.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment.

The ACTING PRESIDENT pro tempore. Without objection, the motion is agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

## JICARILLA APACHE WATER RIGHTS SETTLEMENT ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Indian Affairs Committee be discharged from further consideration of H.R. 5122, the Jicarilla Apache Water Rights Settlement Act; that the Senate proceed to its immediate consideration; that the bill be deemed read for a third time and passed; the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

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

So, the bill (H.R. 5122) was deemed read the third time and passed.

## CIVIL TILTROTOR DEVELOPMENT ADVISORY COMMITTEE ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of S. 2105, the Civil Tiltrotor Development Advisory Committee Act; that the Senate then proceed to its immediate consideration; that the bill be deemed read three times and passed; that the motion to reconsider be laid upon the table; and that any statements relating to this bill appear in the RECORD at the appropriate place.

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

So, the bill (S. 2105) was deemed read the third time and passed, as follows:

S. 2105

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Tiltrotor Development Advisory Committee Act of 1991".

CIVIL TILTROTOR DEVELOPMENT ADVISORY COMMITTEE

SEC. 2. (a) ESTABLISHMENT.—The Secretary of Transportation shall establish in the Department of Transportation a Civil Tiltrotor Development Advisory Committee (hereinafter referred to as the "Advisory Committee") to evaluate the technical feasibility and economic viability of developing civil tiltrotor aircraft and a national system of infrastructure to support the incorporation of tiltrotor aircraft technology into the national transportation system.

(b) MEMBERSHIP.—(1) The Advisory Committee shall be composed of members appointed by the Secretary of Transportation, not later than 60 days after the date of the enactment of this Act, as follows:

(A) At least one representative of the Department of Transportation.

(B) At least one representative of the Federal Aviation Administration.

(C) At least one representative of the National Aeronautics and Space Administration.

(D) Representatives of other Federal departments and agencies, State and local governments, and private industry, as considered appropriate and necessary by the Secretary.

(2) Members appointed pursuant to subparagraphs (A), (B), and (C) of paragraph (1) shall be appointed from among individuals employed within the Federal departments and agencies described in such subparagraphs who receive an annual rate of basic pay which equals or exceeds the rate payable for level VI of the Senior Executive Service.

(3) The Secretary of Transportation shall appoint a Chairperson of the Advisory Committee from among individuals employed within the Department of Transportation who receive an annual rate of basic pay which equals or exceeds the rate payable for level IV of the Executive Schedule.

(c) DUTIES.—The Advisory Committee shall—

(1) determine the costs, feasibility, and economic viability of developing a civil tiltrotor aircraft and establishing the necessary infrastructure to incorporate such aircraft and other advanced vertical takeoff and landing aircraft into the national transportation system;

(2) determine the benefits to the national economy and transportation system, including the potential for improved linkages and connections with other modes of transportation, or incorporating civil tiltrotor aircraft and other advanced vertical takeoff and landing aircraft into the national transportation system;

(3) determine further aeronautical research and development requirements needed to incorporate civil tiltrotor aircraft and other advanced vertical takeoff and landing aircraft into the national transportation system;

(4) determine changes to regulatory standards governing use of the airspace which would be required to incorporate civil tiltrotor aircraft and other advanced vertical takeoff and landing aircraft into the national transportation system; and

(5) recommend which of the costs of developing civil tiltrotor aircraft and establishing the infrastructure necessary to support civil tiltrotor aircraft and other advanced vertical takeoff and landing aircraft should be paid by the Federal Government and which of such costs should be paid by private industry.

(d) REPORT.—Not later than the three hundred and sixty-fifth day following the date of the first meeting of the Advisory Committee, the Advisory Committee shall transmit to Congress a report containing its determinations and recommendations under subsection (c).

(e) TERMINATION.—The Advisory Committee shall terminate on the thirtieth day following the date of submission of its report under subsection (d).

## AMTRAK AUTHORIZATION DEVELOPMENT ACT—CONFERENCE REPORT

Mr. FORD. Mr. President, I submit a report of the committee of conference on H.R. 4250 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4250) to authorize appropriations for the National Railroad Passenger Corporation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 3, 1992.)

Mr. HOLLINGS. Mr. President, I rise in support of the conference agreement

on H.R. 4250, the Amtrak Authorization and Development Act. This measure will help to assure the long-term viability of the Nation's rail passenger system.

Earlier this year, the Surface Transportation Subcommittee reviewed carefully the extent to which insufficient capital funding in the past may have prevented Amtrak from investing adequately in necessary equipment and facility improvements. As a result of this examination, the Commerce Committee concluded that the operating and capital needs of Amtrak must be met to ensure the viability of the Nation's present rail passenger system. I am pleased to note that the conference agreement as passed by the House and before us today incorporates the original Senate measure's focus on these important financial objectives.

In addition, the conference agreement includes a number of important provisions, including a separate authorization for new State-supported and other services to provide Amtrak with greater flexibility to promote expansion in areas where ridership potential can be documented. The legislation also retains and strengthens language from the Senate bill addressing locomotive visibility and requiring the formation of a task force comprised of representatives from the Federal Railroad Administration, Amtrak and each of the on-board service employee and operating crafts to consider recommendations for improving emergency training and performance of on-board crew members. My concern as to whether Amtrak is providing sufficient emergency training for these employees stems, in part, from questions raised about inadequate response to those injured in the Amtrak accident that occurred in Lugoff, SC, during the summer of 1991. I believe that this task force will provide the needed examination in this area.

Finally, the legislation provides a mandate for Amtrak to continue its progress in high-speed rail and demonstrate further new high-speed rail technologies. In this regard I am pleased to note that the conference agreement highlights the importance of Amtrak's recent solicitation for the development of a prototype high-speed lightweight locomotive. One of the bidders for this procurement, Republic Locomotive of Greenville, SC, has pioneered an innovative turbine technology for this application, which holds the promise of implementing high-speed rail between densely populated city pairs without the expense of corridor electrification.

In conclusion, Mr. President, the conference agreement on H.R. 4250 is important for the future of rail passenger service, and I urge my colleagues to support its passage.

Mr. EXON. Mr. President, I rise in support of the conference report to H.R. 4250, the Amtrak Authorization and Development Act. This legislation culminates months of work and dedicated effort by Members and staff alike from both sides of the aisle, from the Senate and the House, and I thank all of my distinguished colleagues who have contributed to the realization of this important legislation.

As reported by the conferees, H.R. 4250 improves rail safety, advances high-speed rail initiatives, and provides for a realistic 2-year authorization for Amtrak. I am especially pleased that this legislation creates for the first time a new account dedicated to new passenger service. This measure will bring the Amtrak system squarely into the future by enabling the planning for the expansion of the basic system. We are closer to the day when additional Amtrak service can be offered between Omaha and Chicago and further ahead, service between Omaha and Kansas City. With this provision, the authorization for the Northeast Corridor Improvement Program, and other vital sections in the bill, Congress takes another meaningful step toward the restoration of passenger rail service to its proper role in our Nation's national transportation strategy.

Of particular note, the conference report incorporates legislation originally introduced by Senator KASSEBAUM to improve the visibility of locomotives through the use of ditch lights, strobe lights, and other illuminating devices. The conferees labored to craft a provision which advances public safety and facilitates the transition to permanent locomotive visibility rules. The so-called grandfather clause in this section is intended to encourage the railroad industry immediately to make their locomotives more visible rather than delay current safety initiatives until the Federal Railroad Administration issues final visibility rules by the end of 1995. In this regard, I am pleased to report that the Union Pacific Railroad in Omaha, NE, has launched an aggressive locomotive visibility improvement program. I would hope and expect that progress on this safety program, as well as similar visibility initiatives now underway at other railroads, will not be interrupted or delayed.

In concluding their deliberations, the conferees made it possible to accommodate in this legislation the specific requests of Senators BREAUX, LOTT, PRESSLER, MOYNIHAN, BOREN, and NICKLES. These initiatives as incorporated into the bill highlight the importance of rail service to many communities across the United States. I trust that all of these Members will join me in my continuing efforts to secure sufficient funding for national passenger train service in the Senate Budget and Appropriations Committees.

Mr. President, the importance of rebuilding our Nation's transportation infrastructure has emerged as a key issue in the Presidential debate. I am confident that this legislation will give the next president a firm base from which to build a revitalized passenger rail system in the United States, and I urge my colleagues to join me in working for passage of the conference report to H.R. 4250.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the conference report.

So the conference report was agreed to.

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

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

The motion to lay on the table was agreed to.

## STOCK RAISING HOMESTEAD ACT AMENDMENTS

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1187, the Stock Raising Homestead Act.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 1187) entitled "An Act to amend the Stock Raising Homestead Act to provide certain procedures for entry onto Stock Raising Homestead Act lands, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

***SECTION 1. MINING CLAIMS ON STOCK RAISING HOMESTEAD ACT LANDS.***

*(a) MINERAL ENTRY UNDER THE STOCK RAISING HOMESTEAD ACT.—Section 9 of the Act of December 29, 1916, entitled "An act to provide for stock-raising homesteads, and for other purposes (43 U.S.C. 299) is amended by adding the following at the end thereof:*

*"(b) EXPLORATION; LOCATION OF MINING CLAIMS; NOTICES.—*

*"(1) IN GENERAL.—(A) Notwithstanding subsection (a) and any other provision of law to the contrary, after the effective date of this subsection no person other than the surface owner may enter lands subject to this Act to explore for, or to locate, a mining claim on such lands without—*

*"(i) filing a notice of intention to locate a mining claim pursuant to paragraph (2); and*

*"(ii) providing notice to the surface owner pursuant to paragraph (3).*

*"(B) Any person who has complied with the requirements referred to in subparagraph (A) may, during the authorized exploration period, in order to locate a mining claim, enter lands subject to this Act to undertake mineral activities related to exploration that cause no more than a negligible disturbance of surface resources and do not involve the use of mechanized equipment, explosives, the construction of roads, drill pads, or the use or toxic or hazardous materials.*

*"(C) The authorized exploration period referred to in subparagraph (B) shall begin 30 days after notice is provided under paragraph (3) with respect to lands subject to such notice and shall end with the expiration of the 60-day*

*period referred to in paragraph (2)(A) or any extension provided under paragraph (2)(B).*

*"(2) NOTICE OF INTENTION TO LOCATE A MINING CLAIM.—Any person seeking to locate a mining claim on lands subject to this Act in order to engage in the mineral activities relating to exploration referred to under paragraph (1)(B) may file with the Secretary of the Interior a notice of intention to locate a claim on the lands concerned. The notice shall be in such form as the Secretary shall prescribe. The notice shall contain the name and mailing address of the person filing the notice and a legal description of the lands to which the notice applies. The legal description shall be based on the public land survey or on such other description as is sufficient to permit the Secretary to record the notice on his land status records. Whenever any person has filed a notice under this subparagraph with respect to any lands, during the 60-day period following the date of such filing, no other person (including the surface owner) may—*

*"(A) file such a notice with respect to any portions of such lands;*

*"(B) explore for minerals or locate a mining claim on any portion of such lands; or*

*"(C) acquire any interest in any portion of such lands pursuant to section 209 of the Federal Land Policy and Management Act of 1977 (43 U.S.C. 1719).*

*"(3) NOTICE TO SURFACE OWNER.—Any person who has filed a notice of intention to locate a mining claim under paragraph (2) for any lands subject to this Act shall provide written notice of such filing by registered or certified mail with return receipt to the surface owner (as evidenced by local tax records) of the lands covered by the notice under paragraph (2). Possession of the return receipt signed by the surface owner shall be necessary prior to entering such lands. The notice shall be provided at least 30 days before entering such lands and shall contain each of the following:*

*"(A) A brief description of the proposed mineral activities.*

*"(B) A map and legal description of the lands to be subject to mineral exploration.*

*"(C) The name, address and phone number of the person managing such activities.*

*"(D) A statement of the dates on which such activities will take place.*

*"(4) ACREAGE LIMITATIONS.—The total acreage covered at any time by notices of intention to locate a mining claim under paragraph (2) filed by any person and by affiliates of such person may not exceed 6,400 acres of lands subject to this Act in any one State and 160 acres or one-tenth of any contiguous parcel of land, whichever is greater (except that in no instance shall the total acreage exceed 640 acres), for a single surface owner. For purposes of this paragraph, the term 'affiliate' means, with respect to any person, any other person which controls, is controlled by, or is under common control with, such person.*

*"(c) CONSENT.—Notwithstanding subsection (a) and any other provision of law, after the effective date of this subsection no person may engage in the conduct of mineral activities (other than those relating to exploration referred to in subsection (b)(1)B)) on a mining claim located on lands subject to this Act without the written consent of the surface owner thereof unless the Secretary has authorized the conduct of such activities under subsection (d).*

*"(d) AUTHORIZED MINERAL ACTIVITIES.—The Secretary may authorize a person to conduct mineral activities (other than those relating to exploration referred to in subsection (b)(1)(B)) on lands subject to this Act without the consent of the surface owner thereof if such person complies with the requirements of subsections (e) and (f).*

*"(e) BOND.—(1) Before the Secretary may authorize any person to conduct mineral activities the Secretary shall require such person to post a bond or other financial guarantee in an amount to insure the completion of reclamation satisfying the requirements of this subsection and subsection (h). The bond or other financial guarantee shall be held for the duration of the mineral activities and for an additional period to cover the responsibility of the person conducting such mineral activities for revegetation under subsection (h)(6). Such bond or other financial guarantee shall also insure—*

*"(A) payment to the surface owner, after the completion of such mineral activities and reclamation, compensation for any permanent damages to crops and tangible improvements of the surface owner that resulted from mineral activities; and*

*"(B) payment to the surface owner of compensation for any permanent loss of income of the surface owner due to loss or impairment of grazing, or other uses of the land by the surface owner to the extent that reclamation required by the plan of operations would not permit such uses to continue at the level existing prior to the commencement of mineral activities.*

*"(2) In determining the bond amount to cover permanent loss of income under paragraph (1)(B), the Secretary shall consider, where appropriate, the potential loss of value due to the estimated permanent reduction in utilization of the land.*

*"(f) PLAN OF OPERATIONS.—(1) Before the Secretary may authorize any person to conduct mineral activities on lands subject this Act, the Secretary shall require such person to submit a plan of operations. The Secretary shall require that mineral activities and reclamation under such plan be conducted in such a way so as to minimize adverse impacts to the environment. A plan under this subsection shall also include procedures for—*

*"(A) the minimization of damages to crops and tangible improvements of the surface owner;*

*"(B) the minimization of disruption to grazing or other uses of the land by the surface owner; and*

*"(C) payment of a fee equivalent to the loss of income to the ranch operation as established pursuant to subsection (g).*

*"(2) The Secretary shall provide a copy of the proposal plan of operations to the surface owner at least 60 days prior to the date the Secretary makes a determination as to whether such plan complies with the requirements of this subsection. During such 60-day period the surface owner may submit comments and recommend modifications to the proposed plan of operations to the Secretary.*

*"(3) The Secretary may approve, require modifications to, or deny a proposed plan of operations. To approve a plan of operations, the Secretary shall make each of the following determinations:*

*"(A) The proposed plan of operations is complete and accurate.*

*"(B) The person submitting the proposed plan of operations has demonstrated that reclamation as required under subsection (h) can be accomplished under the plan and would have a high probability of success based on an analysis of such reclamation measures in areas of similar geochemistry, topography and hydrology.*

*"(C) The person submitting the proposed plan of operations has demonstrated that all other applicable Federal and State requirements have been met.*

*"(4) Final approval of a plan of operations under this subsection shall be conditioned upon compliance with subsections (e) and (g).*

*"(g) FEE.—The fee referred to in subsection (f)(2) shall be—*

*"(1) paid to the surface owner by the person submitting the plan of operations;*

*"(2) paid in advance of any mineral activities or at such other time or times as may be agreed to by the surface owner and the person conducting such activities; and*

*"(3) established by the Secretary taking into account the acreage involved and the degree of potential disruption to existing surface uses (including the loss of income to the surface owner and such surface owner's operations due to the loss or impairment of existing surface uses for the duration of the mineral activities).*

*"(h) RECLAMATION.—Except as provided under paragraphs (5) and (7), lands affected by mineral activities under a plan of operations approved pursuant to subsection (f)(3) shall be reclaimed to a condition capable of supporting the uses to which such lands were capable of supporting prior to surface disturbance. Except as provided under paragraphs (5) and (7), the surface area disturbed by mineral activities shall be backfilled, graded and contoured to its natural topography. Reclamation shall proceed as contemporaneously as practicable with the conduct of mineral activities. For the purposes of such reclamation, the Secretary shall establish reclamation standards which shall include, but not necessarily be limited to, provisions to require each of the following; except that any such standard may be modified only with the consent of the surface owner as part of an approved plan of operations:*

*"(1) TOPSOIL.—(A) Topsoil removed from lands affected by mineral activities shall be segregated from other spoil material and protected for later use in reclamation. If such topsoil is not replaced on a backfill area within a timeframe short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be used so that the topsoil is preserved from wind and water erosion, remains free of any contamination by acid or other toxic material, and is in a useable condition for sustaining vegetation when restored during reclamation.*

*"(B) In the event the topsoil from lands affected by mineral activities is of insufficient quantity or of inferior quality for sustaining vegetation, and other suitable growth media removed from the lands affected by the mineral activities are available that shall support vegetation, the best available growth medium shall be removed, segregated and preserved in a like manner as under subparagraph (A) for sustaining vegetation when restored during reclamation.*

*"(2) STABILIZATION.—All surface areas affected by mineral activities, including spoil material piles, waste material piles, ore piles, subgrade ore piles, and open or partially backfilled mine pits which meet the requirements of paragraph (5) shall be stabilized and protected during mineral activities and reclamation so as to effectively control erosion and minimize attendant air and water pollution.*

*"(3) EROSION.—Facilities such as but not limited to basins, ditches, streambank stabilization, diversions or other measures, shall be designed, constructed and maintained where necessary to control erosion and drainage of the area affected by mineral activities including spoil material piles and waste material piles prior to the use of such material to comply with the requirements of this subsection, and for the purposes of paragraph (7), and including ore piles and subgrade ore piles.*

*"(4) HYDROLOGIC BALANCE.—(A) Mineral activities shall be conducted to minimize disturbances to the prevailing hydrologic balance of the area subject to mineral activities and adjacent areas and to the quality and quantity of water in surface and ground water systems in the area subject to mineral activities and adjacent areas.*

*"(B) Mineral activities shall, to the extent possible, prevent the generation of acid or toxic drainage during the mineral activities and reclamation; and the operator shall prevent the*

*contamination of surface and ground water with acid or other toxic mine drainage and shall prevent or remove water from contact with acid or toxic producing deposits.*

*"(C) Mineral activities shall be conducted to prevent, to the extent possible, disruption to streamflow, or runoff outside the area covered by the plan of operations, and in no event shall be in excess of requirements set by applicable State or Federal law.*

*"(D) Reclamation shall, to the extent possible, also include restoration of the recharge capacity of the area subject to mineral activities to approximate premining condition; except that where surface or underground water sources used for domestic or agricultural use have been diminished, contaminated or interrupted as a proximate result of mineral activities, such water resource shall be restored or replaced.*

*"(5) PIT BACKFILLING/GRADING VARIANCE.—(A) The requirement to backfill, grade and contour land to its natural topography shall not apply with respect to an open mine pit if the Secretary finds that such open pit or partially backfilled pit would not pose a threat to the public health or safety or have an adverse effect on the environment in terms of surface or ground water pollution.*

*"(B) In instances where complete backfilling of an open pit is not required, the pit shall be graded to blend with the surrounding topography as much as practicable and revegetated in accordance with paragraph (6).*

*"(6) REVEGETATION.—(A) Except in such instances where the complete backfill of an open mine pit is not required under paragraph (5), the area affected by mineral activities, including any excess spoil material pile and excess waste pile, shall be revegetated in order to establish a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area affected by mineral activities, capable of self-regeneration and plant succession and at least equal in extent of cover to the natural revegetation of the surrounding area.*

*"(B) In order to insure compliance with subparagraph (A), the period for determining successful revegetation shall be for a period of 5 full years after the last year of augmented seeding, fertilizing, irrigation or other work, except that such period shall be 10 full years where the annual average precipitation is 26 inches or less.*

*"(7) EXCESS SPOIL AND WASTE.—(A) Excess spoil material and excess waste material shall be transported and placed in approved areas, in a controlled manner in such a way so as to assure long-term mass stability and to prevent mass movement. In addition to the measures described under paragraph (3), internal drainage systems shall be employed, as may be required, to control erosion and drainage. The design of such excess spoil material piles and excess waste material piles shall be certified by a qualified professional engineer.*

*"(B) Excess spoil material piles and excess waste material piles shall be graded and contoured to blend with the surrounding topography as much as practicable and revegetated in accordance with paragraph (6).*

*"(8) SEALING.—All drill holes, and openings on the surface associated with underground mineral activities, shall be sealed when no longer needed for the conduct of mineral activities to ensure protection of the public, wildlife and the environment.*

*"(9) STRUCTURES.—All buildings, structures or equipment constructed, used or improved during the mineral activity shall be removed, unless the Secretary determines that the buildings, structures or equipment shall be of beneficial use in accomplishing the post-mining uses or for environmental monitoring.*

*"(i) STATE LAW.—(1) Nothing in this Act shall be construed as affecting any reclamation, bonding, inspection, enforcement, air or water quality standard or requirement of any State law or regulation which may be applicable to mineral activities on lands subject to this Act to the extend that such law or regulation is not inconsistent with this title.*

*"(2) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by mineral activities.*

*"(j) INSPECTIONS.—(1) The Secretary shall make such inspections of mineral activities under a plan of operations approved under subsection (f) so as to ensure compliance with the terms and conditions of such plan. The Secretary shall establish a frequency of inspections for mineral activities conducted under such an approved plan of operations, but in no event shall such inspection frequency be less than one complete inspection per calendar quarter.*

*"(2) Any surface owner of land subject to this Act has reason to believe that they are or may be adversely affected by mineral activities due to any violation of the terms and conditions of a plan of operations approved under subsection (f), such surface owner may request an inspection. The Secretary shall determine within 10 days of the receipt of the request whether the request states a reason to believe that a violation exists, except in the event the surface owners alleges and provides reason to believe that an imminent danger, as provided in subsection (k)(2), exists the 10 day period shall be waived and the inspection conducted immediately. When an inspection is conducted under this paragraph, the Secretary shall notify the surface owner and such surface owner shall be allowed to accompany the inspector on the inspection.*

*"(k) ENFORCEMENT.—(1) If the Secretary or the authorized representative of the Secretary determines, on the basis of an inspection that the operator is in violation of the terms and conditions of a plan of operations approved under subsection (f), the Secretary or his authorized representative shall issue a notice of violation to the operator describing the violation and the corrective measures to be taken. The Secretary or his authorized representative shall provide such operator with a reasonable period of time to abate the violation. If, upon the expiration of time provided for such abatement, the Secretary or his authorized representative finds that the violation has not been abated he shall immediately order a cessation of all mineral activities or the portion thereof relevant to the violation.*

*"(2) If the Secretary or his authorized representative determines, on the basis of an inspection, that any condition or practice exists with respect to mineral activities conducted on lands subject to this Act, or that an operator is in violation of the surface management requirements established pursuant to this section, and such condition, practice or violation is causing, or can reasonably be expected to cause—*

*"(A) an imminent danger to the health or safety of the surface owner of land subject to this Act, or*

*"(B) significant, imminent environmental harm to land, air or water resources,*

*the Secretary or his authorized representative shall immediately order a cessation of such mineral activities or the portion thereof causing such condition, practice or violation.*

*"(3)(A) A cessation order by the Secretary or his authorized representative pursuant to paragraphs (1) or (2) shall remain in effect until the Secretary or his authorized representative determines that the condition, practice or violation has been abated, or until modified, vacated or terminated by the Secretary or his authorized representative. In any such order, the Secretary or his authorized representative shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order. The Secretary shall require appropriate financial assurances to insure that the abatement obligations are met.*

*"(B) Any notice or order issued pursuant to paragraphs (1) or (2) may be modified, vacated or terminated by the Secretary or his authorized representative. An operator, or person conducting mineral activities under section 201(b)(2), issued any such notice or order shall be entitled to a hearing on the record.*

*"(4) If, after 30 days of the date of the order referred to in paragraph (3)(A), the required abatement has not occurred the Secretary shall take such alternative enforcement action against the responsible parties as will most likely bring about abatement in the most expeditious manner possible. Such alternative enforcement action shall include, but is not necessarily limited to, seeking appropriate injunctive relief to bring about abatement.*

*"(5) In the event an operator conducting mineral activities under a plan of operations approved under subsection (f) is unable to abate a violation or defaults on the terms of the plan of operation the Secretary may cause forfeiture of the bond or other financial guarantee for the plan of operations to the extent necessary to ensure abatement and reclamation.*

*"(l) COMPLIANCE.—The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction or restraining order, in the district court of the United States for the district in which the mineral activities are located whenever an operator: (A) violates, fails or refuses to comply with any order issued by the Secretary under subsection (k); or (B) interferes with, hinders or delays the Secretary in carrying out an inspection under subsection (j). Such court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the court to enforce an order under clause (A) shall continue in effect until the completion or final termination of all proceedings for administrative review of such order, unless the district court granting such relief sets it aside or modifies it.*

*"(m) PENALTIES.—(1) Any operator who fails to comply with the terms and conditions of a plan of operations approved under subsection (f) shall be liable for a penalty of not more than $5,000 per violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. No civil penalty under this subsection shall be assessed until the operator charged with the violation has been given the opportunity for a hearing.*

*"(2) An operator who fails to correct a violation for which a cessation order has been issued under subsection (k) within the period permitted for its correction shall be assessed a civil penalty of not less than $1,000 per violation for each day during which such failure continues, but in no event shall such assessment exceed a 30-day period.*

*"(n) DAMAGES FOR FAILURE TO COMPLY.—(1) Whenever the surface owner of any land subject to this Act has suffered any permanent damages to crops or tangible improvements of the surface owner, or any permanent loss of income due to loss or impairment of grazing, or other uses of the land by the surface owner, the surface owner may bring an action in the appropriate United States district court for treble damages, and the court may award such damages if such damages or loss results—*

*"(A) from any mineral activity undertaken without the consent of the surface owner under subsection (c) or an authorization by the Secretary under subsection (d); or*

*"(B) from the failure of a person conducting mineral activities on lands subject to this Act*

*approved under subsection (f) to abate a violation under subsection (k).*

*"(2) The surface owner of any land subject to this Act may also bring an action in the appropriate United States district court for treble damages against any person undertaking any mineral activities on lands subject to this Act in violation of any requirement of subsection (b).*

*"(3) Treble damages awarded by the court under this subsection shall be reduced by the amount of any compensation which the surface owner has received (or is eligible to receive) pursuant to the bond or financial guarantee required under subsection (e).*

*"(o) PAYMENT OF DAMAGES.—The surface owner of any land subject to this Act may petition the Secretary for payment of all or any portion of a bond or other financial guarantee required under subsection (e) as compensation for any permanent damages to crops and tangible improvements of the surface owner, or any permanent or temporary loss of income due to loss or impairment of grazing, or other uses of the land by the surface owner. Pursuant to such a petition, the Secretary may use such bond or other guarantee to provide compensation to the surface owner for such damages and to insure the required reclamation.*

*"(p) BOND RELEASE.—The Secretary shall release the bond or other financial guarantee required under subsection (e) upon the successful completion of all requirements pursuant to a plan of operations approved under subsection (f).*

*"(q) CONVEYANCE TO SURFACE OWNER.—(1) The Secretary may convey interests owned by the United States (including mineral interests) in lands subject to this Act to the surface owner pursuant to the provisions of section 209 of the Federal Land Policy and Management Act of 1976 without regard to the requirements contained in such provisions that findings be made under subsection (b) of such section.*

*"(2) The Secretary shall take such actions as may be necessary to simplify the procedures which must be complied with by surface owners of lands subject to this Act who apply to the Secretary to obtain title to interests in such lands owned by the United States.*

*"(3) Notwithstanding any other provision of law, the Secretary may not convey mineral interests in lands subject to this Act to any person other than the surface owner of such lands without obtaining the consent of such surface owner.*

*"(r) DEFINITIONS.—For the purposes of subsections (b) through (q)—*

*"(1) The term 'mineral activities' means any activity for, related to or incidental to mineral exploration, mining, and beneficiation activities for any locatable mineral on a mining claim. When used with respect to this term—*

*"(A) The term 'exploration' means those techniques employed to locate the presence of a locatable mineral deposit and to establish its nature, position, size, shape, grade and value;*

*"(B) The term 'mining' means the processes employed for the extraction of a locatable mineral from the earth; and*

*"(C) The term 'beneficiation' means the crushing and grinding of locatable mineral ore and such processes are employed to free the mineral from other constituents, including but not necessarily limited to, physical and chemical separation techniques.*

*"(2) The term 'mining claim' means a claim located under the general mining laws of the United States (which generally comprise 30 U.S.C. chapters 2, 12A, and 16, and sections 161 and 162) subject to the terms and conditions of subsections (b) through (q) of this section.*

*"(3) The term 'tangible improvements' includes agricultural, residential and commercial improvements, including improvements made by residential subdividers.*

*"(s) MINERALS COVERED.—Subsections (b) through (q) of this section apply only to minerals not subject to disposition under—*

*"(1) the Mineral Leasing Act (30 U.S.C. 181 and following);*

*"(2) the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following); or*

*"(3) the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).".*

*(b) FEES.—The Secretary may establish such user fees as may be necessary to reimburse the United States for expenses incurred in administering this section.*

*(c) TECHNICAL CONFORMING AMENDMENT.—Section 9 of the Act of December 29, 1916, entitled "An Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299) is amended by inserting "(a) GENERAL PROVISIONS.—" before the words "That all entries made".*

*(d) EFFECTIVE DATE.—The amendments made by this Act shall take effect 180 days after the date of enactment.*

*(e) REGULATIONS.—The Secretary of the Interior shall issue final regulations to implement the amendments made by this Act not later than the effective date of this Act. Failure to promulgate these regulations by reason of any appeal or judicial review shall not delay the effective date as specified in paragraph (d).*

***SEC. 2. REPORT TO CONGRESS ON FOREIGN INTEREST LANDHOLDINGS.***

*(a) The Secretary of the Department of the Interior is directed to report annually to Congress on the control by foreign firms of the acreage and facilities on lands covered by the 1916 Stock Raising Homestead Act.*

*(b) DEFINITIONS.—For purposes of this amendment:*

*(1) The term "domestic firm" means a business entity that is incorporated in the United States, conducts business operations in the United States, and at least 50 percent of its assets are held by private citizens and/or business entities of the United States.*

*(2) The term "foreign firm" means a business entity that is not described under paragraph (1).*

Amend the title so as to read: "An Act to amend the Stock Raising Homestead Act to resolve certain problems regarding subsurface estates, and for other purposes.".

Mr. BINGAMAN. Mr. President, I rise to encourage Members to support passage of S. 1187, amendments to the Stock Raising Homestead Act.

We have been working on this legislation for two Congresses now. It is a sensitive issue that deals with conflicts arising where the mineral estate is federally owned and the surface estate was patented under the Stock Raising Homestead Act for ranching and grazing purposes.

Reaching resolution on this issue has required that the interests of the Federal Government, ranchers, and miners be balanced. This has been a difficult task, but I believe the bill before us now reflects such balance.

The legislation is somewhat different from the which passed the House of Representatives last month, although the basic structure of the bill remains the same. It is my understanding that the bill represents a compromise that the House Of Representatives should find acceptable.

In 1916, Congress passed legislation popularly known as the Stock Raising Homestead Act [SRHA]. This act made available unappropriated public lands for stock raising homestead entries. Patents issue pursuant to SRHA reserved to the United States the mineral estate, thus creating split estates where ownership of the surface, and the mineral estate differs. Conflicts arise between those interested in exploring for, and developing, the Federal mineral estate, and surface owners engaged in raising livestock.

Approximately 70 million acres of land were patented under SRHA prior to repeal of the entry provision in 1976. The Bureau of Land Management [BLM] estimates that there are approximately 17,000 unpatented mining claims recorded on SRHA lands. BLM estimates that roughly 50 prospecting or mining operations are being conducted on these 17,000 claims.

Current law regulates mineral activity on SRHA lands in two stages. During the prospecting phase, compensation is required for damage to crops from mining, and provides that permanent improvements on the lands may not be damaged. For mining operations, if a miner does not have the surface owners' consent to mine, a bond to the United States may be executed to secure payment of any damages.

S. 1187 would provide additional procedures for gaining access to, and undertaking mining activities on, stock raising homestead lands. The bill would require notice to both the surface owner and the Secretary of the Interior prior to entry for exploration purposes. Such notification triggers an exploration period, whereby the person filing the notice has exclusive exploration right for the authorization period.

Any person interested in going forward with development and production must obtain consent from the surface owner. Absent such consent, the miner must submit a plan of operations to the Secretary for approval, pay a surface use fee to the surface owner, and post a bond prior to conducting mineral activities to guarantee reclamation of the surface.

The bill also provides for inspections by the Secretary if a surface owner believes that he or she will, or may be, adversely affected from any violation of the plan of operations, and establishes a cause of action for damages under certain circumstances. In addition, the Secretary of the Interior is directed to take such actions as may be necessary to simplify the procedures to be compiled with by surface owners who apply to obtain title to the mineral estate.

I strongly urge passage of this legislation.

AMENDMENT NO. 3426

Mr. FORD. Mr. President, I move that the Senate concur in the House amendments with a further amendment, which I now send to the desk on behalf of Senator BINGAMAN.

The PRESIDING OFFICER (Mr. GRAHAM). The Clerk will report the amendment by the Senator from New Mexico.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. BINGAMAN, proposes an amendment numbered 4326.

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

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert:

**SECTION 1. MINING CLAIMS ON STOCK RAISING HOMESTEAD ACT LANDS.**

(a) MINERAL ENTRY UNDER THE STOCK RAISING HOMESTEAD ACT.—Section 9 of the Act of December 29, 1916, entitled "An Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299), is amended by adding the following at the end thereof:

"(b) EXPLORATION; LOCATION OF MINING CLAIMS; NOTICES.—

"(1) IN GENERAL.—(A) Notwithstanding subsection (a) and any other provision of law to the contrary, after the effective date of this subsection no person other than the surface owner may enter lands subject to this Act to explore for, or to locate, a mining claim on such lands without—

"(i) filing a notice of intention to locate a mining claim pursuant to paragraph (2); and

"(ii) providing notice to the surface owner pursuant to paragraph (3).

"(B) Any person who has complied with the requirements referred to in subparagraph (A) may, during the authorized exploration period, in order to locate a mining claim, enter lands subject to this Act to undertake mineral activities related to exploration that cause no more than minimal disturbance of surface resources and do not involve the use of mechanized earthmoving equipment, explosives, the construction of roads, drill pads, or the use of toxic or hazardous materials.

"(C) The authorized exploration period referred to in subparagraph (B) shall begin 30 days after notice is provided under paragraph (3) with respect to lands subject to such notice and shall end with the expiration of the 90-day period referred to in paragraph (2)(A), or any extension provided under paragraph (2).

"(2) NOTICE OF INTENTION TO LOCATE A MINING CLAIM.—Any person seeking to locate a mining claim on lands subject to this Act in order to engage in the mineral activities relating to exploration referred to under paragraph (1)(B) shall file with the Secretary of the Interior a notice of intention to locate a claim on the lands concerned. The notice shall be in such form as the secretary shall prescribe. The notice shall contain the name and mailing address of the person filing the notice and a legal description of the lands to which the notice applies. The legal description shall be based on the public land survey or on such other description as is sufficient to permit the Secretary to record the notice on the land status records of the Secretary. Whenever any person has filed a notice under this paragraph with respect to any lands, during the 90-day period following the date of such filing, or any extension thereof pursuant to this paragraph, no other person (including the surface owner) may—

"(A) file such a notice with respect to any portions of such lands;

"(B) explore for minerals or locate a mining claim on any portion of such lands; or

"(C) file an application to acquire any interest in any portion of such lands pursuant to section 209 of the Federal Land Policy and Mangement Act of 1976 (43 U.S.C. 1719).

If, within such 90-day period, the person who filed a notice under this paragraph files a plan of operations with the Secretary pursuant to subsection (f), such 90-day period shall be extended until the approval or disapproval of the plan by the Secretary pursuant to subsection (f).

"(3) NOTICE TO SURFACE OWNER.—Any person who has filed a notice of intention to locate a mining claim under paragraph (2) for any lands subject to this Act shall provide written notice of such filing, by registered or certified mail with return receipt, to the surface owner (as evidenced by local tax records) of the lands covered by the notice under paragraph (2). The notice shall be provided at least 30 days before entering such lands and shall contain each of the following:

"(A) A brief description of the proposed mineral activities.

"(B) A map and legal description of the lands to be subject to mineral exploration.

"(C) The name, address and phone number of the person managing such activities.

"(D) A statement of the dates on which such activities will take place.

"(4) ACREAGE LIMITATIONS.—The total acreage covered at any time by notices of intention to locate a mining claim under paragraph (2) filed by any person and by affiliates of such person may not exceed 6,400 acres of lands subject to this Act in any one State and 1,280 acres of such lands for a single surface owner. For purposes of this paragraph, the term 'affiliate' means, with respect to any person, any other person which controls, is controlled by, or is under common control with, such person.

"(c) CONSENT.—Notwithstanding subsection (a) and any other provision of law, after the effective date of this subsection no person may engage in the conduct of mineral activities (other than those relating to exploration referred to in subsection (b)(1)(B)) on a mining claim located on lands subject to this Act without the written consent of the surface owner thereof unless the Secretary has authorized the conduct of such activities under subsection (d).

"(d) AUTHORIZED MINERAL ACTIVITIES.—The Secretary shall authorize a person to conduct mineral activities (other than those relating to exploration referred to in subsection (b)(1)(B)) on lands subject to this Act without the consent of the surface owner thereof if such person complies with the requirements of subsections (e) and (f).

"(e) BOND.—(1) Before the Secretary may authorize any person to conduct mineral activities the Secretary shall require such person to post a bond or other financial guarantee in an amount to insure the completion of reclamation pursuant to this Act. Such bond or other financial guarantee shall insure—

"(A) payment to the surface owner, after the completion of such mineral activities and reclamation, compensation for any permanent damages to crops and tangible improvements of the surface owner that resulted from mineral activities; and

"(B) payment to the surface owner of compensation for any permanent loss of income of the surface owner due to loss or impairment of grazing, or other uses of the land by the surface owner to the extent that reclamation required by the plan of operations would not permit such uses to continue at the level existing prior to the commencement of mineral activities.

"(2) In determining the bond amount to cover permanent loss of income under paragraph (1)(B), the Secretary shall consider, where appropriate, the potential loss of value due to the estimated permanent reduction in utilization of the land.

"(f) PLAN OF OPERATIONS.—(1) Before the Secretary may authorize any person to conduct mineral activities on lands subject to this Act, the Secretary shall require such person to submit a plan of operations. Such plans shall include procedures for—

"(A) the minimization of damages to crops and tangible improvements of the surface owner;

"(B) the minimization of disruption to grazing or other use of the land by the surface owner; and

"(C) payment of a fee equivalent to the loss of income to the ranch operation as established pursuant to subsection (g).

"(2) The Secretary shall provide a copy of the proposed plan of operations to the surface owner at least 45 days prior to the date the Secretary makes a determination as to whether such plan complies with the requirements of this subsection. During such 45 day period the surface owner may submit comments and recommend modifications to the proposed plan of operations to the Secretary.

"(3)(A) The Secretary shall, within 60 days of receipt of the plan, approve the plan of operations if it complies with the requirements of this Act, including each of the following:

"(i) The proposed plan of operations is complete and accurate.

"(ii) The person submitting the proposed plan of operations has demonstrated that all other applicable Federal and State requirements have been met.

"(B) The Secretary shall notify the person submitting a plan of operations of any modifications to such plan required to bring it into compliance with the requirements of this Act. If the person submitting the plan agrees to modify such plan in a manner acceptable to the Secretary, the Secretary shall approve the plan as modified. In the event no agreement can be reached on the modifications to the plan which, in the opinion of the Secretary, will bring such plan into compliance with the requirements of this Act, then the Secretary shall disapprove the plan and notify both the surface owner and the person submitting the plan of the decision.

"(C) The 60-day period referred to in paragraph (A) may be extended by the Secretary where additional time is required to comply with other applicable requirements of law.

"(D) The Secretary shall suspend or revoke a plan of operation whenever the Secretary determines, on the Secretary's own motion or on a motion made by the surface owner, that the person conducting mineral activities is in substantial noncompliance with the terms and conditions of an approved plan of operations and has failed to remedy a violation after notice from the Secretary within the time required by the Secretary.

"(4) Final approval of a plan of operations under this subsection shall be conditioned upon compliance with subsections (e) and (g).

"(g) FEE—The fee referred to in subsection (f)(1) shall be—

"(1) paid to the surface owner by the person submitting the plan of operations;

"(2) paid in advance of any mineral activities or at such other time or times as may be agreed to by the surface owner and the person conducting such activities; and

"(3) established by the Secretary taking into the account the acreage involved and

the degree of potential disruption to existing surface uses (including the loss of income to the surface owner and such surface owner's operations due to the loss or impairment of existing surface uses for the duration of the mineral activities), except that such fee shall not exceed the fair market value for the surface of the land.

"(h) RECLAMATION.—Lands affected by mineral activities under a plan of operations approved pursuant to subsection (f)(3) shall be reclaimed, to the maximum extent practicable, to a condition capable of supporting the uses to which such lands were capable of supporting prior to surface disturbance. Reclamation shall proceed as contemporaneously as practicable with the conduct of mineral activities.

"(i) STATE LAW.—(1) Nothing in this Act shall be construed as affecting any reclamation, bonding, inspection, enforcement, air or water quality standard or requirement of any State law or regulation which may be applicable to mineral activities on lands subject to this Act to the extent that such law or regulation is not inconsistent with this title.

"(2) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, the interest of such person in water resources affected by mineral activities.

"(j) INSPECTIONS.—Should any surface owner of land subject to this Act have reason to believe that they are or may be adversely affected by mineral activities due to any violation of the terms and conditions of a plan of operations approved under subsection (f), such surface owner may request an inspection of such lands. The Secretary shall determine within 10 days of the receipt of the request whether the request states a reason to believe that a violation exists, except in the event the surface owner alleges and provides reason to believe that an imminent danger exists the 10-day period shall be waived and the inspection conducted immediately. When an inspection is conducted under this paragraph, the Secretary shall notify the surface owner and such surface owner shall be allowed to accompany the inspector on the inspection.

"(k) DAMAGES FOR FAILURE TO COMPLY.—(1) Whenever the surface owner of any land subject to this Act has suffered any permanent damages to crops or tangible improvements of the surface owner, or any permanent loss of income due to loss or impairment of grazing, or other uses of the land by the surface owner, if such damages or loss results from:

"(A) any mineral activity undertaken without the consent of the surface owner under subsection (c) or an authorization by the Secretary under subsection (d); or

"(B) from the failure of the person conducting mineral exploration, development, or production activities to remedy to the satisfaction of the Secretary any substantial non-compliance with the terms and conditions of a plan under subsection (f);

the surface owner may bring an action in the appropriate United States district court for, and the court may award, double damages plus costs for willful misconduct or gross negligence.

"(2) The surface owner of any land subject to this Act may also bring an action in the appropriate United States district court for double damages plus costs for willful misconduct or gross negligence against any person undertaking any mineral activities on lands subject to this Act in violation of any requirement of subsection (b).

"(3) Any double damages plus costs awarded by the court under this subsection shall be reduced by the amount of any compensation which the surface owner has received (or is eligible to receive) pursuant to the bond or financial guarantee required under subsection (e).

"(l) FULL PAYMENT OF DAMAGES.—The surface owner of any land subject to this Act may petition the Secretary for payment of all or any portion of a bond or other financial guarantee required under subsection (e) as compensation for any permanent damages to crops and tangible improvements of the surface owner, or any permanent or temporary loss of income due to loss or impairment of grazing, or other uses of the land by the surface owner. Pursuant to such a petition, the Secretary may use such bond or other guarantee to provide compensation to the surface owner for such damages and to insure the required reclamation.

"(m) BOND RELEASE.—The Secretary shall release the bond or other financial guarantee required under subsection (e) upon the successful completion of all requirements pursuant to a plan of operations approved under subsection (f).

"(n) CONVEYANCE TO SURFACE OWNER.—The Secretary shall take such actions as may be necessary to simplify the procedures which must be complied with by surface owners of lands subject to this Act who apply to the Secretary to obtain title to interests in such lands owned by the United States.

"(o) DEFINITIONS.—For the purposes of subsections (b) through (n)—

"(1) The term 'mineral activities' means any activity for, related to or incidental to mineral exploration, mining, and beneficiation activities for any locatable mineral on a mining claim. When used with respect to this term—

"(A) The term 'exploration' means those techniques employed to locate the presence of a locatable mineral deposit and to establish its nature, position, size, shape, grade and value;

"(B) The term 'mining' means the processes employed for the extraction of a locatable mineral from the earth; and

"(C) The term 'beneficiation' means the crushing and grinding of locatable mineral ore and such processes are employed to free the mineral from the other constituents, including but not necessarily limited to, physical and chemical separation techniques.

"(2) The term 'mining claim' means a claim located under the general mining laws of the United States (which generally comprise 30 U.S.C. chapters 2, 12A, and 16, and sections 161 and 162) subject to the terms and conditions of subsections (b) through (n) of this section.

"(3) The term 'tangible improvements' includes agricultural, residential and commercial improvements, including improvements made by residential subdividers.

"(p) MINERALS COVERED.—Subsections (b) through (n) of this section apply only to minerals not subject to disposition under—

"(A) the Mineral Leasing Act (30 U.S.C. 181 and following);

"(B) the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following); or,

"(C) the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).".

(b) TECHNICAL CONFORMING AMENDMENT.—Section 9 of the Act of December 29, 1916, entitled "An Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299) is amended by inserting "(a) GENERAL PROVISIONS.—" before the words "That all entries made".

(c) EFFECTIVE DATE.—The amendments made by this Act shall take effect 180 days after the date of enactment.

(d) REGULATIONS.—The Secretary of the Interior shall issue final regulations to implement the amendments made by this Act not later than the effective date of this Act. Failure to promulgate these regulations by reason of any appeal or judicial review shall not delay the effective date as specified in paragraph (d).

**SEC. 2. REPORT TO CONGRESS ON FOREIGN MINERAL INTEREST.**

(a) The Secretary of the Interior is directed to submit a report to the Congress within two years after the date of enactment of this Act on the acquisition of mineral interests made after the date of enactment of this Act by foreign firms on lands subject to the Act of December 29, 1916, entitled "Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299), as amended.

(b) DEFINITION.—For purposes of this section the term "foreign firm" means a business entity that conducts business operations in the United States and is 51 percent or more owned and controlled by a foreign person or entity.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

## AMENDING THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6138, a bill to amend the Consolidated Farm and Rural Development Act just received from the House; that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table; further, that any statements relating to this measure appear in the RECORD at the appropriate place and as if read.

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

So the bill (H.R. 6138) was deemed read the third time and passed.

Mr. DOMENICI. Mr. President, this bill corrects a technicality that will help small rural communities along our southern border.

Mr. President, H.R. 5487, the Agriculture, Rural Development, Food and Drug Administration, and related agencies appropriations public law for fiscal year 1993, includes $25 million for these small rural communities known as colonias under the rural and waste disposal grants program.

The funding for these small rural communities was required by the President to address the serious water and wastewater deficiencies in those communities.

I am very pleased that the agriculture appropriations conferees in-

cluded funding for this very important program in the agriculture appropriations bill which is now public law. But Mr. President, it has been brought to my attention that many of the colonias in may State may not even qualify for the grants because of technicalities in the final legislative language.

Mr. President, let me first explain the significance of this very important funding for the colonias.

The colonias are small, unincorporated rural communities with populations ranging from about 250 persons to about 5,000 persons.

Many of the colonias were originally settled over 100 years ago, and the majority of the residents are low-income families of Mexician and Mexican-American descent.

There are hundreds of individuals that live in the colonias that will suffer from a lack of adequate water and sanitation facilities.

This situation is truly dangerous in terms of sanitation and health hazards from the lack of proper water and sewer systems.

Others have recognized the serious nature of this problem and funding for the colonias.

In fact, Mr. President, the conference report accompanying the Agriculture appropriations bill includes language asking the President of the United States to urge the appropriate agencies, to develop a comprehensive and coordinated strategy and plan of action for the delivery of assistance and programs to improve the adverse environmental and health problems of the colonias.

It seems to me that both the Congress and the President see the urgent needs of the colonias. But because of some technicalities that have arisen the colonias, at least 12 of the 14 colonias in my State of New Mexico, would not have qualified for this important funding without the technical change in this bill.

According to the Consolidated Farm and Rural Development Act, section 306C(a)(2), monies under this program will be distributed to a particular county only if that county's unemployment rate is not less than 125 percent of the national average and the per capita income of the residents is not more than 70 percent of the national average per capita income.

The majority of the colonias are located in Dona Ana County in my State of New Mexico.

Mr. President, presently the county of Dona Ana, does not qualify because its unemployment rate ranges around 110 percent of the national average. This is due, in part, because Dona Ana is a very large county and includes the thriving city of Las Cruces, New Mexico State University and the White Sands missile range which bring down the county's overall unemployment rate.

Because the county does not qualify, the colonias in that county would not have received funding under this initiative. The colonias and the surrounding rural areas in Dona Ana County paint a much gloomier picture than the city of Las Cruces. I believe the colonias are well above 125 percent of the national unemployment average.

Mr. President, the technical change in this bill will amend section 306C(a)(2) of the consolidated farm and rural development to include a rural area which was recognized as a colonia as of October 1, 1989.

Because of this technical change the colonias in Dona Ana County, as well as colonias in other counties, will have a chance to receive funding to address their water and wastewater needs.

## ENTERPRISE FOR THE AMERICAS INITIATIVE ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 4059, the Enterprise for the Americas Initiative Act of 1992; that the Senate proceed to its immediate consideration; that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table; and that any statements relating to this bill appear in the RECORD at the appropriate place.

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

So the bill (H.R. 4059) was deemed read the third time and passed.

## DESIGNATING CERTAIN LAND IN MISSOURI AS PART OF THE MARK TWAIN NATIONAL FOREST

Mr. FORD. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 6014, a bill to designate certain land in the State of Missouri as part of the Mark Twain Memorial Forest; that the Senate then proceed to its immediate consideration; that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table; and any statements appear in the RECORD at the appropriate place.

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

So, the bill (H.R. 6014) was deemed read the third time and passed.

## PRESCRIPTION DRUG USER FEE ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 6181, the FDA user fee bill, now at the desk; that the bill be read three times and passed; the motion to reconsider be laid upon the table; and any statements thereon appear in the RECORD at the appropriate place.

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

So, the bill (H.R. 6181) was deemed read the third time and passed.

Mr. DURENBERGER. Mr. President, I rise to express my personal concern over the manner in which this Congress has decided to introduce user fees on America's drug products for purposes of accelerating Food and Drug Administration approval of new drugs.

My concerns are twofold. They relate to specific problems relevant to the structure of the legislation itself. But I am also troubled by its implications for broader issues of health policy.

I am not opposed to user fees in principle. I believe that those who benefit from Government should share in its expense. Clearly, the FDA is a world leader in assuring the safety and effectiveness of our drug supply for the American people, so tax dollars should help support this agency.

And, unquestionably, the pharmaceutical industry is one of the most prosperous in the Nation. Drug companies benefit enormously from efficient FDA review. The industry recognizes that a faster drug review process will get their products to the market more quickly and generate revenues as a result. The New York Times on August 11, 1992, noted, "It costs an average of $10 million a month, per drug, for every additional month of delay that a product is held off the market."

However, I am skeptical that greater regulatory efficiencies will be accomplished under this bill. Indeed, the result may be just the opposite. This bill could institutionalize inefficiency and cause other unanticipated side effects.

My trepidation is based on the dramatic promises made by Dr. David Kessler, the present FDA Commissioner, to reduce drug application review times. At the one and only hearing on this subject, held by the Labor and Human Resources Committee on September 15, 1992, he said this would be accomplished by hiring 600 new staff with the revenue from new user fees.

I have heard many complaints from my constituents and others in the medical technology industry about the FDA's inexplicable delays, seemingly unrelated to issues of safety and effectiveness.

How do we know that these additional staff reviewers will not represent "business as usual"? How do we know that user fees will not just buy more people doing the status quo? What problems will the FDA experience in recruiting qualified, competent medical reviewers?

What we have here, Mr. President, is authorization for a tax on consumer drug purchases premised on a promise of an FDA commissioner.

Although we have been assured that Dr. Kessler's letter was approved by the Department of Health and Human Services and the Office of Management

and Budget, we have received no written assurances that the new employees necessary to achieve the goals set forth by Dr. Kessler will be exempt from personnel and consultant services restrictions. If they are not, this grand hiring scheme might fall through.

I am also concerned about the timing of this bill. Why now? The Secretary has asked the FDA to prepare a strategic plan which will establish goals for the agency into the 21st century. Before that project is completed, we are creating a system of user fees that builds upon the status quo. Wouldn't it be better to establish these fees after the strategic plan is complete, and the agency develops a more efficient system of assuring the safety and effectiveness of drugs?

User fees will not solve all of the problems that the FDA faces and that the FDA must solve. In my book, throwing money at a problem has never led to beneficial or long-lasting solutions to many challenges.

Moreover, Dr. Kessler's dramatic promises focus only on review times for drugs. Will this quest to reduce review times twofold and threefold divert resources from other activities of the agency? Will the pressure to meet the deadlines overemphasize drugs at the expense of other obligations and duties? Will anticipated efficiencies in one area of FDA responsibility lead to neglect of other critically important duties like medical device approvals?

Whenever we look at pharmaceutical issues in the narrow context of the FDA, I am troubled by larger health policy questions. Why is the organized pharmaceutical industry so enthusiastic about paying millions of dollars in fees to the Government? Are we just bolstering a revenue stream from an industry whose prices are soaring, according to the GAO?

Surely these fees either will be added to the price of approved drugs, or we will all pay more through expanded sales. Given the grave concerns on both sides of the aisle about cost containment, we should not impose these new costs on this health care industry without careful thought.

I recognize that many pharmaceuticals provide significant benefits to many patients. However, we remain poorly equipped, in both the public and private sector, to deal with issues of the cost-effectiveness of drugs. Pricing strategies of drug companies are not well-understood. Drug buyers, whether they are doctors or patients, are often not armed with comparative price and efficacy information.

I am not unmindful of the enormous investments that drug firms make in research and development. However, I am also troubled by the fact that American consumers pay for all the costs of the innovation. We are the only developed nation that does not control drug prices. Many foreign buyers pay far less than Americans do for identical drugs.

I realize that some Members are enthusiastic about this user fee proposal. I also recognize that organized representatives of the drug industry have been pushing hard for it.

I believe this bill requires a leap of faith. Has either the FDA or the drug industry earned such a leap? We shall see.

As a member of the Labor and Human Resources Committee, and as a Senator deeply committed to health care reform, I will watch the progress of this experiment with great care.

At this point I ask unanimous consent that a news report from the Washington Post of October 7, 1992, be printed in the RECORD.

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

[From the Washington Post, Oct. 7, 1992]

HOUSE GIVES VITAMIN MAKERS A BREAK

(By Carole Sugarman)

In an unusual case of bicameral bartering, the House yesterday passed legislation that would give vitamin supplement manufacturers a one-year break from conforming to new labeling requirements designed to curb misleading health claims.

The same House bill also gives the Food and Drug Administration authority to charge user fees to pharmaceutical companies applying for new drug applications.

The bill addressing two completely different issues is the result of a deal struck between Sen. Orrin G. Hatch (R-Utah)—whose state's vitamin manufacturers are a $700 million industry—and Rep. John D. Dingell (D-Mich.), Rep. Henry A. Waxman (D-Calif.) and Sen. Edward M. Kennedy (D-Mass.). Those Democrats have been pushing for fees from pharmaceutical companies, which will go toward improving FDA resources for expediting new drug applications.

Hatch said he would not oppose the Democratic wish to impose user fees so long as the one-year moratorium was granted to vitamin manufacturers, according to sources.

Yesterday, Hatch said he wanted the one-year period to develop "a more intelligent approach" to regulating vitamin supplements, and complained that the "FDA appears to be trying to impose severe prior restraints" on supplement manufacturers.

The bill would exempt makers of vitamin and mineral pills, herbs and similar "alternative-medicine" products from FDA regulations to be issued in November. The new set rules were drafted to cover food and supplement manufacturers who make claims that their products may reduce the risk of a disease.

Since 1938, the government has prohibited food or supplement manufacturers from making claims that their products reduce the risk of a disease. But in recent years, some food and supplement manufacturers have circumvented the law, and the federal government has done little to enforce it, critics say.

Under the 1990 Nutrition Labeling and Education Act (NLEA), manufacturers may only make health claims if the FDA determines they are supported by "significant agreement" within the scientific community. If a claim is not approved by the FDA, manufacturers may not use it.

The House bill passed yesterday still would allow supplement manufacturers to make health claims approved by the FDA, but would not specifically prohibit them from making unapproved claims.

Bruce Silverglade, director of legal affairs for the Center for Science in the Public Interest, a consumer advocacy group, said the bill passed yesterday "provides the supplement industry with a license to continue barraging the public with misleading and potentially dangerous health claims for products such as milk thistle extract promoted as providing protection from the ill effects of air pollution." The 1938 law still will apply to supplement manufacturers, Silverglade said, "but it's not much reassurance to the consumer, because [the law] hasn't been enforced."

The legislation comes in the midst of a highly charged debate between vitamin manufacturers—who mounted a public-information campaign suggesting that the FDA's new rules would amount to a ban on supplements—and the FDA, which has long opposed the use of supplementation for the general public. FDA officials said the NLEA is a labeling law that was not intended to prohibit vitamin sales.

FDA officials declined to comment on yesterday's House action pending the outcome of a companion bill slated to be introduced in the Senate this week.

Mr. KENNEDY. Mr. President, the Prescription Drug User Fee Act of 1992 offers a major opportunity to improve the drug review and approval process of the Food and Drug Administration. The idea of asking drug manufacturers to pay user fees to expedite the drug review and approval process has been considered for several years. But it acquired new urgency in 1991, when the Edwards Committee's report on FDA reform urged Congress and the private sector to rely on industry funding to supplement the annual Federal appropriation.

Unitil recently, there has been no agreement on fundamental issues such as the amount of the user fees, the base they would be assessed on, and the services to be carried out by the FDA. However, in recent months, significant progress has been made in consultations with Congress, consumers, industry and the administration.

The bill that Senator HATCH and I offer today has already been passed by the House. The legislation is the result of welcome bipartisan cooperation by Numbers of both the House and Senate. The statutory proposal has been carefully designed to ensure that the fees are reasonable, and that all funds collected go only for those activities directly related to the FDA drug review and approval process. All of us who have worked on this legislation are gratified by the strong support of prescription drug manufacturers for this approach.

The legislation establishes three kinds of user fees: First, drug manufacturers will pay a fee for each new drug application; in the first year, the fee will be $100,000, second, and it will rise to $233,000 by the fifth year; second, manufacturers will pay an annual fee on each establishment which produces

prescription drug products; in the first year the fee will be $60,000, and it will rise to $138,000 in the fifth year; third, manufacturers will pay an annual fee for each prescription drug product marketed; the fee will be $5,000 per product in the first year, and it rises to $14,000 in the fifth year.

The fee schedule was developed in cooperation with industry, and represents a consensus about how best to structure an orderly expansion of the FDA's current drug review and approval capabilities. Because the fees are raised by three different methods, no single user fee will be excessively large. Any of the three fees may be reduced or waived by the Secretary of Health and Human Services to protect small businesses, or to minimize economic barriers for the development of drugs that are important for public health.

It is estimated that in fiscal year 1993 the fees established in this legislation will raise $36 million. In fiscal year 1997, approximately $94 million will be raised, and the 5-year total will be an estimated $337 million. FDA currently expands approximately $120 million per year for drug application review. The user fees will therefore provide about a one-third increase in the FDA budget for this purpose. The annual Federal appropriations for FDA must keep pace with overall domestic spending increases or the user fees will not take effect. In other words, the fees must supplement, not replace, Federal funds.

The need for this legislation is obvious. The current Federal budget situation offers little prospect that adequate resources will be available to the FDA to do the job it should be doing in the years ahead. Without the additional funds that user fees will provide, the FDA faces the prospect of being unable to keep up with new scientific advances. Applications for clinical drug investigations have nearly doubled in the last decade. In the vital area of biotechnology, the number of applications has increased from 1 to 299.

While applications have risen sharply, FDA staff resources have declined. The mismatch between accelerating pharmaceutical research and declining FDA resources is severely delaying the health benefits of medical advances, and some remedy must be found. Without additional funds, we risk a serious bottleneck in the FDA approval process.

The legislation that Senator HATCH and I are putting forward today will raise over $300 million in the next 5 years, and provide resources to hire up to 600 new medical reviewers. In return, FDA Commissioner Kessler has developed a set of specific performance goals that will enable the agency to cut approval times dramatically—almost in half. The goal is to cut review times down to 6 months for applications for most breakthrough drugs, and 12 months for most standard applications. The Commissioner has also committed the agency to a timetable for eliminating current backlogs of applications. These actions will have a significant, long-term impact on health care in this country. Faster drug approval will save patients' lives, and benefit the industry too.

At the time, we must ensure that user fees are not a disincentive to the development of new drugs by small businesses, especially innovative biotechnology firms. The legislation contains reduced fees for small businesses, and allows a complete waiver of fees in special circumstances. We will continue to monitor this measure to see that users fees do not retard the development of promising therapies.

The bill establishes limited fees for over-the-counter drugs. These fees will provide an additional $300,000 per year. The over-the-counter drug industry has already expressed a willingness to explore the establishment of additional user fees, including fees on drug establishments and products.

The bill also instructs the Secretary of Health and Human Services to conduct a study of the advisability of user fees for veterinary drugs.

In a time of severe budgetary constraints, we have a unique opportunity to achieve a quantum jump in FDA's performance.

In addition, title II of the bill institutes a moratorium on the implementation of the Nutrition Labeling and Education Act of 1990 [NLEA] with respect to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances. The NLEA provides a framework for major improvements in the nutrition information provided on foods, and establishes guidelines for health claims that will be permitted on foods and dietary supplements. The new legislation requires the Secretary of Health and Human Services to develop new proposed regulations by June 15, 1993, applicable to dietary supplements and to issue final regulations by December 31, 1993. The moratorium will also postpone the implementation of changes in the method used by the Federal Government to determine recommended daily allowances of essential nutrients.

The purpose of the moratorium is to provide additional time for Congress, the Department of Health and Human Services, consumer groups, industry, and other affected parties to consider the public health issues associated with use of dietary supplements.

I urge my colleagues to vote to adopt this important measure.

TITLE I: PRESCRIPTION DRUG USER FEES

H.R. 6181 is similar to an earlier House-passed bill (H.R. 5952) on prescription drug user fees. Explanation of the legislative intent for parts of the two bills that are the same are contained in the committee report for H.R. 5952. Senator HATCH and I have agreed to the following statement of explanation as to the legislative intent of the sections of the bills that have been changed or would benefit from additional comment.

Section 735(1) excludes from the definition of "human drug application" those applications or licenses for the approval of the following products: Whole blood or a blood component for transfusion; a bovine blood product for topical application licensed before September 1, 1992; an allergenic extract product; an in vitro diagnostic biologic product licensed under section 351 of the Public Health Service Act; or a large volume parenteral drug product approved before September 1, 1992.

Sections 735(1) and 735(3) of the bill exempt both bovine blood products licensed before September 1, 1992 and large volume parenteral drug products [LVP's] approved before September 1, 1992 from the definition of human drug application and prescription drug product.

For the purposes of this bill, bovine blood products for topical application include thrombin products which are approved for use during surgery to reduce bleeding and speed blood clotting.

For the purposes of this bill, large volume parenterals are single-dose sterile fluids that are intended for parenteral or irrigation use in humans and packaged in containers containing 100 milliliters or more. Some examples of LVP's include caloric supplements, fluid and electrolyte replacements or replenishers, blood washing solutions and irrigating solutions. The prior approval process and regulatory status of previously approved LVP's is similar to generic drugs. Because generic drugs are excluded from user fees under the bill, previously approved LVP's will also be excluded from fee requirements.

For the purposes of this bill, renovation means remodeling or alternation, conversion or reconfiguration of a buildings' interior spaces, systems, and feature or exterior surfaces and openings to meet the space and housing requirements of client agencies.

In section 736(b)(2), provision is made for small businesses, that is those with less than 500 employees, to pay only 50 percent of the drug application fee if the company does not already have a prescription drug product on the market. The bill also allows manufacturers to defer payment of application fees until 1 year after the date of submission of the application to the FDA.

This deferral is designed to allow startup companies an additional period of time to raise the capital needed to successfully develop a product. The bill's sponsors believe that the 1-year deferral will be of particular assistance to small companies attempting to develop products in research intensive areas such as biotechnology.

During discussion of the legislation, concerns were raised about fees appli-

cable to applications which included multiple strengths or potencies of a drug. The bill's sponsors would like to clarify that for the purposes of this act, a human drug application which included several different strengths or potencies would be subject to a single application fee.

The bill's sponsors would also like to address concerns that have been raised regarding whether generic drugs would be covered under the act. The bill defines "prescription drug product" as a drug for which a human drug application has been approved. The definition of "human drug application" does not include generics approved under an abbreviated new drug application [ANDA] in section 505(j). The definition of prescription drug establishment is defined as a place where prescription drug products are made. Thus, by its terms the definition of "prescription drug establishment" excludes generics approved under an ANDA under 505(j). Similarly, a product fee only applies to each prescription drug product, as defined in the bill. As stated, the definition of "prescription drug product," which incorporates the definition of "human drug application," excludes generic drugs and all paper new drug applications, except for certain new indications or new chemical entities.

Section 736(d) directs the Secretary to grant a waiver or reduction of one or more fees in situations where the waiver is necessary to protect the public health or where the fee would pose a barrier to innovation. The bill's sponsors do not intend for the fees authorized under this act to serve as a disincentive to the research and development of important prescription drug products, nor should the fees impose an undue financial burden on any company.

The bill's sponsors intend the Secretary to construe broadly, on a case-by-case basis, the appropriateness of fee waivers or reductions. A key assessment in making such waiver decisions clearly should be the extent to which application, product or establishment fees may interfere with a company's ability to develop a specific innovative product. However, it is also expected that the Secretary will consider the financial burden imposed by fees on the ability of companies, especially small companies, to continue innovative research and development programs. In section 736(d)(2) the Secretary is granted broad authority to provide fee waivers for circumstances other than resource limitations in order to allow maximum flexibility to limit barriers to innovation.

Orphan drugs are often developed by small companies and usually have limited commercial potential because of small patient populations. The bill's sponsors are aware that companies may be discouraged from pursuing orphan drug research if any additional constraints are placed on the resources available for this purpose. Accordingly, except in the rare situation in which the commercial potential of a specific orphan drug product is clearly adequate to assure development of the product, the bill's sponsors assume that fees will be waived for orphan drugs.

The bill defines the costs of resources allocated for human drug application review, and describes the additional resources needed to ensure successful implementation of an enhanced prescription drug approval program.

The intent of the legislation is to provide for additional full-time equivalent [FTE] positions to be dedicated to the drug approval process. The bill clarifies that the full-time equivalent positions, including Senior Executive Service and Biomedical Research Service, are intended to be additive to existing personnel levels and should not be offset by FTE losses in other parts of the FDA, PHS or the Departments of Health and Human Services.

TITLE II: DIETARY SUPPLEMENTS

The purpose of title II of this legislation is to institute a moratorium, through December 31, 1993, on the implementation of the provisions of the Nutrition Labeling and Education Act of 1990 (Public Law 101-535; 104 Stat. 2353) [NLEA] with respect to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances.

Dietary supplements can play a beneficial role in nutrition. We encourage efforts to continue rigorous scientific research, conducted by qualified experts, into the function of dietary supplements.

This title will permit the Congress and the Food and Drug Administration [FDA] of the U.S. Department of Health and Human Services [HHS] to examine issues related to the regulation of dietary supplements and specifically the provisions of the NLEA as they relate to these products.

As both the statutory text and legislative record reveal, the NLEA primarily addresses food products. Because of the differences in the history of use and function of dietary supplements and conventional foods, it is appropriate for Congress to enact this moratorium so that the issue of how best to regulate dietary supplements may be carefully considered.

Specifically, this legislation creates a moratorium in the implementation of the NLEA with respect to dietary supplements. This legislation also requires the Secretary to repropose NLEA regulations applicable to dietary supplements no later than June 15, 1993. Final regulations will be issued by December 31, 1993.

The moratorium will provide time for the Congress, HHS, consumer groups, industry, and other affected parties to identify more fully and to consider the public health issues associated with use of dietary supplements, and to develop a comprehensive approach for reforming the regulation of dietary supplements.

The general policy goal is clear: The American public must be assured that the dietary supplements they choose to consume are safe, made to quality standards, bear informative labeling, and that health or disease-related claims are properly supported. Both the regulator—the FDA—and the regulated—including manufacturers, distributors, and suppliers of dietary supplements—have important responsibilities in meeting this goal. In attempting to improve the regulatory framework for these products, the moratorium will advance this goal.

The FDA has proposed that the existing U.S. recommended daily allowances [U.S. RDA's] be replaced as the food label standard for vitamins and minerals by a new concept, the reference daily intakes [RDI's]. The NLEA does not mandate changing the U.S. RDA and does not contain the RDI concept. This legislation enacts a moratorium delaying the implementation of the RDI proposal in order to allow additional time for obtaining a thorough assessment of the scientific rationale for any proposed changes from the existing U.S. RDA's.

While this moratorium is in effect, dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances not in the form of conventional food shall be subject to the provisions of the Federal Food, Drug, and Cosmetic Act [FFDC Act], as in effect on November 7, 1990. Under the terms of the moratorium, the labeling of dietary supplements may contain claims identified under clauses (vi) and (x) of section 3(b)(1)(A) of the NLEA for which the Secretary determines that a significant scientific agreement exists.

Two studies are called for by this act. The first will be conducted by the Comptroller General to determine how FDA utilizes resources to regulate potential health risk and risk from deception with respect to using dietary supplements. The second study requests the Office of Technology Assessment to examine how other industrialized countries regulate dietary supplements and the health effects of these regulatory schemes.

During the moratorium, it is expected that attention will be focused on the issue of what standards and procedures should be applied to dietary supplements, including standards for claims under section 403(r)(5)(D) of the FFDC Act. In order to take advantage of the new information and developments that may occur under the moratorium, it is possible that FDA may wish to propose new regulations, guidelines, and enforcement criteria affecting dietary supplements, or to repro-

pose rules under section (r)(5)(D) of the NLEA.

In the course of the moratorium, FDA's enforcement policies and practices with respect to dietary supplements will be examined. While it is clear that the existing legal mechanisms will continue to be in effect during the moratorium, one of the key questions to be considered next year is the proper role of the food additive provisions contained in section 409 of the FFDC Act in the regulation of dietary supplements and whether section 409 should be replaced by a new statutory standard for dietary supplements.

Mr. BINGAMAN. Mr. President, I rise in support of the Dietary Supplement Act of 1992, and I commend Senator HATCH for his leadership and hard work on this issue. Two weeks ago, the Senate overwhelmingly approved an amendment similar to the one before us today. Unfortunately, the amendment was dropped in conference, making today's action necessary.

The Dietary Supplement Act of 1992 accomplishes four key objectives. it would:

First, impose a 14-month moratorium on the Food and Drug Administration's proposed health claims labeling regulations for dietary supplements;

Second, direct the Commissioner to review the proposed dietary supplement regulations and re-issue proposed regulations by June 15, 1993;

Third, authorize three studies, by the Department of Health and Human Services, the General Accounting Office, and the Office of Technology Assessment, on the issue of dietary supplement regulation; and

Fourth, freeze for 1 year the promulgation of any regulation that requires the use of RDI's, or reference daily intakes, in labeling, as a replacement for RDAs, or recommended daily allowances, in labeling.

Mr. President, this measure does not impact in any way the FDA's existing authority to monitor the safety of dietary supplements, vitamins, and minerals. That authority—and duty—exists now, and it will continue to exist. This measure simply gives us time to develop a comprehensive, thoughtful, and fair solution to the question of dietary supplement regulation, which has confused the Federal Government and the American people for decades.

More important, this amendment gives us time to educate ourselves on the intent, scope, and effect of the proposed regulations. Based on the amount of anxiety caused by the proposed regulations and encouraged by a national antiregulation campaign, I believe we need the time this measure would give us. We need time to better educate the health conscience public on the intent and scope of any regulatory proposal. We need time to ensure that the regulations are fair to the manufacturers, wholesalers, and distributors of dietary supplements, many of whom own small businesses and fear for their livelihoods. We need time to ensure that this group of businessmen and businesswomen clearly and fully understand the scope of the regulations and their responsibilities when making health claims. And as I mentioned earlier, we need time to better develop and articulate the Federal Government's role vis-a-vis the manufacture, packaging, and sale of dietary supplements.

Mr. President, I did not reach the decision to advocate a delay lightly. In fact, since my election to the Senate, I have spent much more time and energy urging the administration to implement regulations than I have spent advocating delay. I am proud to have been a cosponsor and strong supporter of the Nutrition Labeling and Education Act. I worked for 6 years to get the National Nutrition Monitoring Act signed into law and implemented. I founded HealthNet New Mexico 7 years ago to try to help New Mexicans improve their cardiovascular and physical fitness, stop smoking, and eat healthful foods. This year, Senator COHEN and I introduced the Healthy Students-Healthy Schools Act, a bill to help states and localities establish comprehensive, high quality health education programs in all schools, from kindergarten through 12th grade.

I care about the health status of all Americans, Mr. President, and I firmly believe that each and every one of us has the right to know whether the health claims we read in magazines and see on store shelves are truthful and scientifically valid. Yet today, there are compelling reasons to delay implementation of the proposed rules:

First, the statutory classification of dietary supplements, for purposes of regulation, remains unclear. Should dietary supplements be treated as foods, drugs, or a new, third category? Should dietary supplement health claims be regulated in the same manner food product health claims are currently regulated? Or should we create a new system that would allow the FDA to issue a seal of disclaimer or approval with respect to dietary supplement health claims? These are questions that need to be thoughtfully resolved.

Second, the final report and recommendations of the commissioner's dietary supplements task force have not been made public, but should contain important, expert information on how best to proceed in this area. Adding to our basis of knowledge will be the newly commissioned reports by the DHHS, the GAO, and the OTA and Congressional oversight hearings, to be conducted in the 103d Congress.

Third, finally, as I mentioned earlier, there is a great need to educate the consuming public about the true intent, scope, and effect of the Nutrition Labeling and Education Act and any proposed regulations. This has not been done. Too many consumers believe that on November 9, 1992, the day after the regulations are scheduled to go into effect, that the vitamins, minerals, and other dietary supplements they use will be stripped from the shelves. They believe many of the vitamins they depend on will no longer be available without a prescription from a licensed medical doctor. Neither one of these scenarios is true. Vitamins, minerals, and other dietary supplements will continue to be available, without prescription. Only the labels—and unsubstantiated health claims—will change because the proposed regulations deal only with health *claims*. This needs to be made clear to the American public, and any lingering questions should be resolved when the proposed regulations are republished next summer.

I urge my colleagues to support the Dietary Supplement Act of 1992 and this amendment and to work with us on this issue when the 103d Congress convenes in January.

Mr. KENNEDY. Mr. President, I ask unanimous consent that a joint statement by myself and Senator HATCH be printed in the RECORD at this point.

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

JOINT STATEMENT OF SENATOR EDWARD M. KENNEDY AND SENATOR ORRIN HATCH

Mr. President, the Prescription Drug User Fee Act of 1992 represents a major opportunity to improve the drug review process of the Food and Drug Administration [FDA]. The idea of charging user fees to drug manufacturers to help expedite the drug review and approval process has been around for several years. But it acquired greater urgency in 1991, when the Edwards committee's report on FDA reform urged Congress and the private sector to seek industry funding to supplement the annual public appropriations.

Until recently, there has been no agreement on fundamental issues such as the nature of the user fees to be charged, and the type of services to be carried out by the FDA. However, over the last several weeks significant progress has been made in consultation between Congress, consumers, industry, and the administration.

This legislation is the result of tremendous bipartisan cooperation by Members of both bodies of Congress. The statutory framework has been carefully designed to ensure that the fees are reasonable, and that all monies collected go only for those activities directly related to the FDA drug review and approval process. All of us that have worked on this legislation have been very pleased by the enthusiastic support offered by prescription drug manufacturers.

The need for this legislation is obvious. The current Federal budget situation offers little prospect that ade-

quate resources will be available to the FDA to do the job it should be doing in the years ahead. Without the additional funds that user fees would provide, the FDA faces the prospect of being unable to keep up with new scientific advances. Applications for clinical drug investigations have nearly doubled in the last decade. In the vital area of biotechnology, the number of applications has increased from 1 to 299.

However, FDA staff resources have declined for most of that period. The mismatch between accelerating pharmaceutical research and declining FDA resources is severely delaying the health benefits of medical advances, and some remedy must be found.

Without additional funds, we risk a serious bottleneck in the FDA approval process. The legislation that Senator HATCH and I are putting forward today will raise over $300 million over 5 years and provide resources to hire up to 600 new medical reviewers. In return, FDA Commissioner Kessler has articulated a set of specific performance goals that will enable the agency to cut approval times dramatically—almost in half. The goal is to cut review times down to 6 months for applications for most breakthrough drugs, and 12 months for most standard applications. The Commissioner has also committed to a timetable for eliminating backlogs of overdue applications. These actions would have a significant, long-term impact on health care in this country.

Faster drug approval will save patients' lives, and benefit the industry too. At the same time, we must ensure that user fees does not become disincentives to the development of new drugs by small businesses, especially innovative biotechnology firms. The legislation contains reduced fees for small businesses, and allows a complete waiver of fees in special circumstances. We will continue to work to see that user fees do not retard the development of promising therapies.

The bill includes limited fees for over-the-counter [OTC] drugs that will provide approximately $300,000 per year. More importantly, the OTC industry has already expressed a willingness to explore additional user fees, including fees on drug establishments and products. The bill also instructs the Secretary of Health and Human Services to conduct a study of the advisability of user fees for the animal drug industry.

In a time of severe budgetary constraints we have a unique opportunity to improve FDA's performance. I urge my colleagues to vote to adopt this important measure.

TITLE I: PRESCRIPTION DRUG USER FEES

Senator HATCH and I have agreed to the following statement of explanation as to the legislative intent. The proposed amendments leave intact most of the language from the House bill, and the managers make reference to the legislative history of the House report for all issues not explicitly addressed by our comments:

Section 735(1) is amended to exclude from the definition of "human drug application" those applications or licenses for the approval of the following products: whole blood or a blood component for transfusion; a bovine blood product for topical application licenses before September 1, 1992; an allergenic extract product; an in vitro diagnostic biologic product licensed under section 351 of the Public Health Service Act; or a large volume parenteral drug product approved before September 1, 1992. Whole blood, allergenic extracts and in vitro diagnostic biologic products were unintentionally included in the definition of human drug application in the House bill. The Senate amendments rectify the omission in the House bill.

Sections 735(1) and 735(3) of the Senate amendments except both bovine blood products licensed before September 1, 1992 and large volume parenteral drug products [LVP's] approved before September 1, 1992 from the definition of human drug application and prescription drug product.

For the purposes of this bill, bovine blood products for topical application include thrombin products which are approved for use during surgery to reduce bleeding and speed blood clotting.

For the purposes of this bill, large volume parenterals are single-dose sterile fluids that are intended for parenteral or irrigation use in humans and packaged in containers containing 100 milliliters or more. Some examples of LVP's include caloric supplements, fluid and electrolyte replacements or replenishers, blood washing solutions and irrigating solutions. The prior approval process and regulatory status of previously approved LVP's is similar to generic drugs. Because generic drugs are excluded from user fees under the bill, previously approved LVP's will also be excluded from fee requirements.

For the purposes of this bill, "renovation" means remodeling or alteration, conversion or reconfiguration of a buildings' interior spaces, systems, and feature or exterior surfaces and openings to meet the space and housing requirements of client agencies.

The House passed bill allowed a small business with less than 500 employees to pay only 50 percent of the drug application fee if the company did not already have a prescription drug product on the market. In section 736(b)(2) the Senate amendments retain the 50-percent fee reduction for small business and add an additional benefit for small business. The amendments allow manufacturers to defer payment of application fees until 1 year after the date of submission of the application to the FDA.

This deferral is designed to allow start-up companies an additional period of time to raise the capital needed to successfully develop a product. The bill's sponsors believe that the 1-year deferral will be of particular assistance to small companies attempting to develop products in research intensive areas such as biotechnology.

During discussion of the legislation, concerns were raised about fees applicable to applications which included multiple strengths or potencies of a drug. The bill's sponsors would like to clarify that for the purposes of this act, a human drug application which included several different strengths or potencies would be subject to a single application fee.

The bill's sponsors would also like to address concerns that have been raised regarding whether generic drugs would be covered under the act. The bill defines "prescription drug product" as a drug for which a "human drug application" has been approved. The definition of "human drug application" does not include generics approved under an abbreviated new drug application [ANDA] in section 505(j). The definition of prescription drug establishment is defined as a place where "prescription drug products" are made. Thus, by its terms the definition of "prescription drug establishment" excludes generics approved under an ANDA under 505(j). Similarly, a product fee only applies to each "prescription drug product," as defined in the bill. As stated, the definition of "prescription drug product," which incorporates the definition of "human drug application," excludes generic drugs and all paper new drug applications, except for certain new indications or new chemical entities.

Section 736(d) directs the Secretary to grant a waiver or reduction of one or more fees in situations where the waiver is necessary to protect the public health or where the fee would pose a barrier to innovation. The bill's sponsors do not intend for the fees authorized under this act to serve as a disincentive to the research and development of important prescription drug products, nor should the fees impose an undue financial burden on any company.

The bill's sponsors intend the Secretary to construe broadly, on a case-by-case basis, the appropriateness of fee waivers or reductions. A key assessment in making such waiver decisions clearly should be the extent to which application, product or establishment fees may interfere with a company's ability to develop a specific innovative product. However, it is also expected that the Secretary will consider the financial burden imposed by fees on the ability of companies, especially small companies, to continue innovative research and development programs. In section 736(d)(2) the Secretary is granted broad authority to provide fee waivers for circumstances other than resource limitations in order to allow

maximum flexibility to limit barriers to innovation.

Orphan drugs are often developed by small companies and usually have limited commercial potential because of small patient populations. The bill's sponsors are aware that companies may be discouraged from pursuing orphan drug research if any additional constraints are placed on the resources available for this purpose. Accordingly, except in the rare situation in which the commercial potential of a specific orphan drug product is clearly adequate to assure development of the product, the bill's sponsors assume that fees will be waived for orphan drugs.

The bill defines the costs of resources allocated for human drug application review, and describes the additional resources needed to ensure successful implementation of an enhanced prescription drug approval program.

The intent of the legislation is to provide for additional full-time equivalent [FTE] positions to be dedicated to the drug approval process. The bill clarifies that the full-time equivalent positions, including Senior Executive Service and Biomedical Research Service, are intended to be additive to existing personnel levels and should not be offset by FTE losses in other parts of the FDA, PHS or the Departments of Health and Human Services.

TITLE II: DIETARY SUPPLEMENTS

The purpose of the Dietary Supplement Act of 1992 is to institute a moratorium, through December 31, 1993, on the implementation of the provisions of the Nutrition Labeling and Education Act of 1990 (Public Law 101-535; 104 Stat. 2353) [NLEA] with respect to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances.

Dietary supplements can play a beneficial role in nutrition. We encourage efforts to continue rigorous scientific research, conducted by qualified experts, into the function of dietary supplements.

The Dietary Supplement Act of 1992 will permit the Congress and the Food and Drug Administration [FDA] of the U.S. Department of Health and Human Services [HHS] to examine issues related to the regulation of dietary supplements and specifically the provisions of the NLEA as they relate to these products.

As both the statutory text and legislative record reveal, the NLEA primarily addresses food products. Because of the differences in the history of use and function of dietary supplements and conventional foods, it is appropriate for Congress to enact this moratorium so that the issue of how best to regulate dietary supplements may be carefully considered.

Specifically, this legislation creates a moratorium in the implementation of the NLEA with respect to dietary supplements. This legislation also requires the Secretary to repropose NLEA regulations applicable to dietary supplements no later than June 15, 1993. Final regulations will be issued by December 31, 1993.

The moratorium will provide time for the Congress, HHS, consumer groups, industry, and other affected parties to identify more fully and to consider the public health issues associated with use of dietary supplements, and to develop a comprehensive approach for reforming the regulation of dietary supplements.

Tne general policy goal is clear: The American public must be assured that the dietary supplements they choose to consume are safe, made to quality standards, bear informative labeling, and that health or disease-related claims are properly supported. Both the regulator—the FDA—and the regulated—including manufacturers, distributors, and suppliers of dietary supplements—have important responsibilities in meeting this goal. In attempting to improve the regulatory framework for these products, the moratorium will advance this goal.

The FDA has proposed that the existing U.S. recommended daily allowances [U.S. RDA's] be replaced as the food label standard for vitamins and minerals by a new concept, the reference daily intakes [RDI's]. The NLEA does not mandate changing the U.S. RDA and does not contain the RDI concept. This legislation enacts a moratorium delaying the implementation of the RDI proposal in order to allow additional time for obtaining a thorough assessment of the scientific rationale for any proposed changes from the existing U.S. RDA's.

While this moratorium is in effect, dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances not in the form of conventional food shall be subject to the provisions of the Federal Food, Drug, and Cosmetic Act [FFDC Act], as in effect on November 7, 1990. Under the terms of the moratorium, the labeling of dietary supplements may contain claims identified under clauses (vi) and (x) of section 3(b)(1)(A) of the NLEA for which the Secretary determines that a significant scientific agreement exists.

Two studies are called for by this act. The first will be conducted by the Comptroller General to determine how FDA utilizes resources to regulate potential health risk and risk from deception with respect to using dietary supplements. The second study requests the Office of Technology Assessment to examine how other industrialized countries regulate dietary supplements and the health effects of these regulatory schemes.

During the moratorium, it is expected that attention will be focused on the issue of what standards and procedures should be applied to dietary supplements, including standards for claims under section 403(r)(5)(D) of the FFDC act. In order to take advantage of the new information and developments that may occur under the moratorium, it is possible that FDA may wish to propose new regulations, guidelines, and enforcement criteria affecting dietary supplements, or to repropose rules under section (r)(5)(D) of the NLEA.

In the course of the moratorium, FDA's enforcement policies and practices with respect to dietary supplements will be examined. While it is clear that the existing legal mechanisms will continue to be in effect during the moratorium, one of the key questions to be considered next year is the proper role of the food additive provisions contained in section 409 of the FFDC act in the regulation of dietary supplements and whether section 409 should be replaced by a new statutory standard for dietary supplements.

## MAMMOGRAPHY QUALITY STANDARDS ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to consideration of H.R. 6182, the mammography standards bill, now at the desk; that the bill be deemed read three times and passed; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

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

So, the bill (H.R. 6182) was deemed read the third time and passed.

Mr. KENNEDY. The Mammography Quality Improvement Act of 1992 is an important part of our current initiatives in Congress on women's health. This bill is intended to establish uniform national standards to ensure the safety and accuracy of mammograms.

Breast cancer is the most common type of cancer in women. It is second only to lung cancer as the leading cause of cancer death in women age 15 to 54. A total of 181,000 new cases and 46,000 deaths are estimated in 1992. One in nine women will develop the disease at some point in their lives.

Mammography, when properly used, can detect breast cancer at an early stage when proper treatment has a high probability of cure. Mammography, itself, does not prevent or cure breast cancer. But its timely use is one of the most effective weapons we have against this deadly disease. Unfortunately, there is no guarantee that current procedures are safe and accurate.

Poor quality mammography poses a serious health threat to women. Mammograms are among the most difficult radiological examinations to perform and among the most difficult to read. If the image is poor or the interpretation

is inaccurate, an early cancer can easily be missed.

Delays in diagnosis inevitably lead to delays in treatment and unnecessary deaths or mastectomies. False positive mammograms can lead to unnecessary biopsies or other procedures.

Currently, there is no uniform mammography quality assurance system. This legislation will assure that women will be able to seek out facilities that have been inspected and certified to meet high standards, and that will provide greater assurance of quality care.

The pending legislation establishes quality assurance standards for all facilities providing mammography. Such facilities must use only radiological equipment designed specificially for mammography. They must use only qualified personnel to perform the radiological imaging, and use only qualified rediologists to interpret the results. They must establish a program for quality assurance and control.

In addition, all mammography facilities must receive certification by the Department of Health and Human Services that the facilities meet basic standards for equipment, personnel, and quality. The facilities must have an annual on-site inspection, and must be accredited as a condition of receiving such certification.

If a facility fails to obtain certification or is not in compliance with the quality standards established by the legislation, the Secretary may impose sanctions in lieu of revoking, suspending or limiting a certificate. The first priority of the bill is to restore a mammography facility to compliance through a plan for corrective action which is developed by the Secretary.

When used properly mammography can be a life-saving procedure, and we must do all we can to assure that it is used effectively. This legislation is a major advance in assuring that women will receive quality mammography service.

I commend Senator ADAMS and the other Members of the Senate who have worked closely with us to develop this bipartisan measure, and I urge the Senate to appove it.

I ask unanimous consent that a summary of the bill be printed in the RECORD following my remarks.

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

BILL SUMMARY—MAMMOGRAPHY QUALITY STANDARDS ACT OF 1992

The bill establishes national, uniform quality standards for mammography. All facilities providing mammography will be required to be certified by the Secretary of Health and Human Services as meeting quality standards for mammography established by the Secretary in the following areas: equipment, personnel, and quality assurance. Certification is for a three-year period and is renewable. Provisional certificates may be issued for new facilities and units. Provisional certificates are valid for six months, and may be extended only for 90 days, and then only in highly unusual situations.

The bill allows and encourages states to carry out the certification program requirements and to implement standards no less stringent than those of the national program.

The bill requires that facilities use only radiological equipment designed specifically for mammography.

The bill requires that facilities use only qualified radiological technologists to perform mammography. These individuals must meet state licensing requirements or be certified by the appropriate professional organizations. They must also meet ongoing training and education requirements.

The bill requires that facilities use only qualified physicians to interpret the results of the mammogram. These individuals must be either certified by an approved professional board or program to interpret mammography. They must also meet training and continuing medical education requirements.

The bill requires that all facilities establish a quality assurance and control program to ensure the reliability, clarity, and accurate interpretation of mammograms. In order to be certified by the Secretary, all facilities must undergo an on-site physics consultation and evaluation (i.e. survey) performed by a qualified medical physicist and submit the results of the survey to the accreditation body.

The bill requires that all facilities be inspected annually by qualified inspectors. The Secretary or State agency acting on behalf of the Secretary will conduct inspections of the beam quality, average glandular dose, phantom image quality and other features to ensure the facility is in compliance with the quality standards required in the bill.

The bill requires that facilities be accredited by an accrediting body approved by the Secretary. Approved accreditation bodies will provide comprehensive peer evaluation and oversight of all components of the mammography facility, including equipment and technical considerations, quality assurance and control programs, and the evaluation of the clinical image quality.

The bill requires that the Secretary establish sanctions. The Secretary may impose sanctions on facilities that do not comply with the certification requirements, including directed plans of correction, civil money penalties, and the cost for on-site monitoring. The Secretary may also suspend, revoke, or limit a certificate if the facility misrepresents itself or fails to comply with intermediate sanctions. The Secretary may shut down facilities that are a significant hazard to the public health.

The bill provides adequate funding to ensure that all facilities can be certified and inspected through the collection of fees to cover such costs, while research grants will be provided such funds as necessary through appropriations.

Mr. ADAMS. Mr. President, I rise today in support of H.R. 6182, the Mammography Quality Standards Act, which will establish national quality standards for mammography. This bill is long overdue. Most of us believe—or would like to believe—that we are getting the highest quality health care possible when we receive medical tests. Where mammography screening is concerned, this is too often not the case.

There is absolutely no guarantee that the mammogram a woman receives today is safe and accurate, even when her doctor recommends the facility. Nor is there a guarantee that the mammogram a woman receives is of the highest quality possible. There are no uniform quality standards for mammography that apply to all 11,000 mammography facilities in the United States. What we have is a disjointed patchwork of Federal, State, and private voluntary standards. And these overlapping and conflicting regulations are riddled with holes.

Congress is no stranger to this issue. We tried to establish quality standards for mammography under the Medicare Program as part of the catastrophic health coverage bill in 1988. When that bill was repealed, Congress passed a separate provision in 1990 to cover the cost of breast cancer screening of women eligible for Medicare, and require again that mammography facilities meet key quality standards as a condition for reimbursement.

But 2 years later, we still do not have a final regulation implementing these standards. Under an interim rule, facilities are required only to self-certify, inspections have yet to be carried out, and there is no requirement that inspections—when they are done—will be performed by qualified personnel.

Even now less than half of the facilities in the country are certified under the Medicare Program. Facilities do not have to comply because the program is entirely voluntary.

At its best the Medicare Program won't work for all women—it doesn't provide protection for the more than 30 million women who the NCI recommends get annual or biannual screening but who under the age of 65 are not eligible for Medicare.

And what happens under Medicare if a facility provides substandard mammography? Very little. It would lose Federal reimbursement, but would not be prohibited from providing a mammogram to any woman walking in the door.

A few States have tried to fill the gap. States like Michigan, Rhode Island, Maryland, Indiana. But 80 percent of the States have no standards. And even the best of State programs do not evaluate clinical images—the very key to high quality mammography.

Probably the best hope for high quality mammography is the private accreditation program established by the American College of Radiology. The ACR has done a tremendous job. But again, the program is entirely voluntary. And only 40 percent of all facilities are accredited. The ACR program is a professional organization and lacks any enforcement power. It has no way to ensure continued compliance once the facility is accredited. Nor does it have any authority to shut down a substandard facility.

What we have is a regulatory system in disarray in the middle of a breast cancer epidemic.

Breast cancer is the single most common form of cancer in women, and a major cause of death second only to lung cancer. This year alone 181,000 women will be diagnosed with the disease. And over 46,000 women will die.

To defeat lung cancer we tell women to stop smoking. To detect breast cancer early, we tell women to get a mammogram—because we know that early detection of breast cancer through mammography can reduce mortality from breast cancer by 30 percent.

But the truth is we can recommend that a woman get a mammogram, but we can't guarantee that it will be safe or accurate.

During subcommittee hearings we learned all too well the consequences of poor quality mammography—women suffered needlessly and in some cases lost their life.

Many of you will remember Mary Stupp. She testified here last October. She told us how she had two mammograms over a 3-year period and that her doctors missed her cancer despite her repeated efforts to get them to look again because she felt something was wrong. By the time the doctors diagnosed Mary with breast cancer, the cancer had spread to her liver. Her doctors told her she had a few months to live, but that if they had read the mammogram right the first time she would have had a good prognosis.

Well, Mary died this summer. During the hearing she asked that we pass this bill so that other women would not have to die needlessly. And that's what I hope we'll do.

H.R. 6182 will establish strong uniform national standards for quality mammography. The bill will require that all facilities: use only equipment designed specifically for mammography; establish an ongoing program for quality assurance and control; use only qualified personnel to perform the mammogram; use only qualified physicians to interpret the result of the mammogram and be certified every 3 years and be inspected every year.

Facilities not meeting these standards will face civil sanctions for failure to comply.

The bottom line is that the burden for getting the highest quality mammogram should not have to fall to women. It should be a guarantee. And this bill does that.

At our hearing we received many helpful suggestions and this legislation incorporates those recommendations and others by my colleagues, particularly Senator HATCH, on the committee.

The amendment: First, clarifies the role of the Federal Government, the States, and private accreditation and provides for a stronger State role; second, builds more directly on the private accreditation system that provides essential professional review of clinical images; third, establishes a new authority for getting the program up and running and makes clear that facilities will be responsible for sharing inspection costs; fourth, eliminates unnecessary bureaucracy and reporting requirements; and fifth, establishes a separate authority for States that wish to run the program themselves.

Other technical changes were made as well. These changes in no way compromise the integrity of the bill. H.R. 6182 sets out to establish tough national quality standards for mammography and it does that.

Several concerns have been raised about the impact of the requirements of the bill on the cost of mammography and access to mammography facilities in rural and underserved areas. I'd like to take a moment to put those concerns to rest. The available data do not support the argument that either cost or access to mammography services in rural or underserved areas will be adversely affected by the requirements of this bill.

The GAO and witnesses from the State of Michigan—which has already enacted a similar program—testified before the Labor Committee that the standards established by S. 1777 would not increase the cost of mammography. Other studies show that the average cost of providing quality mammography is about $3 per mammogram.

Second, no data indicate that there is an access problem for women in rural or underserved areas. The greatest barrier to quality mammography is reimbursement. The majority of private plans do not pay for the cost of breast cancer screening. The National Cancer Institute has in fact, identified an oversupply of mammography equipment, and the American College of Radiology has identified only one community in the United States with fewer than 25,000 people that does not have an ACR accredited facility.

We must consider the cost of not providing high quality mammography. The Secretary of the Michigan State Department of Public Health testified that the State program costs about $240,000 per year to run—approximately the same amount paid out for an average malpractice claim involving women with breast cancer. Malpractice claims in this area are the most expensive and the second most common area of malpractice claims.

Early detection of breast cancer is the only way we successfully fight breast cancer. A good mammogram is key to that success. But without quality standards for mammography, a woman has no guarantee that she will receive a safe and accurate mammogram. This bill will provide that guarantee.

I would like to point out that the bill has the strong endorsement and support of the American Cancer Society, the National Breast Cancer Coalition, which represents 127 breast cancer organizations, the American College of Radiology, the Susan G. Komen Foundation, the American College of Obstetricians and Gynecologists, the Association of State and Territorial Health Officials, and the Conference of Radiation Control Program Directors.

I hope we can make our vote unanimous and tell women in this country, that no matter where they get a mammogram, in whatever facility or State, that they will receive the same high-quality care.

I urge you to vote yes on this bill.

A SPECIAL NOTE OF THANKS

Mr. ADAMS. Mr. President, I'd like to take a minute now before we vote to thank the individuals and groups who have worked tirelessly on behalf of this legislation. About 3 years ago, my administrative assistant, Ellen Globokar, came to me after seeing a very shocking story on NBC Nightly News about the poor quality of mammography some women were receiving. We had already seen the horrible tragedy resulting from poor quality Pap smears, and we decided right then, to get to the bottom of this problem and see if something needed to be done.

Robyn Lipner, my chief health policy staff member, has been spearheading the effort for me ever since. Her tireless efforts on behalf of women's health issues are well known, and her work on this bill, the Mammography Quality Standards Act, has been outstanding. Not only do I, but the women in America, owe her a debt of gratitude for her dedication over the last 3 years to improving women's health and getting tough Federal quality standards for mammography adopted.

I'd also like to give a special thanks to Lucia Giudice, a health fellow in my office, for her excellent work and endless hours of preparation on this bill. I'd also like to thank Van Dunn, David Nexon, Phyllis Albritton, Kevin Quinn, Ann LaBelle, Mike Nelson, Donald Shriber, Mike Hash, and Ruth Katz for their excellent staff work on this bill. And finally, I'd like to thank the organizations who have supported my efforts and led the fight to pass this bill, they are: The American Cancer Society, the Susan G. Komen Foundation, the Breast Cancer Coalition, the American College of Radiology, the American College of Obstetricians and Gynecologists, the Association of State and Territorial Health Officers, and the Conference of Radiation Control Program Directors.

And finally, I'd like to dedicate this bill to two very special people, Mary Stupp who passed away this summer, and Marie Ann Domsalla, who has shown such courage and determination in her fight against breast cancer. Thank you all.

Mr. FORD. Mr. President, I rise today in support of this bill, H.R. 6182 that is so vitally important to the women of this Nation. Breast cancer is

a most horrible disease. It strikes all generations and is unrelenting in the attack on its helpless victims. If there is anything that can be done to stop it, we must pursue that effort with all the resources that we possess.

Mr. President, there is something that we can do. A properly performed mammography can help catch this dreaded disease in its early stages, when chances are highest for a full recovery. It is not perfect, it is not 100 percent effective, but it is a start. However, too many women go through the hassles of having a mammogram, only to have it improperly read or improperly taken. Many women do what their doctors, health providers, and friends say they should in getting this service performed, only to leave with a false sense of security.

There must be nationwide standards set regarding this oftentimes life or death diagnosis. This bill will do that. The regulation of mammography services is the least that we, as caring human beings, can do. In my home State of Kentucky, I am proud to say that we are on the forefront in mammography services. All States and all women should be so lucky. But it is not luck. It is the following through on a commitment to the women of this great Nation. Establishing standards and bringing regulation to mammography services and radiological equipment is not the solution, but it is a positive first step in the fight against breast cancer, and I say again, the least that can be done. It is with that sentiment that I ask colleagues to join me in my support for this most meaningful legislation.

Ms. MIKULSKI. Mr. President, I am delighted to be an original cosponsor of the Senate companion to the Mammography Quality Assurance Act of 1992. This bill will assure women that no matter which office they walk into to get a mammogram, it will be done right.

The breast cancer rate in the United States has increased dramatically. Today, 1 in 9 women will develop breast cancer in her lifetime, up from only 1 in 20 in 1961. The death rate from breast cancer is up 24 percent from 1979 to 1986. Researchers presently have no explanation for these dramatic increases. While there still is no 100 percent cure for breast cancer, we do know how to treat the disease at earlier stages to save lives.

Women in America are getting the message that we need to have regular mammograms to protect ourselves from breast cancer. We also have to make sure that the facilities we use to get mammograms are fit for duty. We have to make sure that the results of all mammograms will be accurate and consistent.

Mammograms can detect breast cancer early so that women can get the treatments they need to survive this disease. But a mammogram is among the most difficult radiographic images to read. If it is done wrong, women suffer from delayed treatment which can have drastic consequences for them, including death or avoidable deformity.

Currently, there are no Federal standards for all mammography clinics. Only 50 percent of clinics choose to participate in voluntary quality assurance programs established by the American College of Radiology. Almost a third of those applying fail to meet the standards.

Forty States have passed laws relating to mammography. But only 10 States, including Maryland, have passed laws that make sure mammograms are safe and accurate. But why should women in other States go without those basic protections? Why should they suffer and even die because the equipment or personnel that are used for mammograms are not adequate or reliable?

These gaps are unacceptable. This bill will fill the gaps. I urge my colleagues to vote for this bill and work with Senator ADAMS, Senator DURENBERGER, and me to make sure our technology, our testing, our techniques, and our technicians are fit for duty.

Mr. JOHNSTON. Mr. President, I would like to take the opportunity to express my support for this important women's legislation. This year, breast cancer will take the lives of approximately 44,500 women and occur in approximately 175,000 more women. It is the second leading cause of death of American women after lung cancer. It will invade 1 in 8 women during their lifetime. Experts say the value of early detection is that it could save the lives of 30 percent of women who might otherwise die of the disease.

Clearly, mammography is an extremely sensitive radiologic process that, if carried out with inaccurate equipment and poorly trained technicians, can provide inaccurate results. Women today need to have the assurance that mammograms they receive are safe and accurate. Our current system is a patchwork of Federal, State and private voluntary standards for mammography quality assurance and there is a dire need for consistency at all levels of care.

The proposed legislation is important to make certain that women who undergo mammograms get a competent, thorough procedure. There is no question that women have died who have undergone mammograms in which cancer has not been detected. Legislation like this legislation will save thousands of lives and is long overdue. I urge the Senate to pass it.

Mr. DODD. Mr. President, I rise today in support of H.R. 6182, the Mammography Quality Standards Act. Every woman in this country lives with the fear that someday she will develop breast cancer. To date, the best method of treatment is early intervention. In fact, if detected at an early stage, breast cancer is 95 percent to almost 100 percent curable. If not, it can be deadly.

Unfortunately, there is no guarantee to women today that the mammography services they receive are reliable. Presently, the only accreditation system in this country is voluntary. There is no enforcement to encourage facilities to meet quality standards. Consequently, problems with misreading images or faulty interpretation can lead to serious medical conditions that easily could have been prevented with proper diagnosis.

The current lack of Federal regulations and patchwork of State and voluntary standards threatens the quality of mammography services, and ultimately the lives of millions of women. Women seeking mammograms must be assured that they are receiving the highest quality of services. The Mammography Quality Standards Act will do just that. It requires that all mammography facilities be accredited to ensure the highest quality mammography and establishes an effective system of checks and balances to maintain those standards.

H.R. 6182 comes at a critical time. Breast cancer is the leading cause of death among women 35 to 55 years old. In the next few years, we will see this age group grow, so it is imperative that we take the necessary precautions now to eradicate breast cancer.

I am pleased to see the passage of the Mammography Quality Standards Act and commend my colleague, Senator ADAMS, for bringing this legislation before the Senate.

Mr. HATCH. Mr. President, I am pleased to submit a substitute amendment to H.R. 5938, the Mammography Quality Improvement Act of 1992. This legislation will provide uniform and required standards across the Nation for the performance of this valuable test for breast cancer. Because mammography, when properly performed, can detect cancer at a very early point in the disease, cure or improved survival are more likely. For this reason, it is important to bring the benefits of quality mammography to our citizens.

This bill addresses the need to ensure that mammographic procedures are performed properly and interpreted by properly trained physicians. This should assure women that they are receiving screening and diagnostic mammography services that are accurate and consistent with good radiologic practice. Such an approach makes the potential benefits of good practice available to all.

Senator ADAMS has focused our attention on this important issue and has engaged with us in the lengthy task of developing appropriate legislation. I want to commend him for these efforts. I believe we have arrived at legislation

that addresses the need for quality performance of this valuable and essential test.

Initially, we were concerend that the transition from the existing voluntary program to a mandatory program might require some special considerations in order to avoid unintended consequences. Rural and inner-city facilities were the subjects of our concern. We sought to ensure that the legislation was supportive of improved care, rather than punitive in nature, in order to ensure the availability of quality care to the vulnerable populations served by these facilities. In short, we did not want mammographic facilities in rural and inner-city areas to be inadvertently forced out of existence by this bill.

The aim of this legislation is to raise the quality of mammography, both in performance and interpretation, across the Nation. Although adverse action against facilities may be necessary on occasion, it is not the primary focus of this bill. Rather, improvement of performance is the objective.

A category of provisional certification was provided so that additional time would be available for facilities to meet the important standards of this program. This certification is to be used generously for facilities seeking self-improvement, but is not intended to be provided indefinitely, or to those who do not seek to comply. Accordingly, it may be provided and renewed once only, and then only for a very limited time.

Local adherence to national standards may well be accomplished through the involvement of State governments. This legislation provides such an opportunity. For those States that do not choose such a role, the Secretary of the Department of Health and Human Services will ensure that the mammography available in those States will be of acceptable quality.

Sanctions are provided in this legislation to ensure that misrepresentation, falsification of information provided to the program, or provision of care in violation of the program will not be tolerated.

It is also my hope that the Department of Veterans Affairs will adopt these standards to provide uniform protection to American women. I do not believe we should have a double standard. America's women veterans should be accorded the same assurances that the quality of this key diagnostic test.

Again, I am pleased that we were able to work out this legislation and I commend the Senator from Washington for his diligence in pursuing passage of this bill. We made several key changes that I believe will make this an even more effective piece of legislation. I am pleased to support it.

Mr. DURENBERGER. Mr. President, I would like to say how pleased I am as an original cosponsor of the Mammography Quality Standards Act that the Senate has passed this important legislation. It will go a long way toward assuring women that they are receiving quality mammography.

Regular mammography screening is the most effective way we have to reduce the number of women who die from breast cancer. Mammography can spot cancerous lesions the size of a speck of dust, allowing definitive diagnosis before the cancer grows. According to Dr. Bill Roper, director of the Centers for Disease Control, "Controlled studies have shown that a one-third reduction in mortality related to breast cancer is possible, but that is possible only if quality services are given."

And that's the reason this bill was introduced: to ensure that mammography done to find breast cancer is *quality* mammography. Mammography is difficult to do—much harder, for example, than x raying a solid structure such as a bone. The equipment must be carefully calibrated, the patient properly positioned and the images reviewed by physicians particularly skilled in interpretation.

There are now over 10,000 mammography facilities, ranging from teaching hospitals to doctors' offices and mobile clinics. Many of these participate in a voluntary accreditation program run by the American College of Radiology, and the college is to be commended for its leadership in this area. But it is troubling that 30 percent of facilities fail their first attempt at accreditation, especially since it is the better facilities who would want to be accredited.

This legislation builds on the college's work and sets up a nationwide system of mandatory certification that will replace the patchwork of mostly voluntary standards we now have. Starting in October 1994, the Department of Health and Human Services or particular States—if a State chooses to do so—will certify that facilities meet national quality standards.

One requirement for certification is accreditation of the facility by a State agency or a nonprofit organization such as the American College of Radiology; the accreditation process will involve randomized review of how well mammograms are taken and interpreted. Women today have no assurance when they walk into a mammogram facility that outside organizations have reviewed the quality of the facility's work, but when this legislation takes effect they will.

While I have been a strong supporter of quality mammography, I have been concerned that we not set up an unnecessarily bureaucratic regulatory regime. There is always a balance to be struck between regulation and overregulation, and I believe this legislation strikes that balance much better now than it did a year ago. I also am pleased that facilities have 2 years to prepare before this legislation takes effect and that several provisions have been included that give facilities flexibility in meeting the standards.

I commend Senator ADAMS as well as Senator HATCH, the ranking minority member of the Labor Committee, for the improvements in the bill.

Mr. President, throughout the health care system we need to be more concerned with quality and more concerned with outcomes. This legislation will improve the quality of mammography across the Nation and reduce the number of people who die unnecessarily from a disease that could have been treated—and that's the best outcome of all.

Mr. RIEGLE. Mr. President, I rise today in support of the Breast Cancer Screening Safety Act, S. 1777. The mammography screening test is an excellent tool for early detection of breast cancer. Survival rates for women with breast cancer increase dramatically with early detection. But without proper maintenance of the mammography equipment, trained technicians and professional interpretation of the mammogram, the test is of compromised value.

The Breast Cancer Screening Safety Act will create national standards that will assure high quality mammography screening tests. This legislation will provide States the resources to develop and administer quality assurance programs. I am especially pleased that Senator ADAMS has added provisions to this legislation to provide states, like Michigan, with the adequate financial and technical resources to meet these new standards. This was done, in part, to address the concerns constituents from my home state of Michigan had expressed.

Mr. President, the woman of Michigan are fortunate to live in a State that has been a leader in ensuring high quality mammography screening. Michigan has one of the highest professional standards for mammography equipment, technicians, and the interpretation of mammography screens in the Nation. More importantly, Michigan has taken steps, by committing the resources and the staff necessary to periodically inspect all the Michigan facilities, to endorse these high standards. It is time that national standards be adopted and enforced so women across this Nation can be assured of receiving as high a quality mammogram as the women of Michigan enjoy.

Mr. President, I would also like to praise the work of Michigan State Representative Maxine Berman and the Michigan Department of Public Health for leading the way in quality assurance for mammography screening tests. Representative Berman early on recognized the need to take legislative action to ensure the safety and accuracy of mammography screenings. She

has testified in support of the bill. Her pioneering efforts at the State level, in close cooperation with the Michigan Department of Public Health, has brought this important public health concern to national focus. I also consulted with several health officials in Michigan's Department of Public Health, who have taken a lead on assuring mammography exams, and they too enthusiastically support the Breast Cancer Screening Safety Act.

I urge my colleagues to support passage of the Breast Cancer Screening Safety Act so that women across the country will be assured of high quality mammography screening exams. I also commend the efforts of Senator ADAMS in pushing forward this important legislation.

Mr. D'AMATO. Mr. President, I rise today to support the passage of S. 1777, the Breast Cancer Screening Safety Act of 1991. This bill addresses the urgent need for expanded access to quality mammography screening for all American women.

Expanding access to mammography screening and ensuring that such screenings meet the highest standards of quality is vital to reducing the unacceptably high death rate associated with breast cancer in this country. It is estimated that in 1992, 180,000 women will be diagnosed with breast cancer, and 46,000 women will die from the disease. Breast cancer is the leading cause of cancer death among women ages 35–52 in the United States.

Mr. President, I and many of my colleagues have worked hard this year in a bipartisan effort to provide sufficient funding to speed research on effective treatments for breast cancer. I and several of my colleagues have also successfully fought for increased funding for the Centers for Disease Control's prevention programs for breast and cervical cancers. Increased research funding in combination with increased prevention funding can make a real difference in fighting the war against breast cancer.

Next to a cure, at this time, our best defense against this horrible disease is early detection and treatment. Such early detection, through regular mammography screening, can, according to the Center for Disease Control, reduce breast cancer mortality by 30 to 40 percent for women aged 50 and older.

Unfortunately, far too few American women receive early cancer detection tests on a regular basis. In 1987, only 25 percent of women over age 50 reported having a mammogram within the preceding 2 years. We need to encourage and facilitate increased use of these tests by American women.

S. 1777 establishes badly needed national quality standards for mammography to assure that every mammogram a woman receives is safe and accurate. The need to establish national standards was underscored by the findings of a recent General Accounting Office report which found that existing professional standards are not uniformly followed at many screening facilities. The same study found a need for strong Federal standards to assure the quality of mammography screening, and sufficient legal mechanisms to enforce them. S. 1777 addresses this need by requiring the Secretary of Health and Human Services to develop national quality standards in the areas of equipment, personnel, oversight, quality control, and enforcement. I commend my colleague from Washington, Senator ADAMS, for introducing and steering this bill through the legislative process. I am convinced that bill, by improving the quality of mammography screening, will surely save numerous lives.

Mr. President, we know that one in every nine American women will develop breast cancer at some point in her life. We need to guarantee these women access to the best preventive health care available. S. 1777 will help us do just that. I encourage my colleagues to join me in voting for this bill.

Mr. GRASSLEY. Mr. President, I am proud to be a cosponsor of the Mammography Quality Standards Act. It is fitting that the Senate will pass this legislation on the eve of Breast Cancer Awareness month.

Over the last 20 years, the risk of developing breast cancer has increased dramatically. In 1990, 1 woman in 10 could expect to develop breast cancer in her lifetime. This year, a woman's risk of developing breast cancer has increased to one in nine. This means that there will be 175,000 newly diagnosed cases of breast cancer this year alone.

Fortunately, we have determined that early detection of breast cancer can dramatically increase a woman's chance of defeating breast cancer. It is, therefore, vital that women are aware of the prevalence of the disease and their vulnerability to developing it. I am painfully aware of the need to increase public awareness about breast cancer as a result of my wife, Barbara's, personal victory over breast cancer several years ago. We believe that early detection through a routine mammogram saved Barbara's life and is the key to saving the lives of other women who develop the disease.

Although public awareness is important, it is also important that women are screened routinely for breast cancer. The goal of a mammogram is to produce a high quality image, which can be accurately interpreted to determine the presence of a cancerous lesion. This is a highly complex process which requires great precision. In order to obtain a good quality mammogram, obtained with a low radiation dose to the patient, a number of quality standards must be adhered to. Such quality standards include using dedicated equipment and employing qualified personnel.

A recent report by the General Accounting Office found that most of the features considered necessary for guaranteeing quality screening contribute significantly to the goal of obtaining good image quality with minimal risk to the patient. Because a mammogram is among the radiographic images most difficult to read, it must have optimal clarity. If image quality is poor or the interpretation is faulty, the interpreter may miss cancerous lesions. And on the other hand, a poor image or interpretation can lead to unnecessary testing and biopsies if normal tissue is misread as abnormal.

Surprisingly, there are no national, uniform, quality standards for mammography. Only a few States have enacted legislation establishing quality standards, and the only Federal standards applies to the Medicare Program. The only other standards that exist are voluntary standards developed by the American College of Radiology.

The Mammography Quality Standards Act would change this. The act directs the Secretary of Health and Human Services to develop standards which would apply to the equipment used in mammography and the personnel involved in the process. Facilities offering mammograms would have to apply for certification and would be inspected on an annual basis. The standards established by this bill will be an important step in assuring a good mammogram, and successfully contribute to future treatment.

Although we have made significant steps in detecting this disease and treating it, we still do not know what factors place a woman at risk. It is worrisome that the risk of developing breast cancer continues to grow. We need to continue to focus on research efforts and promoting public awareness. It is my hope that one day our daughters and granddaughters will not have to face the risk of this disease.

Mr. McCAIN. Mr. President, I am pleased to join my colleague from Washington, Senator ADAMS, in proposing this amendment to establish standards for the performance of mammography services.

Mr. President, breast cancer has become the most common form of cancer for women in our society today. We have taken steps this year to increase the amount of money being spent on breast cancer research. But, until we have more knowledge about what causes breast cancer and whether it can be prevented, the best weapons we have are education, early detection and aggressive treatment.

One of the critical tools in the arsenal of early detection is regular screening mammograms. While we know that good, accurate mammograms have an 85- to 95-percent success rate as a tool in early detection, there is strong con-

cern about the safety and accuracy of mammograms.

The problems uncovered with mammograms have been very serious. And, the effects of a faulty mammogram or interpretation can be catastrophic. For example, if the mammogram's image is faulty, a technician can miss cancerous lesions, thus resulting in delayed treatment and possibly an unwarranted mastectomy or death.

There are currently no minimum Federal, and few State, standards to assure the quality and accuracy of mammography. In fact, only 13 States have enacted legislation to establish quality assurance standards for mammography.

The amendment we are proposing today is virtually identical to legislation just reported from the Health and Human Resources Committee.

It has 10 major components.

First, it would establish national, uniform quality standards for mammography.

Second, it would require that facilities use only radiological equipment designed specifically for mammography.

Third, it would require that facilities employ certified radiologists to perform mammography.

Fourth, it would require that all facilities establish a quality assurance and control program to ensure the reliability, clarity, and accurate interpretation of mammography.

Fifth, it would require that all facilities use only qualified physicians to interpret the results of the mammogram.

Sixth, it would require that all facilities be inspected annually by qualified inspectors.

Seventh, it would require facilities to be accredited by an accrediting body approved by the Secretary.

Eighth, it would require that the Secretary establish tough sanctions on facilities that do not comply with certification requirements.

Ninth, it would permit States to become the accrediting body if they so choose—assuming that they comply with and adopt all of the standards.

And, tenth, it would provide funding to ensure that all facilities can be certified and inspected.

Mr. President, while I don't generally like the idea of legislating things like this from the Federal level, this is one area where an exception must be made. Given the critical nature of mammograms to the lives of women in America, it is essential that their accuracy be assured. The quality assurance that will result from this amendment, if it is adopted, will provide the type of certainty that all of us should not only expect, but demand, of those providing mammograms to our loved ones.

It is my hope that the Senate will adopt this important amendment, and that it will be accepted in conference. It is time that we assure the women of our Nation, and their loved one's, that they can place their confidence in this critical early detection tool.

## PROVIDING THAT THE GEORGIA BAPTIST HOSPITAL COLLEGE OF NURSING BE DEEMED AS SATISFYING CERTAIN ACCREDITATION REQUIREMENTS

Mr. FORD. Mr. President, I ask unanimous consent that Senate proceed to the consideration of S. 3362, introduced earlier today by Senator FOWLER, making technical corrections in the Higher Education Act of 1965; that the bill be deemed read three times and passed; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD as though read.

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

So, the bill (S. 3362) was deemed read the third time and passed, as follows:

S. 3362

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

Notwithstanding the provisions of section 1201(a)(5) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)(5)), the Georgia Baptist Hospital College of Nursing shall be deemed as satisfying, for academic year 1992-1993, the accreditation requirements described in such section.

Mr. FOWLER. Mr. President, I rise today to introduce a bill which has been cleared on both sides and has no revenue impact at all, which will make a much-needed technical correction in order to prevent a gross inequity from occurring.

Georgia Baptist Hospital College of Nursing, an outstanding, 90-year old institution in my State, began transitioning from a 3-year diploma program to a 4-year baccalaureate program in 1988 and has been counseled throughout the entire process by both the State and Federal Departments of Education. Once the school began the formal transition, it submitted a program participation application to obtain Federal financial aid for its college of nursing students. This application was approved by the U.S. Department of Education in 1989. Based on this approval, the students have been eligible for and received Pell, SEOG, Stafford loans, PLUS/SLS, and other forms of Federal financial aid for both the diploma and baccalaureate programs.

In June of this year, the Department of Education notified the college that all of the students who had applied for financial aid and had that aid approved, were no longer eligible because Georgia Baptist Hospital College of Nursing is not yet accredited by the Southern Association of Colleges and Schools [SACS]. For those not familiar with this process, in order to receive Federal financial aid, schools must be accredited by their regional accrediting board. The problem for Georgia Baptist Hospital College of Nursing is that SACS will not consider a school for accreditation until that school graduates its first class. Georgia Baptist Hospital College of Nursing will graduate its first class in March 1993. The College of Nursing has received initial approval status by the Georgia Board of Nursing for continued operation annually since June 1989 but, as I stated earlier, the school needs SACS accreditation in order to be eligible for Federal financial aid.

This bill makes Georgia Baptist Hospital College of Nursing an eligible institution for purposes of receiving Federal financial aid for the 1992-93 academic year only. After that time, they will be considered an eligible institution for financial aid purposes under the Higher Education Act.

Mr. President, before I close let me add that Georgia Baptist Hospital College of Nursing has graduated over 5,000 nursing students since it opened its doors in 1902. The school has a zero default rate on its student loans which is something they can and should take great pride in. I do not have to remind my colleagues of the shortages we have in the nursing profession and what a vital role they play in our health care system. The loss of financial aid for these students is devastating to their families, the school and the nursing profession and I urge passage of this bill.

## JOHN F. KENNEDY CENTER ACT AMENDMENTS OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 3363, a bill introduced earlier today by Senator MITCHELL reauthorizing the John F. Kennedy Center for the Performing Arts; that the bill be deemed read a third time and passed; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

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

So, the bill (S. 3363) was deemed read the third time and passed, as follows:

S. 3363

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

**SECTION 1. BUREAU, BOARD OF TRUSTEES, AND ADVISORY COMMITTEE.**

Section 2 of the John F. Kennedy Center Act (20 U.S.C. 76h) is amended—

(1) by redesignating subsections (a), (b), and (c) as subsections (b), (c), and (d);

(2) by inserting before subsection (b) (as redesignated in paragraph (1)) the following new subsection:

"(a) The Congress finds that—

"(1) the late John Fitzgerald Kennedy served with distinction as President of the United States, and as a Member of the Senate and the House of Representatives;

"(2) by the untimely death of John Fitzgerald Kennedy this Nation and the world have suffered a great loss;

"(3) the late John Fitzgerald Kennedy was particularly devoted to education and cultural understanding and the advancement of the performing arts;

"(4) it is fitting and proper that a living institution of the performing arts, designated as the National Center for the Performing Arts, named in the memory and honor of this great leader, shall serve as the sole national monument to his memory within the city of Washington and its environs;

"(5) such a living memorial serves all of the people of the United States by preserving, fostering, and transmitting the performing arts traditions of the people of this Nation and other countries by producing and presenting music, opera, theater, dance and other performing arts; and

"(6) such a living memorial should be housed in the John F. Kennedy Center for the Performing Arts, located in the District of Columbia.";

(3) in subsection (b) (as redesignated in paragraph (1))—

(A) in the first sentence, by inserting "as the National Center for the Performing Arts and as a living memorial to John Fitzgerald Kennedy," after "thereof"; and

(B) in the second sentence—

(i) by striking "Secretary of Health and Human Services" and inserting "Secretary of State"; and

(ii) by striking "Chairman of the District of Columbia Recreation Board" and inserting "Superintendent of Schools of the District of Columbia";

(4) by amending subsection (c) (as redesignated in paragraph (1)) to read as follows:

"(c) The general trustees shall be appointed by the President of the United States and each such trustee shall hold office as a member of the Board for a term of six years, except that—

"(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term;

"(2) a member shall continue to serve until such member's successor has been appointed; and

"(3) the term of office of a member appointed prior to the date of enactment of this subsection shall expire as designated at the time of appointment."; and

(5) in the last sentence of subsection (d) (as redesignated in paragraph (1)), by striking "him" and inserting "the member".

(6) EFFECTIVE DATE FOR CERTAIN APPOINTMENTS.—The appointments made pursuant to the amendments made by clauses (i) and (ii) of subparagraph (3)(B) of section 1 of this Act shall not commence until the expiration of the terms of the Secretary of Health and Human Services and the Chairman of the District of Columbia Recreation Board, respectively, serving as Trustees of the John F. Kennedy Center for the Performing Arts on the date of enactment of this Act.

**SEC. 2. PRESENTATIONS, PROGRAMS, FACILITIES FOR ACTIVITIES, AND MEMORIAL IN HONOR OF THE LATE PRESIDENT; RESTRICTION ON ADDITIONAL MEMORIALS.**

Subsection (a) of section 4 of the John F. Kennedy Center Act (20 U.S.C. 76j) is amended to read as follows:

"(a)(1) The Board shall—

"(A) present classical and contemporary music, opera, drama, dance and other performing arts from the United States and other countries;

"(B) promote and maintain the Center as the National Center for the Performing Arts by—

"(i) developing and maintaining, in consultation with the Secretary of Education and the heads of other Federal agencies involved in performing arts education, a leadership role in national performing arts education policy and programs, including developing and presenting original and innovative performing arts and educational programs for children, youth, families, adults and educators designed specifically to foster an appreciation and understanding of the performing arts;

"(ii) develop and maintain, in consultation with the Secretary of Education and the heads of other Federal agencies involved in performing arts education, a comprehensive and broad program for national and community outreach, including establishing model programs for adaptation by other presenting and educational institutions; and

"(iii) conducting joint initiatives with the national education and outreach programs of the Very Special Arts, an affiliate of the John F. Kennedy Center for the Performing Arts which has an established program for the identification, development and implementation of model programs and projects in the arts for disabled individuals;

"(C) in consultation with the Secretary of Education and the heads of other Federal agencies involved in performing arts education, strive to ensure that the John F. Kennedy Center for the Performing Arts education and outreach programs and policies meet the highest level of excellence and reflect the cultural diversity of the Nation;

"(D) provide facilities for other civic activities at the John F. Kennedy Center for the performing Arts;

"(E) provide within the John F. Kennedy Center for the Performing Arts a suitable memorial in honor of the late President; and

"(F) develop a comprehensive building needs plan for the existing features of the John F. Kennedy Center for the Performing Arts. This building needs plan shall not include expansion of the building or construction of a new building.

"(2)(A) The Board, in accordance with applicable law, may enter into contracts or other arrangements with, and make payments to, public agencies or private organizations or persons in order to carry out the Board's functions under this Act.

"(B) Notwithstanding any other provisions of law, a contract or other arrangement described in subparagraph (A) that is entered into for an environmental system, a protection system or a repair to or restoration of the John F. Kennedy Center for the Performing Arts may be negotiated with selected contractors and awarded on the basis of contractor qualifications as well as price.".

**SEC. 3. TRUST FUNDS, OFFICERS AND EMPLOYEES, REVIEW OF BOARD ACTIONS.**

Section 5 of the John F. Kennedy Center Act (20 U.S.C. 76k) is amended—

(1) in the first sentence of subsection (a), by striking "Smithsonian Institution" and inserting "John F. Kennedy Center for the Performing Arts, as a bureau of the Smithsonian Institution,";

(2) in subsection (b)—

(A) in the first sentence, by striking "director, an assistant director, and a secretary of the John F. Kennedy Center for the Performing Arts and of" and inserting "a Chairperson of the John F. Kennedy Center for the Performing Arts (hereinafter in this Act referred to as the 'Chairperson'), who shall serve as the chief executive officer of such Center, and a secretary of such Center. The Chairperson shall appoint"; and

(B) in the second sentence, by striking "director, assistant director," and inserting "Chairperson"; and

(3) by adding at the end the following new subsection:

"(d) The Secretary of the Interior and the Board shall enter into a cooperative agreement regarding major capital projects for the Center. Such cooperative agreement shall—

"(1) provide that the Board or the Board's designated representative shall plan, design, and construct all major capital projects at the John F. Kennedy Center for the Performing Arts; and

"(2) contain assurances that—

"(A) all planning, design, and construction of major capital projects shall be approved by the Secretary of the Interior or such Secretary's designee prior to commencement of such activities;

"(B) the Secretary of the Interior shall transfer to the Board or other entities from amounts available to such Secretary for the John F. Kennedy Center for the Performing Arts the funds necessary to carry out the activities described in subparagraph (A) in accordance with the terms of such cooperative agreement; and

"(C) the Board shall report quarterly to the Secretary of the Interior or such Secretary's designee regarding the progress of all planning, design, and construction performed pursuant to such cooperative agreement.".

**SEC. 4. OFFICIAL SEAL, BOARD VACANCIES AND QUORUM, TRUSTEE POWERS AND OBLIGATIONS, REPORTS, SUPPORT SERVICES, AND REVIEW AND AUDIT.**

Section 6 of the John F. Kennedy Center Act (20 U.S.C. 761) is amended—

(1) in subsection (c)—

(A) by striking "its" and inserting "the Board's"; and

(B) by striking "it" and inserting "the Board";

(2) in subsection (e)—

(A) by striking the title and inserting "MAINTENANCE, REPAIR, AND SECURITY SERVICES.—";

(B) by striking "alteration of the building" and all that follows in paragraph (1) and inserting "security services.";

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

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

"(2) SPECIAL RULE.—The Board, with the concurrence of the Secretary of the Interior or such Secretary's designee, shall designate the services to be performed pursuant to paragraph (1) in order to ensure that such services will meet the requirements for high quality operations, except that in no event shall the Board require the expenditure of funds in excess of those appropriated pursuant to the authority of section 13(b).."; and

(3) in paragraph (3) (as redesignated in subparagraph (2)(C) of section 4 of this Act), by adding at the end the following new sentence: "Such agreement shall be reviewed and updated, if necessary, every five years.".

**SEC. 5. TECHNICAL AMENDMENT.**

Section 10 of the John F. Kennedy Center Act (20 U.S.C. 76p) is amended—

(1) by striking "he" and inserting "the Secretary"; and

(2) by striking "his" and inserting "the Secretary's".

**SEC. 6. DEFINITIONS AND AUTHORIZATION OF APPROPRIATIONS.**

The John F. Kennedy Center Act (20 U.S.C. 76h et seq.) is amended by inserting at the

end the following new sections (with section 12 being codified at 20 U.S.C. 76r, and section 13 being codified at 20 U.S.C. 76s):

**"SEC. 12. DEFINITIONS.**

"For the purpose of this Act—

"(1) the term 'capital projects' means capital repairs, replacements, improvements, rehabilitations, alterations, and modifications to the existing features of the John F. Kennedy Center for the Performing Arts building and all existing features of interior and exterior Center spaces, including the existing theaters, garage, roadways, and walkways;

"(2) the term 'existing' means existing on the date of enactment of the John F. Kennedy Center Act Amendments of 1992; and

"(3) the term 'maintenance, repair, and security services' means all services and equipment necessary or desirable to maintain and operate the existing features of the John F. Kennedy Center for the Performing Arts building and all existing interior and exterior building spaces, including the existing theaters, garage, roadways, and walkways, in a manner consistent with the requirements for high quality operations as determined by the concurrence of the Board and the Secretary of the Interior or the Secretary's designee and in accordance with the cooperative agreement described in section 6(e)(3) (as redesignated in subparagraph (2)(C) of section 4 of the John F. Kennedy Center Act Amendments of 1992).

**"SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

"(a) CAPITAL PROJECTS.—There are authorized to be appropriated to the Secretary of the Interior $15,000,000 for fiscal year 1993 and each succeeding fiscal year through fiscal year 1997 to carry out subparagraph (F) of section 4(a)(1), subparagraph (A) of section 4(a)(2), and subsection (d) of section 5.

"(b) MAINTENANCE, REPAIR, AND SECURITY.—There are authorized to be appropriated to the Secretary of the Interior $12,000,000 for fiscal year 1993 and each succeeding fiscal year through fiscal year 1997 to carry out paragraph (1) of section 6(e).

"(c) EDUCATION AND OUTREACH PROGRAMS.—There are authorized to be appropriated to the Secretary of Education $4,000,000 for each of the fiscal years 1993 and 1994, and $5,000,000 for each of the fiscal years 1995, 1996, and 1997, to be granted to the Board to carry out subparagraphs (B) and (C) of section 4(a)(1).

"(d) SPECIAL RULE.—No funds appropriated pursuant to the authority of subsection (a) or (b) for capital projects or for maintenance, repair, and security services for existing theaters shall be used for performing arts related production expenses.".

**SEC. 7.**

This Act may be cited as the "John F. Kennedy Center Act Amendments of 1992".

## WOMEN IN APPRENTICESHIP AND NONTRADITIONAL OCCUPATIONS ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate Labor Committee be discharged from further consideration of H.R. 3475, the Women in Apprenticeship and Nontraditional Occupations Act; that the Senate proceed to its immediate consideration; that the bill be deemed read for a third time and passed; that the motion to reconsider be laid upon the table; and that any statements appear at the appropriate place in the RECORD.

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

So, the bill (H.R. 3475) was deemed read the third time and passed.

Mrs. KASSEBAUM. Mr. President, I rise today to ask my colleagues to support the passage of H.R. 3475, the Women in Apprenticeship and Nontraditional Occupations Act. This legislation is important because it would help to increase the retention of women in nontraditional occupations—jobs which pay women 30 percent more than conventional occupations in which women are employed. Jobs in the skilled trades and technical positions provide low-income women and welfare recipients with a true path to economic self-sufficiency. Just last week in my own State of Kansas, two women were placed by the Topeka YWCA in nontraditional manufacturing jobs at a starting wage of $16 per hour.

Unfortunately, women in male-dominated occupations often face a hostile work environment and pervasive sexual harassment from both supervisors and coworkers. This does not have to be the case. There are successful models for integrating women into male-dominated occupations. House Resolution 3475 is based on one such award-winning model—the female employment initiative of Stein & Co. Stein is a Chicago real estate developer which has made a concerted, aggressive effort to bring women into the construction trades on its job sites and to keep them there. Stein has had up to 85 women at a time working on a Federal construction site. Most construction sites have no women or one, at most, at any point in time.

Under H.R. 3475, the Department of Labor would provide technical assistance to employers and labor unions to assist them in successfully integrating women into male-dominated occupations. This bill is aimed at preventing the problems which typically arise in such occupations—minimizing the likelihood of sexual harassment and discrimination—and averting the need for employee grievances which are expensive and time consuming for both employer and employee.

In November 1991, the Senate passed the Nontraditional Employment for Women Act by unanimous consent. As an amendment to the Jobs Training Partnership Act, this legislation requires service-delivery areas to train women in nontraditional jobs. The bill was signed into law by President Bush. But what good is that training, if employers are not ready to integrate women into the workplace or if the barriers to getting and keeping the job are insurmountable? If we want the women who will be trained for nontraditional jobs through the Job Training Partnership Act to face a receptive work environment, we must ensure that the workplace will be prepared to receive them.

Ensuring that women work in nontraditional fields is as important to our economy as it is to women and their families. By the year 2000, the majority of new entrants into the labor force will be women and minorities. This Nation must ensure that women are working throughout all sectors of the economy. Our Nation's productivity and economic development will hinge upon our ability to redeploy women from the small number of traditionally female sectors to the broader range of occupations which make up our economy as a whole. The Women in Apprenticeship Occupations and Nontraditional Occupations Act is an important step in this direction.

## PREVENTIVE HEALTH AMENDMENTS OF 1992 CONFERENCE REPORT

Mr. FORD. Mr. President, I submit a report of the committee of conference on H.R. 3635 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3635) to amend the Public Health Service Act to revise and extend the program of block grants for preventive health and health services, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1992.)

Mr. KENNEDY. Mr. President, the legislation is a significant expansion of the Federal Government's role in health promotion and disease prevention in assuring a healthy America. The goals of this legislation are to provide resources to States to assist them in achieving the year 2000 national health objectives, develop initiatives for preventing disease, illness, and disability, and promote healthy lives through risk reduction and preventive measures for women, adolescents, and racial and ethnic minorities.

Programs and activities strengthened by this legislation include the preventive health and health services block grant, the Lead Poisoning Prevention Program, the Comprehensive Perinatal Care Program, the Breast and Cervical Cancer Screening Program, the Vaccine Injury Compensation Program, and the Bulk Purchase of Vaccines Program.

New programs authorized by this legislation include an Office of Adolescent

Health, the screening and early detection of prostate cancer, the prevention of cases of infertility from sexually transmitted diseases, a birth defects surveillance and epidemiology research program, and the establishment of a Centers for Disease Control Foundation.

The legislation revises and extends the preventive health and health services block grant. The authorization of the program is increased to $205 million for fiscal year 1993. It also increases the set-aside for services for rape victims and rape prevention to $7 million.

The legislation stresses that block grant funds be used to make progress toward the goals identified in the Department of Health and Human Services report, "Healthy People 2000: National Health Promotion and Disease Prevention Objectives." The funds are intended to improve the health status of the general population as well as work toward eliminating disparities between the general population and racial and ethnic minorities.

The legislation addresses the need to reduce the incidence and severity of diseases and conditions that disproportionately affect women and racial and ethnic minorities. Minorities and the poor continue to suffer poorer overall health status than the general population; many preventable diseases occur at higher rates, and access to quality health promotion and disease prevention services are inadequate. The States are also authorized to use block grant funds for the improvement of the health of women and the racial and ethnic minorities.

Adolescents need greater health services too. One in five of today's adolescents have at least one serious health problem. The future contributions of young people are too often lost because of the senseless violence of suicide and homicide, or the tragedy of malnutrition or chronic despair. This legislation establishes an Office of Adolescent Health. The Office will coordinate the diverse activities of Federal agencies as they related to adolescents. It will monitor the health status of adolescents, support training of health providers who work with adolescents, and support research projects relating to conditions and diseases of adolescents.

The legislation also establishes a prostate cancer prevention program at the Centers for Disease Control which will provide early detection, screening, and prevention services to high-risk and low-income individuals. The program will address the growing concern about the increasing number of men developing prostate cancer and the alarming death rate from that disease. The legislation will ensure that existing screening methods are evaluated, surveillance systems are improved, information is disseminated to health professionals, and research is expedited for the early detection of prostate cancer.

The legislation also establishes a program to screen and treat preventable cases of infertility arising from sexually transmitted diseases in women. The program was established in response to the growing concerns about the nationwide epidemic of chlamydia, its devastating impact on women, and with the hope that new methods for the diagnosis and treatment of this disease will allow progress to be made in controlling this epidemic and reducing the cases of infertility.

Lead poisoning is the No. 1 preventable environmental disease of children. Yet only meager efforts have been undertaken to eliminate lead exposure and detect lead toxicity. For more than a decade it has been known that even healthy appearing children with modest lead elevations show poor academic performance as evidenced by low IQ scores, impaired hearing, speech, and language development, and disruptive classroom behavior.

This legislation revises and extends programs for screening infants and children for lead poisoning. It also creates a program to educate health professionals, paraprofessionals, and the public on the importance of preventing lead poisoning, establishes an interagency task force to coordinate the efforts of Federal agencies to prevent lead poisoning, and supports the development of more improved and more cost-effective testing measures for detecting lead poisoning.

Birth defects, alone and in combination with low birthweight, are a leading cause of infant mortality. The legislation establishes a program to improve State collection and analysis of data of birth defects.

The legislation supports the expansion of the current Comprehensive Perinatal Care Program within the Office of Special Populations as a vital element in an overall strategy to reduce infant mortality. The legislation also addresses the concerns of community health centers on health care financing. It allows them flexibility using nongrant funds to maintain fiscal viability.

An outstanding preventive health initiative is currently being undertaken at the Medical Center of Central Massachusetts. It is establishing a new center as a model that will focus on providing preventive health care to the citizens of central Massachusetts. Of particular importance will be a comprehensive outreach program to provide preventive health care to women, children, and families. In addition to providing much needed preventive health services to the Worcester region, the center will serve as a national model for institutions seeking to offer on-site neonatal and gynecological services, and family practice services.

The current measure builds on the strengths of existing law and enhances the Federal-State partnership in promoting health and preventing disease and disability. With this legislation, we take a major step toward better health care for millions of our citizens, and I urge the Senate to approve it.

Mr. HARKIN. Mr. President, I rise in strong support of the conference report accompanying H.R. 3635, the Preventive Health Amendments of 1992. I want to commend the distinguished chairman of the Labor and Human Resources Committee, Senator KENNEDY, for his continuing leadership in efforts to improve the health care available to Americans. I also want to thank him and his excellent staff for their great work and commitment to bring H.R. 3635 to this point. I was very pleased to have had the opportunity to join him as a conferee on this measure. The conference agreement, while not everything that I would have wanted, includes a major package of health promotion and disease prevention initiatives and is among the most important pieces of health legislation we will approve this session.

Mr. President, as I have said may times, I believe that the most fundamental flaw in our health care system today is its preoccupation with patching and mending and its virtual neglect of prevention and health promotion. What we really have is not a health care system but a sick care system. This year we will spend billions of dollars to treat diseases and disabilities that could have been prevented or caught at an earlier stage. Yet, only a tiny fraction of our health care budget is spend on keeping people healthy and preventing disease and disability. As a result of this flaw in our national health policy, not only are health costs increased, but the quality and length of the lives of many Americans are needlessly reduced. We need to overhaul our sick care system into an American health care systems of which we can all be proud. The conference agreement before the Senate today takes us an important step further toward completing that task.

At the beginning of this Congress, I introduced a package of seven bills, which I call the Prevention First, designed to begin reordering our health care priorities towards commonsense prevention. S. 510, the Older Americans Disease Prevention and Health Promotion Act, which provides for a national program to expand access to health promotion services to senior citizens at senior centers, congregate meal sites and through the Meals-on-Wheels Program, was recently signed into law as part of the Older Americans Act Amendments last month. I am very pleased that a number of other components of my Prevention First initiative and other suggestions are contained in this bill.

A major component of the conference agreement is its reauthorization of the

preventative health and health services block grant. This important program is the backbone of State and local public health and prevention efforts. It funds a full range of key disease prevention and health promotion services provided to Americans in every State and locality—from hypertension screening, to health education, to breast cancer screening to smoking cessation programs. H.R. 3635 would expand and strengthen this program, building upon my legislation of last Congress, the Health Objectives 2000 Act. A revised version of this bill, the Year 2000 Health Objectives Planning Act was signed into law by the President and helped pave the way for implementation of the National Health Promotion and Disease Prevention Objectives for the Year 2000.

The conference report before us provides increased capacity and resources to States and localities to assist them in achieveing the Year 2000 National Health Objectives, addressing improvements in health status, risk reduction, public and professional awareness, health services and protective measures, and surveillance and evaluations. Second, it creates and develops an effective partnership of Federal, State, and local health agencies, voluntary health organizations, and other health groups, including minority community-based organizations, to develop initiatives for preventing disease and disability. These provisions will greatly improve not only the preventive health services block grant, but the efficiency and effectiveness of our public health system in general as well.

The conference agreement also incorporates the provisions of S. 507, the Lead Poisoning Prevention Act, legislation I introduced on behalf of myself and a number of our colleagues. Inclusion of S. 507 attacks the No. 1 preventable disease among children—lead poisoning. Conservative estimates indicate that more than 3.5 million American children from all walks of life have dangerous levels of lead in their blood. And we know the devastating impact lead poisoning can have on our children. We know that even healthy-appearing children with modest lead elevations often display poor academic performance, low IQ scores, impaired hearing, unsatisfactory speech and language development, and disruptive classroom behavior. A recent study found that lead poisoned children are seven times more likely to drop out of school before graduating from high school.

The costs of lead poisoning are staggering and the cost-effectiveness of screening for it is clear. The annual cost of remedial education and health care needed as a result of childhood lead poisoning alone totals over $1 billion. Screening and early detection for lead poisoning saves by more than 50-fold the immediate cost of treatment. Yet, there is a sorrowful lack of awareness regarding the perils of lead poisoning, the benefits of screening and the resulting preventive and treatment measures that can be taken to combat this problem.

The conference report attacks this problem by authorizing and expansion of support to States and localities to screen children, establishing a national education program to increase awareness among children, parents, teachers and health professionals about lead poisoning, developing a more cost effective accurate test to screen for lead poisoning, and finally to make certain that the actions of different Federal agencies responding to the problem of lead poisoning are properly coordinated. These steps will save lives and money.

Mr. President, the report before us also incorporates the provisions of S. 505, another component of my Prevention First legislation package. This bill would change the name of our nation's flagship Federal agency on prevention, the Centers for Disease Control [CDC], to the Centers for Disease Control and Prevention [CDC]. This change appropriately recognizes CDC's central role in our national efforts to prevent disease and disability and will give greater national visibility to these efforts. This simple change will also demonstrate our commitment to increasing the focus of our efforts in health care on prevention and elevate prevention to its appropriate high level within the structure of Government health care programs. I want to commend CDC for their strong work and commitment to improving the public health. I want to especially commend Dr. Bill Roper who I think is doing a find job heading up CDC and for his strong support for this change.

The agreement before us contains a number of other prevention-oriented initiatives. It will strengthen our efforts to reduce the rate of preventable injuries, infertility, and adolescent violence. Each of these are very important and would significantly contribute to improved health.

Mr. President, I have been placing top priority in my capacity as chairman of the Senate subcommittee that funds health, education and social services programs on programs that prevent disease and disability and promote health. In the fiscal year 1993 Labor, Health and Human Services Appropriations bill, given final approval by the Senate Saturday, we have provided significant increases in funding for prenatal care, chronic and environmental disease prevention, disability prevention, childhood immunizations and many other critical preventive programs. In the past 2 years alone, we have been able to increase funding for the prevention block grant by more than 50 percent, from $92 to $148 million. We have increased funding for lead poisoning prevention nearly fourfold, from $8 million to nearly $30 million. We have increased funding for the maternal and child health block grant by $78 million and increased funding for childhood immunizations by nearly 50 percent, from $217 to $341 million.

So through these appropriations and through adoption of this authorizing legislation, we are making a downpayment on what needs to be done to turn our sick care system into an American health care system of which we can be proud. We will take further steps next year to assure that all Americans are guaranteed access to quality health and long-term care at a price they can afford. I will be working to assure that preventive measures are at the centerpiece of these efforts.

Mr. President, I urge prompt passage of this conference report and hope that we can move without hesitation to send it to the President for final approval.

Mr. FORD. Mr. President, I ask unanimous consent that the conference report be agreed to; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

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

So, the conference report was agreed to.

## HARD WORK IS THE PROCESS OF THE SENATE

Mr. SIMPSON. Mr. President, I want to thank my friend from Kentucky for that abbreviated version and thank the Chair for alacrity and swiftness in recognizing our efforts here in a most extraordinary way. The exchanges of the friend of Kentucky and my own do not often appear reported in the RECORD, nor would they make light evening reading sometimes.

I enjoy working with him. We work with vigor and loyalty to our leaders and try to promote the flow of the Senate's business as best we can so that the Senate might work its will, as the senior colleague and the most respected colleague from West Virginia often says. That is what Senator FORD and I try to do in our work in our own unique way. We disagree vigorously sometimes, but his word, indeed, is his bond.

Mr. FORD. I thank my good friend.

Mr. President, I thank you for your indulgence here and ability.

So that those who are watching might understand, a great deal of work, long hours, several days have gone into working out agreements on bills that were developed in the House and sent here or developed in the Senate and sent over there. Some were conference reports. Other were negotiations between Senators to bring it to a point where we have that agreement.

What we have seen here today between Senator SIMPSON from Wyoming and myself has been the culmination of all that hard work, which is the process of the Senate. These are unanimous-consent agreements. There is a long, tough trail sometimes to get to that point. There is a lot of give and take. It is given in the best interest of our constituency as it relates to the efficiency of the Senate. It all comes down to one point where we are able to make it work.

I again appreciate the kind words of my friend. I do not imagine the day is over yet. As the Senator says, we are getting ready to hear the dean of all parliamentary procedure and rules of the Senate and an individual who was honored today—not enough, but hopefully there will be some more—when certain items in his home State were agreed to to put his name on it.

Mr. President, I see we now have a couple of items we might be able to work through here.

Mr. SIMPSON. Mr. President, may I before the Senator from Kentucky propounds his unanimous-consent request, I think it is very important that the American people understand what he just said. Some of this material has been here since the first session of this Congress, and people have been working diligently on it. It is my experience after 25 years of legislating that legislating is pretty dry work, if done properly. It is not done for press releases and ribbon-cutting exercises. It is called legislating.

It is a very difficult process of learning to compromise an issue without compromising yourself, learning to do the Nation's business in a highly nondramatic way. What you have seen in this last hour is a true compilation of blood, sweat, and tears on the part of many persons on both sides of the aisle, on both sides of the Capitol building coming to fruition when the final give and take is a very simple one: Either you get it passed or you have to start all over. That is where a lot of give and take is made in the legislative process in the conference committees. It is unreported upon largely because it is unable to be described properly. But it is the essence of democracy.

## MONUMENT HONORING THOMAS PAINE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3364, introduced earlier today by Senator SYMMS, to authorize the construction of a monument in the District of Columbia, or its environs, to honor Thomas Paine; that the bill be deemed read the third time, passed, and the motion to reconsider be laid upon the table; and that any statements relating to passage of this item be included at the appropriate place in the CONGRESSIONAL RECORD.

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

So the bill (S. 3364) was deemed read the third time and passed, as follows:

S. 3364

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That effective as of the enactment of the Act entitled "An Act to authorize the construction of a monument in the District of Columbia or its environs to honor Thomas Paine, and for other purposes" (H.R. 1628, One Hundred Second Congress), such Act is amended to read as follows:

**"SECTION 1. AUTHORITY TO ESTABLISH MEMORIAL.**

"(a) IN GENERAL.—The Thomas Paine National Historical Association is authorized to establish a memorial on Federal land in the District of Columbia or its environs to honor Thomas Paine.

"(b) COMPLIANCE WITH STANDARDS FOR COMMEMORATIVE WORKS.—The establishment of the memorial shall be in accordance with the Act entitled 'An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes' approved November 14, 1986 (40 U.S.C. 1001, et. seq.).

**"SEC. 2. PAYMENT OF EXPENSES.**

"The Thomas Paine National Historical Association shall be solely responsible for acceptance of contributions for, and payment of the expenses of, the establishment of the memorial. No Federal funds may be used to pay any expense of the establishment of the memorial.

**"SEC. 3. DEPOSIT OF EXCESS FUNDS.**

"If, upon payment of all expenses of the establishment of the memorial (including the maintenance and preservation amount provided for in section 8(b) of the Act referred to in section 1(b)), or upon expiration of the authority for the memorial under section 10(b) of that Act, there remains a balance of funds received for the establishment of the memorial, the Thomas Paine National Historical Association shall transmit the amount of the balance to the Secretary of the Treasury for deposit in the account provided for in section 8(b)(1) of that Act.".

THOMAS PAINE MEMORIAL PROJECT

Mr. SYMMS. Mr. President, our colleagues have heard me speak repeatedly about Thomas Paine. Sometimes my mission has been to generate support for the Thomas Paine Memorial Project, other times it has been to give a status report on our project.

Mr. President, today, I rise with a very special mission, and that is to bring to the attention of the Congress the extraordinary generosity of the private sector's support of a very memorable and important facet of this effort.

As many of our colleagues recall, on the evening of Thursday, September 24, we joined in the Presidents Room of the Capitol Building, EF-100, for a wonderful evening of great food and refreshments as we honored the lifelong contributions to the study of history by Dr. Thomas Clark, of Lexington, KY.

Dr. Clark is known throughout the Nation as a result of his work, and leadership as past president of the Organization of American Historians. In Kentucky, Dr. Clark is nearly beatified for his diligence as a teacher, author, editor, and friend—I have heard only secondhand reports about his golf game, however.

Many of our colleagues were joined in honoring Dr. Clark by Prof. Fred Friendly and his wife Ruth; Felix DeWeldon, who sculpted the magnificent Iwo Jima among others and Florence Stapleton, the past president of the Thomas Paine Association among others.

Mr. President, I want to remind our colleagues of the fact that the wonderful evening would not have been possible if the private sector had not reached deep into its pockets and donated to the worthy cause of honoring Dr. Clark and Thomas Paine.

These donors are: the Bingham Fund, a charitable organization established by Kentucky's Bingham family which was joined by Toyota, U.S.A. of Kentucky, Humana, Inc., Long John Silvers, and Texas Gas & Transmission in giving generously of their financial resources along with the Keith Stein Co. of Boise, ID, and one of my truest friends and my historian/ophthalmologist, Dr. Chuck Howarth.

Additionally, we were very fortunate to receive generous in-kind, support from the Henley Park Hotel here in Washington, Hiram Walker & Sons, Walton Thomas International of Washington, Schneider's of Capitol Hill, Broadbent Meats who supplied that wonderful ham all the way from Cadiz, KY, Premier Beverage of Tampa, FL, and of course Kentucky's Maker's Mark Distillery.

Mr. President, without generosity of these people and the hard work of people like Shirley Felix of the Capitol Catering Office, Karen Portik and Celeste Farmer of the Senate Republican Conference, and Jeremy Chou and Trevor Norris of my staff, this very memorable evening would not have taken place.

Mr. President, with an expression of my deep appreciation to each of these people, I yield the floor.

Mr. President, I ask unanimous consent that the supportive letter regarding Thomas Paine expressing the will of the Rules Committee be printed in the RECORD for the benefit of our colleagues and researchers in the future.

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

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
*Washington, DC, October 2, 1992.*

JOHN G. PARSONS,
*Chairman, National Capital Memorial Commission, Washington, DC.*

DEAR MR. PARSONS: Congress has passed H.R. 1628, a bill to authorize the construction

of a memorial to Thomas Paine, and the President is expected to sign the bill soon. We hope that the Commission will consider promptly this authorization.

In the legislative review of this authorization, there was strong support in both Houses to permit its placement on the Capitol Grounds. In fact there were 78 Senate cosponsors of a resolution proposing such a location. There is, however, a long and strong sentiment that no more memorials be placed on the Capitol Grounds. For that reason, Congress chose to authorize the erection of the monument in the District of Columbia as set forth in this bill.

A memorial to Thomas Paine has strong support in Congress and across America. In keeping with that sentiment, we are writing to urge the Commission to work with The Thomas Paine National Historical Association to select a suitable location within the District to assure that this monument will be erected in a place of dignity and prominence appropriate to a person who played such an important role in the history of this Nation.

We look forward to the day when our Committee, and the Congress, has the opportunity to review the site selected by the Commission and pass the necessary legislation to authorize the issuance of a building permit. It is time to put an end to the capital city's silence on the contributions of Thomas Paine.

Sincerely,

TED STEVENS,
*Ranking Republican Member,*
WENDELL H. FORD,
*Chairman.*

## EXTENSION OF NATIONAL AIR AND SPACE MUSEUM

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar No. 258, S. 289.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 289) to authorize the Board of Regents of the Smithsonian Institution to plan and design an extension of the National Air and Space Museum at Washington Dulles International Airport, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Rules and Administration, with an amendment.

On page 2, line 5, strike "1" and insert in lieu thereof "2". So as to make the bill read:

S. 289

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Board of Regents of the Smithsonian Institution is authorized to plan and design an extension of the National Air and Space Museum at Washington Dulles International Airport.

SEC. 2. Effective October 1, 1992, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution $9,000,000 to carry out the purposes of this Act.

AMENDMENT NO. 3427

(Purpose: To designate an appropriate public area within the extension of the National Air and Space Museum, Washington Dulles International Airport, to honor Edwin Jacob Garn)

Mr. SIMPSON. Mr. President, I send an amendment on behalf of Senator WARNER to the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. Simpson], for Mr. Warner, proposes an amendment numbered 3427.

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

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

The amendment is as follows:

On page 2, line 4, immediately after the period, add the following: "The Board of Regents of the Smithsonian Institution shall designate and name an appropriate public area within such extension to honor Edwin Jacob Garn, currently a member of the Board of Regents, Smithsonian Institution, having served since 1981, and the first Member of Congress to fly in space while serving as a Member.".

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3427) was agreed to.

Mr. GARN. Mr. President, S. 289 reflects the need of the Smithsonian to provide a replacement facility for the inadequate and outmoded structures near Suitland, MD. That facility currently houses the restoration laboratory, exhibition production and maintenance services, archives, and storage functions of the National Air and Space Museum, which cannot be stored in the Museum's existing building on the Mall. To meet these requirements, it is important to extend those functions at a nearby location while relying on nonappropriated sources of funding to a major extent.

On at least six occasions over the past 9 years, the Board of Regents of the Smithsonian Institution has recommended that an extension of the National Air and Space Museum be constructed at Washington Dulles International Airport so the Museum may continue to fulfill its historic mandate to "memorialize the national development of aviation and space flight * * *." Twice before authorizing legislation has passed the Senate, only to fail in the House.

The existing National Air and Space Museum on the Mall is the most popular museum in the world. Its approval stems from the manner in which its artifacts, from the Wright Flyer to the *Pioneer 10* spacecraft, are exhibited to the public, as well as from the fact that the American people are captivated by the idea of flight and space exploration.

The crucial matter of preserving a collection is the heart of any museum's functions. In spite of the wonderful job that is currently being done, it is obvious that the present site of the museum's restoration and preservation activities, the Paul E. Garber facility at Suitland, is totally inadequate for the existing collection, and absolutely unsuitable for the needs of the future.

The icons of air and space are large: The prototype Boeing 707—whch introduced the commercial jet age, generated billions of dollars for U.S. workers and investors, and shrank the world—should be available as an example of our aviation heritage. But it is too large for the Mall Museum. The space shuttle *Enterprise*—which I was pleased to help obtain for the Smithsonian—should be available for close inspection. The speedy and mysterious SR-71 *Blackbird* is also awaiting exhibit space, as are other examples of our achievements. These machines are too large to be exhibited in the museum on the Mall; indeed, most of them cannot even be disassembled for transportation to the Mall. The Regents of the Smithsonian Institution believe the best location is at nearby Dulles International Airport.

I am aware that there are those who would like to disperse the Air and Space Museum to the many corners of the land, but I believe that bridge has already been crossed in the numerous studies within and without the Smithsonian Institution, and by the many decisions of the Board of Regents pursuant to its statutory authority. Under the accepted criteria the decisions always and unequivocally designated Dulles International Airport as the site of the extension. I recognize that there is room for regional air and space museums, and I am committed to assist and foster these developments. But I believe there should be but one National Air and Space Museum, and that should be kept as compact and unified in display, administration and support as possible.

The Smithsonian does not seek to expand museum activities through extensive new construction that would be costly in itself and would require the long-term commitment of increased levels of Federal program and operating funds. Locating the extension at Washington Dulles International Airport, where a number of its aircraft are stored, will permit the new facility to be managed as part of the existing Museum, thereby avoiding the costs of an additional administrative and support superstructure.

The Dulles location also will permit the Institution to take advantage of the very generous financial package offered by the Commonwealth of Virginia, which several years ago enacted bonding authority for the extension. While a modest increment of Federal funding may be required for the overall

project, the Smithsonian expects to explore a variety of financing options, including fund-raising in the private sector, to complement the Virginia offer and ease Federal requirements for its support.

The extension will provide adequate space and modern systems that will enhance the Institution's capacity to enter into collaborative programs with other organizations and share the resources of the National Air and Space Museum with communities beyond the immediate Washington, DC, area. Clearly, the utilization of emerging technologies is key to accelerating the distribution of information about the Museum's resources such as collections, exhibitions, and public programming, as well as to establishing real-time communications between organizations.

Mr. President, I ask that my colleagues approve S. 289 so that this important and thoughtful initiative can proceed.

Mr. ROBB. Mr. President, earlier today the Senate passed S. 289, Senator GARN's bill to authorize $9 million to design an extension of the National Air and Space Museum at Dulles International Airport. Because I was presiding over the Senate at the time, I was unable to speak to the issue. I would like to say just a few words at this time in support of the measure.

Passage of this bill today represents the fourth time that the Senate has approved legislation reaffirming the sound decision of the Smithsonian's Board of Regents to locate the much-needed annex to the Air and Space Museum at Dulles Airport. Just 4 days ago, in fact, the Senate passed the text of S. 289 as part of Senator SIMON's bill establishing a National African-American Memorial Museum—S. 523.

The Commonwealth of Virginia and I have been avid supporters of the Air and Space Museum extension at Dulles since the Smithsonian first broached the idea in 1983, while I was Governor. My distinguished successors in that office, Jerry Baliles and Doug Wilder, have maintained the Commonwealth's commitment to the project.

Unfortunately, attempts have been made over the years to tamper with the Regents' decision to site the annex at Dulles. The most recent attempt to do so came in the form of H.R. 3281, a bill to reopen the site selection process for the extension. I am pleased that the House overwhelmingly rejected that effort on September 30 by a vote of 317-106.

It is my hope that the recent House vote will put to rest the attempts to reopen what should be a settled question, and I wholeheartedly support the Senate's passage of Senator GARN's bill today.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 289

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Board of Regents of the Smithsonian Institution is authorized to plan and design an extension of the National Air and Space Museum at Washington Dulles International Airport. The Board of Regents of the Smithsonian Institution shall designate and name an appropriate public area within such extension to honor Edwin Jacob Garn, currently a member of the Board of Regents, Smithsonian Institution, having served since 1981, and the first Member of Congress to fly in space while serving as a Member.

SEC. 2. Effective October 1, 1992, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution $9,000,000 to carry out the purposes of this Act.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

## RECOMMENDATIONS OF FEDERAL COURTS STUDY COMMITTEE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6185, a bill to implement the recommendations of the Federal Courts Study Committee, just received from the House; that the bill be deemed read the third time, passed and the motion to reconsider be laid upon the table; and that statements with respect to passing this bill appear at the appropriate place in the RECORD.

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

So the bill (H.R. 6185) was deemed read the third time and passed.

Mr. HEFLIN. Mr. President, I rise today to urge immediate passage of H.R. 6185, the Federal Courts Administration Act of 1992. This comprehensive legislation, which began as S. 1569 when I introduced it in the Senate over 1 year ago, would implement recommendations of the Federal Courts Study Committee and make other changes which are necessary to facilitate the operation of our Federal courts system.

The 100th Congress created within the Judicial Conference of the United States a 15-member Federal Courts Study Committee and directed it to "make a complete study of the courts of the United States and of the several States and transmit a report * * * on such study." The Federal Courts Study Committee included members of the Federal executive, legislative, and judicial branches and representatives from State governments, universities and private practice, all of whom worked toward the goal of developing a long-range plan for the judicial system. I was privileged to serve as a member of this committee, as did Senator GRASSLEY.

The 101st Congress saw the first phase of Federal Courts Study Committee legislative recommendations enacted into law as title III of the Judicial Improvements Act of 1990. H.R. 6185 incorporates additional recommendations of the Federal Courts Study Committee. These important provisions are as follows:

Section 101 would delegate authority to the Supreme Court, under the Rules Enabling Act, to define what constitutes a final decision; and to define circumstances in which orders and actions of district courts not otherwise subject to appeal under acts of Congress may be appealed to the courts of appeals.

Section 102 would provide jurisdiction for magistrate judges to revoke, modify or terminate the supervised release or probation of a defendant sentenced by a magistrate judge.

Section 103 would allow the Chief Justice of the United States, upon request, to designate and assign temporarily any circuit judge to another circuit.

Title II of H.R. 6185 addresses important needs and issues affecting the surviving spouses and dependents of Federal judges. This proposal would reduce the contribution of judges from 5 percent of salary to 2.2 percent of salary while in active service or while serving in senior or recalled status, and would set the rate of contribution at 3.5 percent of retirement salary for those judges leaving office. The reductions in the judges' contributions would attract more participants and extend protection to survivors of judges who otherwise would remain vulnerable to financial crises.

Titles III-VII of H.R. 6185 contain various judicial housekeeping items which were included at the request of the Judicial Conference of the United States. These sections focus on judicial financial administration; jury matters; judiciary personnel administration, benefits, and protections; and criminal administrative matters.

The legislation which originally passed the Senate (S. 1569) contained a provision, section 403, since deleted, dealing with compensation for loss or damage to personal property of jurors. It is our opinion that it is within the power of the Judicial Conference of the United States to delegate to the Administrative Office of the U.S. Courts

the authority to pay for such losses, without the need for further legislation.

Moreover, section 602 of H.R. 6185 allows the Federal Judicial Center to work with other organizations to assist in the development of judicial systems in foreign countries. With new democracies forming all over the world, it is essential that our judicial branch officers and employees be authorized to share their expertise in judicial administration and the basic tenets of freedom that this country holds dear. I anticipate that there will be many beneficial developments from the efforts of the Federal Judicial Center, the Judicial Conference, and the Administrative Office of the U.S. Courts in this regard.

Title VIII of H.R. 6185 would reauthorize the State Justice Institute from 1993 to 1996. This reauthorization, which I strongly support, would continue the mission of the State Justice Institute to improve the administration of justice in our Nation's State court systems.

Title IX would improve the Federal claims litigation process before the U.S. Claims Court and assist the court in providing better and more efficient service to its litigants. It would also ensure fair treatment for the judges of the court by providing certain benefits equivalent to those available to other Federal trial judges.

Section 907, amending the Contract Disputes Act, is intended to make clear that the claim certification requirements of 41 United States Code, section 605 are not intended to be jurisdictional—in the sense of being an absolute prerequisite to court jurisdiction. Certification has always been intended to ensure that complete, clear, and honest claims are presented to Federal contracting officers, and this requirement remains: Contracting officers are not required to address claims that do not comply with the provisions of title 41, United States Code, section 605. However, a defect in the certification, discovered after a claim is in litigation, may be cured by the contractor to avoid repetition of the entire administrative claim process and waste of judicial or board resources. See generally *United States* v. *Grumman Aerospace Corp.*, 927 F.2d 575 (Fed. Cir. 1991); *Ball, Ball & Brosamer, Inc.* v. *United States*, 878 F.2d 1426 (Fed. Cir. 1986).

The term technically defective is intended to cover the full range of defects found by the courts that do not involve a substantive defect such as bad faith, fraud, or reckless and intentional disregard of the statutory certification requirements. Examples of technically defective certifications made curable by this amendment include certification language that is incomplete, failure to supply a certification with each document submitted as part of the claim when all claim documentation is not submitted simultaneously, missing certifications when two or more claims not requiring certification are deemed by the court or board to be a larger claim requiring certification, and certification by the wrong or incorrect representative of the contractor—when the person making the certification was duly authorized by the contractor to certify on its behalf. This list is not intended to be exclusive, but to illustrate that use of the word "technically" does not narrowly and unreasonably limit the scope of this amendment.

Contractors whose certifications are defective as the result of innocent mistake or inadvertence should not be penalized where their claims are otherwise meritorious and a good faith effort appears to have been made to provide a responsive certification in the first instance, including recertifications filed in response to contracting officer inquiries after the initial claim was filed. This amendment continues protection for the Government against false, bad faith, or fraudulent claims. But it is consistent with the goal of preventing wasteful or duplicative litigation by allowing a contractor to cure a defect after the case is before a court or board, and thus permitting the court or board to proceed to the merits of the litigation.

Finally, title X would provide a civil cause of action in Federal court for victims of terrorism. This provision has strong bipartisan support in the Congress, and I am pleased to support its inclusion here.

Mr. President, H.R. 6185 is the product of much effort on the part of many people. In particular, I would like to extend my deep gratitude to my colleagues on the Senate Judiciary Committee, especially Senators THURMOND and GRASSLEY. I would also like to thank Representative HUGHES, chairman of the House Judiciary Subcommittee on Intellectual Property and Judicial Administration, and Representative MOORHEAD, ranking minority member of the subcommittee and fellow Federal Courts Study Committee member. In addition, the staffs of these Members of Congress are to be commended for their fine work and dedication.

In formulating this Federal Courts Administration legislation, we have been mindful of the concerns of many parties expressing an interest. I feel that these efforts have produced a consensus bill which will benefit our Federal judiciary in many ways, for years to come.

Mr. GRASSLEY. Mr. President, I rise in support of final passage of H.R. 6185/S. 1569, the Federal courts bill, and ask that Senator HEFLIN add my name as a cosponsor of the bill.

A little more than 2 years ago, Senator HEFLIN and I were privileged to be members of the Federal Courts Study Committee. The committee issued an extensive report with recommendations for improving the Federal courts. We implemented some of those recommendations with a bill in 1990, and today we implement several more. We are empowering magistrates to make modifications in probation or supervised release, as well as making it easier for appeals court judges to be transferred temporarily to another circuit to accommodate heavier dockets.

There are many more good recommendations from the Federal Court Study Committee, including changes in prisoner litigation procedures, that have not yet been adopted. I hope that Senator HEFLIN and I will have the opportunity to continue working on the improvement of the Federal courts. It cannot be disputed that our courts are clogged and the judges need assistance with some reforms.

This bill also contains a series of recommendations from the Administrative Office of the U.S. Courts which will enable the courts to function more efficiently. And, in this bill, we have made needed changes in the Judicial Survivor Annuity Act, which will enable the families and survivors of judges to have a more rational benefit plan. I am generally cautious on salaries and benefits for Federal employees, and have long been a fighter against congressional pay raises. But this improvement will be a small initial cost to the Government, and the judges will be contributing to the plan. The result will be a better plan for the families of very important public servants—Federal judges.

We have also provided for some changes in the U.S. Claims Court, the court with jurisdiction over money disputes with the Federal Government. The most significant change is an improvement in the contractor certification procedure. Under the Contract Disputes Act, a contractor is required to certify a claim against the Government. Often, that certification—a technical form—can be the subject of extensive litigation. Under the changes provided in this bill, the claims court or the board of contract appeals may allow a certification to be corrected for technical defects at any time prior to a final decision, unless the defective certification was fraudulent, made in bad faith, or made with reckless or gross negligence. Some contractors sought more expansive changes in the claims certification requirement, but this change should relieve the claims court of needless and wasteful litigation over the validity of certifications. But it also preserves the Government's need for the certification requirement—much needed insurance against bad faith claims against the Government.

Finally, Mr. President, I am pleased that this bill incorporates my legislation to create a new civil action for American victims of terrorism. The

tragedies of Pan Am 103 and the *Achilles Lauro* still burn in our minds. Those responsible have not been called to account for destroying precious American lives. This provision, the product of 3 years of effort, is now finally coming to fruition. American victims will be able to bring a claim against a terrorist group for money damages. The Justice Department had some concerns about protecting its criminal investigations in these kinds of cases. And we have been able to accommodate the Department's interests. After all, we agree that the first and best remedy is to bring these terrorists to justice in our courts of law. But often, the terrorists elude justice, as in the *Achilles Lauro* case where Leon Klinghoffer, an elderly American was callously murdered by PLO terrorists. And in the Pan Am 103 case, two Libyans have been indicted, but have not been apprehended. While this bill will not permit civil actions against sovereign leaders, it will allow the victims to pursue renegade terrorist organizations and their leaders, and go after the resource that keeps them in business—their money. We all hope that this new provision will not be invoked—that is, that there will not be American victims of terrorism. But in the event tragedy strikes, victims will be armed with this civil remedy.

## FEDERAL COURTS ADMINISTRATION ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1569.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 1569) entitled "An Act to implement the recommendations of the Federal Courts Study Committee, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Federal Courts Administration Act of 1992".

### TITLE I—IMPLEMENTATION OF FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

**SEC. 101. SUPREME COURT AUTHORITY TO PRESCRIBE RULES FOR APPEAL OF INTERLOCUTORY DECISIONS.**

Section 1292 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).".

**SEC. 102. ABOLITION OF TEMPORARY EMERGENCY COURT OF APPEALS.**

(a) APPEALS UNDER ECONOMIC STABILIZATION ACT.—Section 211 of the Economic Stabilization Act of 1970 (Public Law 91-379; 84 Stat. 799) is amended by striking subsections (b) through (h) and inserting the following:

"(b) Appeals from orders or judgments entered by a district court of the United States in cases and controversies arising under this title shall be brought in the United States Court of Appeals for the Federal Circuit if the appeal is from a final decision of the district court or is an interlocutory appeal permitted under section 1292(c) of title 28, United States Code.".

(b) JUDICIAL REVIEW OF EMERGENCY ORDERS UNDER THE NATURAL GAS POLICY ACT.—Section 506(c) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3416(c)) is amended—

(1) in the first sentence, by striking "the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended," and inserting "the United States Court of Appeals for the Federal Circuit"; and

(2) by striking "Temporary Emergency Court of Appeals" each place it appears and inserting "United States Court of Appeals for the Federal Circuit".

(c) CONFORMING AMENDMENTS.—Section 1295(a) of title 28, United States Code, is amended—

(1) by striking "and" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(11) of an appeal under section 211 of the Economic Stabilization Act of 1970;

"(12) of an appeal under section 5 of the Emergency Petroleum Allocation Act of 1973;

"(13) of an appeal under section 506(c) of the Natural Gas Policy Act of 1978; and

"(14) of an appeal under section 523 of the Energy Policy and Conservation Act.".

(d) ABOLITION OF COURT.—The Temporary Emergency Court of Appeals created by section 211(b) of the Economic Stabilization Act of 1970 is abolished, effective 6 months after the date of the enactment of this Act.

(e) PENDING CASES.—(1) Any appeal which, before the effective date of abolition described in subsection (d), is pending in the Temporary Emergency Court of Appeals but has not been submitted to a panel of such court as of that date shall be assigned to the United States Court of Appeals for the Federal Circuit as though the appeal had originally been filed in that court.

(2) Any case which, before the effective date of abolition described in subsection (d), has been submitted to a panel of the Temporary Emergency Court of Appeals and as to which the mandate has not been issued as of that date shall remain with that panel for all purposes and, notwithstanding the provisions of sections 291 and 292 of title 28, United States Code, that panel shall be assigned to the United States Court of Appeals for the Federal Circuit for the purpose of deciding such case.

**SEC. 103. JURISDICTION OF MAGISTRATE JUDGES TO MODIFY OR REVOKE PROBATION OR SUPERVISED RELEASE AFTER IMPRISONMENT.**

Section 3401 of title 18, United States Code, is amended—

(1) in subsection (d) by striking "and to revoke or reinstate the probation of any person granted probation by him." and inserting "and to revoke, modify, or reinstate the probation of any person granted probation by a magistrate judge."; and

(2) by adding at the end the following new subsections:

"(h) The magistrate judge shall have power to modify, revoke, or terminate supervised release of any person sentenced to a term of supervised release by a magistrate judge.

"(i) A district judge may designate a magistrate judge to conduct hearings to modify, revoke, or terminate supervised release, including evidentiary hearings, and to submit to the judge proposed findings of fact and recommendations for such modification, revocation, or termination by the judge, including, in the case of revocation, a recommended disposition under section 3583(e) of this title. The magistrate judge shall file his or her proposed findings and recommendations.".

**SEC. 104. INTERCIRCUIT TRANSFERS.**

Section 291(a) of title 28, United States Code, is amended to read as follows:

"(a) The Chief Justice of the United States may, in the public interest, designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit.".

### TITLE II—JUDICIAL SURVIVORS' ANNUITIES IMPROVEMENTS

**SEC. 201. JUDICIAL SURVIVORS' ANNUITIES AMENDMENTS.**

(a) ELECTION.—Section 376(a)(1) of title 28, United States Code, is amended in the matter following subparagraph (G)—

(1) by striking "or" at the end of clause (v); and

(2) by inserting before the semicolon at the end of clause (vi) ", or (vii) the date of the enactment of the Federal Courts Administration Act of 1992".

(b) CONTRIBUTIONS.—Section 376(b) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(b)";

(2) in the first sentence by striking "including any 'retirement salary', a sum equal to 5 percent of that salary." and inserting "a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—

"(A) of a justice or judge of the United States retired from regular active service who is described in section 371(b)(1) of this title,

"(B) of a justice or judge of the United States retired under section 372(a) of this title who is willing and able to perform judicial duties in accordance with section 294 of this title,

"(C) of a judge of the United States Court of Federal Claims retired under section 178 (a) or (b) of this title who meets the requirements of section 178(d) of this title, or

"(D) of a judicial official on recall under section 155(b), 797, 373(c)(4), 375, or 636(h) of this title,

shall be an amount equal to 2.2 percent of retirement salary.";

(3) by redesignating all that follows the first sentence (as amended by paragraph (2) of this subsection) as paragraph (3) and inserting before such paragraph (3) the following new paragraph:

"(2) A judicial official who is not entitled to receive an immediate retirement salary upon leaving office but who is eligible to receive a deferred retirement salary on a later date shall file, within 90 days before leaving office, a written notification of his or her intention to remain within the purview of this section under such conditions and procedures as may be determined by the Director of the Administrative Office of the United States Courts. Every judicial official who files a written notification in accordance with this paragraph shall be deemed to consent to contribute, during the period before such a judicial official begins to receive his or her re-

tirement salary, a sum equal to 3.5 percent of the deferred retirement salary which that judicial official is entitled to receive. Any judicial official who fails to file a written notification under this paragraph shall be deemed to have revoked his or her election under subsection (a) of this section."; and

(4) in paragraph (3), as redesignated by paragraph (3) of this subsection, by striking "so deducted and withheld from the salary of each such judicial official" and inserting "deducted and withheld from the salary of each judicial official under paragraphs (1) and (2) of this subsection".

(c) DEPOSITS.—Section 376(d) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking "5 percent" and inserting "3.5 percent"; and

(2) in paragraph (2) by striking "5 percent" and inserting "3.5 percent".

(d) REFUND OF DEPOSITS.—Section 376(g) of title 28, United States Code, is amended to read as follows:

"(g) If any judicial official leaves office and is ineligible to receive a retirement salary or leaves office and is entitled to a deferred retirement salary but fails to make an election under subsection (b)(2) of this section, all amounts credited to his or her account established under subsection (e), together with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, minus a sum equal to 2.2 percent of salary for service while deductions were withheld under subsection (b) or for which a deposit was made by the judicial official under subsection (d), shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this section, a 'reasonable period of time' shall be presumed to be no longer than 1 year following the date upon which such judicial official relinquishes his or her office.".

(e) PAYMENT OF ANNUITIES.—Section 376(h)(1) of title 28, United States Code, is amended by striking "or while receiving 'retirement salary,' " and inserting "while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section".

(f) CREDITABLE SERVICE.—Section 376(k) of title 28, United States Code, is amended—

(1) in paragraph (3) by striking "and" at the end;

(2) in paragraph (4) by striking the period and inserting ", and"; and

(3) by adding at the end the following new paragraph:

"(5) those years during which such judicial official had deductions withheld from his or her retirement salary in accordance with subsection (b)(1) or (2) of this section.".

(g) COMPUTATION OF ANNUITY.—Section 376(l) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking "(i) during those three years of such service in which his or her annual salary" and inserting "(i) during those three years of such service, or during those three years while receiving a retirement salary, in which his or her annual salary or retirement salary"; and

(2) in paragraph (1) by redesignating subparagraph (D) as subparagraph (E) and inserting after subparagraph (C) the following:

"(D) the number of years during which the judicial official had deductions withheld from his or her retirement salary under subsection (b) (1) or (2) of this section; plus".

(h) TERMINATION.—Section 376 of title 28, United States Code, is amended by adding at the end of that section the following new subsection:

"(v) Subject to the terms of a decree, court order, or agreement described in subsection (t)(1), if any judicial official ceases to be married after making the election under subsection (a), he or she may revoke such election in writing by notifying the Director of the Administrative Office of the United States Courts. The judicial official shall also notify any spouse or former spouse of the application for revocation in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulation prescribe. The Director may provide under such regulations that the notification requirement may be waived with respect to a spouse or former spouse if the judicial official establishes to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.".

(i) ADJUSTMENT OF CONTRIBUTION RATE.—Section 376 of title 28, United States Code, is amended by adding at the end of that section the following new subsection:

"(w) The Comptroller General of the United States shall, at the end of each 3-fiscal year period, determine whether the contributions by judicial officials under subsection (b) during that 3-year period accounted for 50 percent of the costs of the Judicial Survivors' Annuities Fund and if not, then what adjustments in the contribution rates under subsection (b) should be made to achieve that 50 percent figure. The Comptroller General shall report the results of each determination under this subsection to the Congress.".

(j) CREDIT FOR PRIOR CONTRIBUTIONS AT HIGHER RATE.—Notwithstanding any other provision of law, the contribution under section 376(b) (1) or (2) of title 28, United States Code (as amended by this section), of any judicial official who is within the purview of such section 376 on the effective date of this title shall be reduced by 0.5 percent for a period of time equal to the number of years of service for which the judicial official has made contributions or deposits before the enactment of this Act to the credit of the Judicial Survivors' Annuities Fund or for 18 months, whichever is less, if such contributions or deposits were never returned to the judicial official. For purposes of this subsection, the term "years" shall mean full years and twelfth parts thereof.

(k) REDEPOSIT OF PRIOR CONTRIBUTIONS.—Any judicial official as defined in section 376(a)(1) of title 28, United States Code, who makes an election under section 376(b) of title 28, United States Code, may make a redeposit, as required by section 7 of Public Law 94-554 and section 2(c)(2) of Public Law 99-336, to the credit of the Judicial Survivors' Annuities Fund in installments, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts. If a judicial official elects to make a redeposit in installments—

(1) the Director shall require that the first installment payment made shall be in an amount no smaller than the last 18 months of salary deductions or deposits previously returned to that judicial official in a lump-sum payment; and

(2) the election under section 376(b) of title 28, United States Code, shall be effective upon payment of the first such installment.

(l) AUDIT BY GAO.—The Comptroller General shall—

(1) conduct an audit of the judicial survivors annuities program under section 376 of title 28, United States Code, for the 3-year period beginning on the date of the enactment of this Act; and

(2) report to the Congress, not later than 60 days after the end of that 3-year period, on the results of such audit, comparing such program to other survivors annuities programs within the Federal Government.

**SEC. 202. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

## TITLE III—JUDICIAL FINANCIAL ADMINISTRATION

**SEC. 301. AWARD OF FILING FEES IN FAVOR OF THE UNITED STATES.**

(a) ACTIONS COMMENCED BY THE UNITED STATES.—Section 2412(a) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2) A judgment for costs, when awarded in favor of the United States in an action brought by the United States, may include an amount equal to the filing fee prescribed under section 1914(a) of this title. The preceding sentence shall not be construed as requiring the United States to pay any filing fee.".

(b) DISPOSITION OF FILING FEES.—Section 1931 of title 28, United States Code, is amended by striking "The following" and all that follows through the end and inserting the following:

"(a) Of the amounts paid to the clerk of court as a fee under section 1914(a) or as part of a judgment for costs under section 2412(a)(2) of this title, $60 shall be deposited into a special fund of the Treasury to be available to offset funds appropriated for the operation and maintenance of the courts of the United States.

"(b) If the court authorizes a fee under section 1914(a) or an amount included in a judgment for costs under section 2412(a)(2) of this title of less than $120, the entire fee or amount, up to $60, shall be deposited into the special fund provided in this section.".

## TITLE IV—JURY MATTERS

**SEC. 401. JURY SELECTION.**

Section 1863(b)(2) of title 28, United States Code, is amended by adding at the end the following: "The plan for the district of Massachusetts may require the names of prospective jurors to be selected from the resident list provided for in chapter 234A, Massachusetts General Laws, or comparable authority, rather than from voter lists.".

**SEC. 402. GRAND JURY TRAVEL.**

Section 1871(c) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(5) A grand juror who travels to district court pursuant to a summons may be paid the travel expenses provided under this section or, under guidelines established by the Judicial Conference, the actual reasonable costs of travel by aircraft when travel by other means is not feasible and when certified by the chief judge of the district court in which the grand juror serves.".

**SEC. 403. PERMANENT AUTHORIZATION FOR OPTIONAL USE OF NEW JURY SELECTION PROCESS.**

(a) AUTHORITY TO USE ONE-STEP PROCEDURE.—Section 1878 of title 28, United States Code, is amended to read as follows:

**"§ 1878. Optional use of a one-step summoning and qualification procedure**

"(a) At the option of each district court, jurors may be summoned and qualified in a

single procedure, if the court's jury selection plan so authorizes, in lieu of the two separate procedures otherwise provided for by this chapter. Courts shall ensure that a one-step summoning and qualification procedure conducted under this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title.

"(b) Jury selection conducted under this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with a one-step summoning and qualification procedure authorized by this section.".

(b) CONFORMING AMENDMENT.—The item relating to section 1878 in the table of sections for chapter 121 is amended to read as follows:

"1878. Optional use of a one-step summoning and qualification procedure.".

(c) SAVINGS PROVISION.—For courts participating in the experiment authorized under section 1878 of title 28, United States Code (as in effect before the effective date of this section), the amendment made by subsection (a) of this section shall be effective on and after January 1, 1992.

## TITLE V—MISCELLANEOUS

### SEC. 501. PRETERMISSION OF REGULAR SESSIONS OF COURT OF APPEALS.

Section 48(c) of title 28, United States Code, is amended by striking ", with the consent of the Judicial Conference of the United States,".

### SEC. 502. REPORTS AND STATISTICS.

(a) ELIMINATION OF DUPLICATIVE REPORTING REQUIREMENT.—After January 1, 1992, the Director of the Administrative Office of the United States Courts is not required to send a report under section 1121(a) of Public Law 95-630 (12 U.S.C. 3421(a)).

(b) TRANSFER OF REPORTING DUTY TO ADMINISTERING AGENCY.—Section 2412(d)(5) of title 28, United States Code, is amended by striking "The Director" and all that follows through "this title," and inserting "The Attorney General shall report annually to the Congress on".

(c) EXTENSION FOR JUDICIAL CENTER REPORT.—Section 302(c) of the Judicial Improvements Act of 1990 (Public Law 101-650; 104 Stat. 5104) is amended by striking "2 years" and inserting "2 years and 9 months".

### SEC. 503. RECYCLING AND REUSE OF RECYCLABLE MATERIALS.

Section 604(g) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(3)(A) In order to promote the recycling and reuse of recyclable materials, the Director may provide for the sale or disposal of recyclable scrap materials from paper products and other consumable office supplies held by an entity within the judicial branch.

"(B) The sale or disposal of recyclable materials under subparagraph (A) shall be consistent with the procedures provided in section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) for the sale of surplus property.

"(C) Proceeds from the sale of recyclable materials under subparagraph (A) shall be deposited as offsetting collections to the fund established under section 1931 of this title and shall remain available until expended to reimburse any appropriations for the operation and maintenance of the judicial branch.".

59-059 O—97 Vol. 138 (Pt. 23) 6

### SEC. 504. VENUE IN DIVERSITY AND FEDERAL QUESTION CASES.

Section 1391(a)(3) of title 28, United States Code, is amended by inserting before the period ", if there is no district in which the action may otherwise be brought".

### SEC. 505. SUMMARIES OF REPORTS TO CONGRESS.

Section 103(c)(4)(B) of the Civil Justice Reform Act of 1990 (Public Law 101-650) is amended by striking "the reports" and inserting "summaries of the reports".

### SEC. 506. COSTS AND FEES IN THE UNITED STATES COURT OF VETERANS APPEALS.

(a) IN GENERAL.—Section 2412(d)(2)(F) of title 28, United States Code, is amended by inserting before the semicolon "and the United States Court of Veterans Appeals".

(b) APPLICATION TO PENDING CASES.—The amendment made by subsection (a) shall apply to any case pending before the United States Court of Veterans Appeals on the date of the enactment of this Act, to any appeal filed in that court on or after such date, and to any appeal from that court that is pending on such date in the United States Court of Appeals for the Federal Circuit.

(c) FEE AGREEMENTS.—Section 5904(d) of title 38, United States Code, shall not prevent an award of fees and other expenses under section 2412(d) of title 28, United States Code. Section 5904(d) of title 38, United States Code, shall not apply with respect to any such award but only if, where the claimant's attorney receives fees for the same work under both section 5904 of title 38, United States Code, and section 2412(d) of title 28, United States Code, the claimant's attorney refunds to the claimant the amount of the smaller fee.

(d) EFFECTIVE DATE.—This section, and the amendment made by this section, shall take effect on the date of the enactment of this Act.

## TITLE VI—JUDICIARY PERSONNEL ADMINISTRATION, BENEFITS, AND PROTECTIONS

### SEC. 601. JUDICIAL RETIREMENT MATTERS.

(a) JUDICIAL RETIREMENT FUNDS.—Section 255(g)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(B)) is amended by inserting after "Judicial survivors' annuities fund (10-8110-0-7-602);" the following:

"Judicial Officers' Retirement Fund (10-8122-0-7-602);

"Court of Federal Claims Judges' Retirement Fund (10-8124-0-7-602);".

(b) JUDICIARY TRUST FUNDS.—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by inserting after "Payment to civil service retirement and disability fund (24-0200-0-1-805);" the following:

"Payment to Judiciary Trust Funds (10-0941-0-1-752);".

### SEC. 602. FEDERAL JUDICIAL CENTER.

(a) FUNCTIONS.—Subsection 620(b) of title 28, United States Code, is amended—

(1) in paragraph (4) by striking "and" at the end;

(2) in paragraph (5) by striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(6) insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with and assist agencies of the Federal Government and other appropriate organizations in providing information and advice to further improvement in the administration of justice in the courts of foreign countries and to acquire information about judicial administration in foreign countries that may contribute to performing the other functions set forth in this section.".

(b) CLERICAL COMPENSATION.—Subsection 625(c) of title 28, United States Code, is amended by striking "competitive service and" and inserting "competitive service without regard to".

## TITLE VII—CRIMINAL ADMINISTRATIVE MATTERS

### SEC. 701. NEW AUTHORITY FOR PROBATION AND PRETRIAL SERVICES OFFICERS.

(a) PROBATION OFFICERS.—Section 3603 of title 18, United States Code, is amended—

(1) in paragraph (7) by striking "and" at the end;

(2) by redesignating paragraph (8) as paragraph (9) and inserting after paragraph (7) the following new paragraph:

"(8)(A) when directed by the court, and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of section 4243 or 4246 of this title, and report such person's conduct and condition to the court ordering release and to the Attorney General or his designee; and

"(B) immediately report any violation of the conditions of release to the court and the Attorney General or his designee; and".

(b) PRETRIAL SERVICES.—Section 3154 of title 18, United States Code, is amended—

(1) by redesignating paragraph (12) as paragraph (13); and

(2) by inserting after paragraph (11) the following new paragraph:

"(12)(A) As directed by the court and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of section 4243 or 4246 of this title, and report such person's conduct and condition to the court ordering release and the Attorney General or his designee.

"(B) Any violation of the conditions of release shall immediately be reported to the court and the Attorney General or his designee.".

### SEC. 702. GOVERNMENT RATES OF TRAVEL FOR CRIMINAL JUSTICE ACT ATTORNEYS AND EXPERTS.

The Administrator of General Services, in entering into contracts providing for special rates to be charged by Federal Government sources of supply, including common carriers and hotels (or other commercial providers of lodging) for official travel and accommodation of Federal Government employees, shall provide for charging the same rates for attorneys, experts, and other persons traveling primarily in connection with carrying out responsibilities under section 3006A of title 18, United States Code, including community defender organizations established under subsection (g) of that section.

### SEC. 703. TECHNICAL CORRECTION.

Section 3143(b)(1) of title 18, United States Code, is amended by striking "paragraph (b)(2)(D)" and inserting "subparagraph (B)(iv) of this paragraph".

## TITLE VIII—STATE JUSTICE INSTITUTE REAUTHORIZATION

### SEC. 801. AUTHORIZATION OF APPROPRIATIONS.

The text of section 215 of the State Justice Institute Act of 1984 (Public Law 98-620; 42 U.S.C. 10713) is amended to read as follows:

"SEC. 215. There are authorized to be appropriated to carry out the purposes of this

title $20,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, $25,000,000 for fiscal year 1995, and $25,000,000 for fiscal year 1996. Amounts appropriated for each such year are to remain available until expended.".

**SEC. 802. INTERAGENCY AGREEMENTS.**

Section 206(b) of the State Justice Institute Act of 1984 (42 U.S.C. 10705(b)) is amended—

(1) in paragraph (1)—

(A) by striking "shall give priority to grants, cooperative agreements, or contracts" and inserting "may award grants to or enter into cooperative agreements or contracts"; and

(B) in subparagraph (A) by striking the comma and inserting a semicolon;

(2) in paragraph (2) by inserting "to" after "award grants";

(3) by striking paragraph (3) and inserting the following:

"(3) Upon application by an appropriate State or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of State or local government other than a court.";

(4) by redesignating paragraph (4) as paragraph (5); and

(5) by inserting after paragraph (3) the following new paragraph:

"(4) The Institute may enter into contracts with Federal agencies to carry out the purposes of this title.".

**SEC. 803. TECHNICAL AMENDMENTS.**

(a) BOARD OF DIRECTORS.—Section 204(a)(3) of the State Justice Institute Act of 1984 (42 U.S.C. 10703(a)(3)) is amended in the second sentence by striking "conference" and inserting "Conference".

(b) USES OF FUNDS.—Section 206(c)(7) of the State Justice Institute Act of 1984 (42 U.S.C. 10705(c)(7)) is amended by striking "effect" and inserting "affect".

**SEC. 804. EFFECTIVE DATE.**

The provisions of this title shall take effect on the date of the enactment of this Act.

## TITLE IX—COURT OF FEDERAL CLAIMS

**SEC. 901. SHORT TITLE.**

This title may be cited as the "Court of Federal Claims Technical and Procedural Improvements Act of 1992".

**SEC. 902. COURT DESIGNATION.**

(a) IN GENERAL.—Chapters 7, 51, 91, and 165 of title 28, United States Code, are amended—

(1) by striking "United States Claims Court" each place it appears and inserting "United States Court of Federal Claims"; and

(2) by striking "Claims Court" each place it appears and inserting "Court of Federal Claims".

(b) OTHER PROVISIONS OF LAW.—Reference in any other Federal law or any document to—

(1) the "United States Claims Court" shall be deemed to refer to the "United States Court of Federal Claims"; and

(2) the "Claims Court" shall be deemed to refer to the "Court of Federal Claims".

**SEC. 903. MILITARY RETIREMENT PAY FOR RETIRED JUDGES.**

(a) IN GENERAL.—Chapter 7 of title 28, United States Code, is amended by adding at the end the following new section:

**"§ 180. Military retirement pay for retired judges**

"Section 371(e) of this title applies to judges of the United States Court of Federal Claims, and for the purpose of construing section 371(e) of this title, a judge of the United States Court of Federal Claims shall be deemed to be a judge of the United States as defined in section 451 of this title.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 7 of title 28, United States Code, is amended by adding at the end the following:

"179. Insurance and annuities programs.
"180. Military retirement pay for retired judges.".

**SEC. 904. RECALL OF COURT OF FEDERAL CLAIMS JUDGES ON SENIOR STATUS.**

(a) IN GENERAL.—Section 375 of title 28, United States Code, is amended—

(1) in the first sentence of subsection (a)(1) by striking ", a judge of the Claims Court," and ", judge of the Claims Court,";

(2) by amending paragraph (2) of subsection (a) to read as follows:

"(2) For purposes of paragraph (1) of this subsection, a certification may be made, in the case of a bankruptcy judge or a United States magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located.";

(3) by amending paragraph (3) of subsection (a) to read as follows:

"(3) For purposes of this section, the term 'bankruptcy judge' means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1984."; and

(4) in subsection (f)—

(A) by striking ", a judge of the Claims Court,"; and

(B) by striking ", a commissioner of the Court of Claims,".

(b) RECALL OF RETIRED JUDGES.—Section 797(d) of title 28, United States Code, is amended in the second sentence by striking "civil service".

**SEC. 905. LAW CLERKS.**

The first sentence of section 794 of title 28, United States Code, is amended by inserting after "may approve" the following: "for district judges".

**SEC. 906. SITES FOR HOLDING COURT.**

(a) IN GENERAL.—Section 798(a) of title 28, United States Code, is amended to read as follows:

"(a) The United States Court of Federal Claims is authorized to use facilities and hold court in Washington, District of Columbia, and throughout the United States (including its territories and possessions) as necessary for compliance with sections 173 and 2503(c) of this title. The facilities of the Federal courts, as well as other comparable facilities administered by the General Services Administration, shall be made available for trials and other proceedings outside of the District of Columbia.".

(b) HEARING IN A FOREIGN COUNTRY.—Section 798 of title 28, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

"(b) Upon application of a party or upon the judge's own initiative, and upon a showing that the interests of economy, efficiency, and justice will be served, the chief judge of the Court of Federal Claims may issue an order authorizing a judge of the court to conduct proceedings, including evidentiary hearings and trials, in a foreign country whose laws do not prohibit such proceedings, except that an interlocutory appeal may be taken from such an order pursuant to section 1292(d)(2) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal.".

(c) APPEAL JURISDICTION.—Section 1292(d)(2) of title 28, United States Code, is amended by inserting after "When" the following: "the chief judge of the United States Court of Federal Claims issues an order under section 798(b) of this title, or when".

**SEC. 907. JURISDICTION.**

(a) CERTIFICATIONS.—(1) Section 6(c) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)) is amended—

(A) in paragraph (1) in the second sentence—

(i) by striking "and" after "belief,"; and

(ii) by inserting before the period at the end of the sentence the following: ", and that the certifier is duly authorized to certify the claim on behalf of the contractor"; and

(B) by adding at the end the following:

"(6) The contracting officer shall have no obligation to render a final decision on any claim of more than $50,000 that is not certified in accordance with paragraph (1) if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim shall not deprive a court or an agency board of contract appeals of jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by an agency board of contract appeals, the court or agency board shall require a defective certification to be corrected.

"(7) The certification required by paragraph (1) may be executed by any person duly authorized to bind the contractor with respect to the claim.".

(2) The amendment made by paragraph (1)(B) shall be effective with respect to all claims filed before, on, or after the date of the enactment of this Act, except for those claims which, before such date of enactment, have been the subject of an appeal to an agency board of contract appeals or a suit in the United States Claims Court.

(3) If any interest is due under section 12 of the Contract Disputes Act of 1978 on a claim for which the certification under section 6(c)(1) is, on or after the date of the enactment of this Act, found to be defective shall be paid from the later of the date on which the contracting officer initially received the claim or the date of the enactment of this Act.

(4) The amendments made by paragraph (1)(A) shall be effective with respect to certifications executed more than 60 days after the effective date of amendments to the Federal Acquisition Regulation implementing the amendments made by paragraph (1)(A) with respect to the certification of claims.

(b) JURISDICTION OF COURT OF FEDERAL CLAIMS.—(1) Section 1491(a)(2) of title 28, United States Code, is amended in the last sentence by inserting before the period at the end the following: ", including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act".

(2) The amendment made by paragraph (1) shall be effective with respect to all actions filed before, on, or after the date of the enactment of this Act, except for those actions which, before such date of enactment, have been the subject of—

(A) a final judgment of the United States Claims Court, if the time for appeal of that

judgment has expired without an appeal having been filed, or

(B) a final judgment of the Court of Appeals for the Federal Circuit.

**SEC. 908. AWARDABLE COSTS.**

(a) AWARD OF COSTS.—Section 1919 of title 28, United States Code, is amended—

(1) by striking "district court or" and inserting "district court,"; and

(2) by inserting after "Trade" the following: ", or the Court of Federal Claims".

(b) TECHNICAL AMENDMENTS.—(1) The section caption for section 1919 of title 28, United States Code, is amended to read as follows:

**"§ 1919. Dismissal for lack of jurisdiction".**

(2) The item relating to section 1919 in the table of sections for chapter 123 of title 28, United States Code, is amended to read as follows:

"1919. Dismissal for lack of jurisdiction.".

**SEC. 909. PROCEEDINGS GENERALLY.**

Section 2503 of title 28, United States Code, is amended by adding at the end the following:

"(d) For the purpose of construing sections 1821, 1915, 1920, and 1927 of this title, the United States Court of Federal Claims shall be deemed to be a court of the United States.".

**SEC. 910. SUBPOENAS AND INCIDENTAL POWERS.**

(a) IN GENERAL.—Section 2521 of title 28, United States Code, is amended—

(1) by amending the section caption to read as follows:

**"§ 2521. Subpoenas and incidental powers";**

(2) by inserting "(a)" before "Subpoenas requiring"; and

(3) by adding at the end the following new subsections:

"(b) The United States Court of Federal Claims shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority as—

"(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

"(2) misbehavior of any of its officers in their official transactions; or

"(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

"(c) The United States Court of Federal Claims shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. The United States marshal for any district in which the Court of Federal Claims is sitting shall, when requested by the chief judge of the Court of Federal Claims, attend any session of the Court of Federal Claims in such district.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 165 of title 28, United States Code, is amended by amending the item relating to section 2521 to read as follows:

"2521. Subpoenas and incidental powers.".

**SEC. 911. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

## TITLE X—ADDITIONAL PROVISIONS

**SEC. 1001. VICTIMS' RIGHTS FUNDING.**

Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended—

(1) by striking subsection (c) and inserting the following:

"(c) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation."; and

(2) by striking subsection (d) and inserting the following:

"(d) The Fund shall be available as follows:

"(1) The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code.

"(2) Of the next $100,000,000 deposited in the Fund in a particular fiscal year—

"(A) 49.5 percent shall be available for grants under section 1403; and

"(B) 45 percent shall be available for grants under section 1404(a).

"(3) The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404(a).

"(4) The next $4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404(a).

"(5) Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under paragraphs (1) through (4) shall be available as follows:

"(A) 47.5 percent shall be available for grants under section 1403.

"(B) 47.5 percent shall be available for grants under section 1404(a).

"(C) 5 percent shall be available for grants under section 1404(c).".

**SEC. 1002. AUTHORITY TO LIMIT COLLECTION OF PRETRIAL INFORMATION IN CLASS A MISDEMEANOR CASES.**

Section 3154(1) of title 18, United States Code, is amended by inserting before the period "; except that a district court may direct that information not be collected, verified, or reported under this paragraph on individuals charged with Class A misdemeanors as defined in section 3559(a)(6) of this title".

**SEC. 1003. TERRORISM CIVIL REMEDY.**

(a) TERRORISM.—Chapter 113A of title 18, United States Code, is amended—

(1) in section 2331 by striking subsection (d) and redesignating subsection (e) as subsection (d);

(2) by redesignating section 2331 as 2332 and striking the caption for section 2331 and inserting the following:

**"§ 2332. Criminal penalties";**

(3) by inserting before section 2332 as redesignated the following:

**"§ 2331. Definitions**

"As used in this chapter—

"(1) the term 'international terrorism' means activities that—

"(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

"(B) appear to be intended—

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government by assassination or kidnapping; and

"(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

"(2) the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;

"(3) the term 'person' means any individual or entity capable of holding a legal or beneficial interest in property; and

"(4) the term 'act of war' means any act occurring in the course of—

"(A) declared war;

"(B) armed conflict, whether or not war has been declared, between two or more nations; or

"(C) armed conflict between military forces of any origin.";

(4) by adding after section 2332, as redesignated by paragraph (2) of this subsection, the following new sections:

**"§ 2333. Civil remedies**

"(a) ACTION AND JURISDICTION.—Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees.

"(b) ESTOPPEL UNDER UNITED STATES LAW.—A final judgment or decree rendered in favor of the United States in any criminal proceeding under section 1116, 1201, 1203, or 2332 of this title or section 902(i), (k), (l), (n), or (r) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(i), (k), (l), (n), or (r)) shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

"(c) ESTOPPEL UNDER FOREIGN LAW.—A final judgment or decree rendered in favor of any foreign state in any criminal proceeding shall, to the extent that such judgment or decree may be accorded full faith and credit under the law of the United States, estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

**"§ 2334. Jurisdiction and venue**

"(a) GENERAL VENUE.—Any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in any district where the defendant resides, is found, or has an agent.

"(b) SPECIAL MARITIME OR TERRITORIAL JURISDICTION.—If the actions giving rise to the claim occurred within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of this title, then any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district in which any plaintiff resides or the defendant resides, is served, or has an agent.

"(c) SERVICE ON WITNESSES.—A witness in a civil action brought under section 2333 of this title may be served in any other district where the defendant resides, is found, or has an agent.

"(d) CONVENIENCE OF THE FORUM.—The district court shall not dismiss any action brought under section 2333 of this title on the grounds of the inconvenience or inappropriateness of the forum chosen, unless—

"(1) the action may be maintained in a foreign court that has jurisdiction over the subject matter and over all the defendants;

"(2) that foreign court is significantly more convenient and appropriate; and

"(3) that foreign court offers a remedy which is substantially the same as the one available in the courts of the United States.

**"§ 2335. Limitation of actions**

"(a) IN GENERAL.—Subject to subsection (b), a suit for recovery of damages under section 2333 of this title shall not be maintained unless commenced within 4 years after the date the cause of action accrued.

"(b) CALCULATION OF PERIOD.—The time of the absence of the defendant from the United States or from any jurisdiction in which the same or a similar action arising from the same facts may be maintained by the plaintiff, or of any concealment of the defendant's whereabouts, shall not be included in the 4-year period set forth in subsection (a).

**"§ 2336. Other limitations**

"(a) ACTS OF WAR.—No action shall be maintained under section 2333 of this title for injury or loss by reason of an act of war.

"(b) LIMITATION ON DISCOVERY.—If a party to an action under section 2333 seeks to discover the investigative files of the Department of Justice, the Assistant Attorney General, Deputy Attorney General, or Attorney General may object on the ground that compliance will interfere with a criminal investigation or prosecution of the incident, or a national security operation related to the incident, which is the subject of the civil litigation. The court shall evaluate any such objections in camera and shall stay the discovery if the court finds that granting the discovery request will substantially interfere with a criminal investigation or prosecution of the incident or a national security operation related to the incident. The court shall consider the likelihood of criminal prosecution by the Government and other factors it deems to be appropriate. A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure. If the court grants a stay of discovery under this subsection, it may stay the action in the interests of justice.

"(c) STAY OF ACTION FOR CIVIL REMEDIES.—(1) The Attorney General may intervene in any civil action brought under section 2333 for the purpose of seeking a stay of the civil action. A stay shall be granted if the court finds that the continuation of the civil action will substantially interfere with a criminal prosecution which involves the same subject matter and in which an indictment has been returned, or interfere with national security operations related to the terrorist incident that is the subject of the civil action. A stay may be granted for up to 6 months. The Attorney General may petition the court for an extension of the stay for additional 6-month periods until the criminal prosecution is completed or dismissed.

"(2) In a proceeding under this subsection, the Attorney General may request that any order issued by the court for release to the parties and the public omit any reference to the basis on which the stay was sought.

**"§ 2337. Suits against Government officials**

"No action shall be maintained under section 2333 of this title against—

"(1) the United States, an agency of the United States, or an officer or employee of the United States or any agency thereof acting within his or her official capacity or under color of legal authority; or

"(2) a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or an agency thereof acting within his or her official capacity or under color of legal authority.

**"§ 2338. Exclusive Federal jurisdiction**

"The district courts of the United States shall have exclusive jurisdiction over an action brought under this chapter."; and

(5) by amending the table of sections to read as follows:

"CHAPTER 113A—TERRORISM

"Sec.
"2331. Definitions.
"2332. Criminal penalties.
"2333. Civil remedies.
"2334. Jurisdiction and venue.
"2335. Limitation of actions.
"2336. Other limitations.
"2337. Suits against government officials.
"2338. Exclusive Federal jurisdiction.

(b) TABLE OF CONTENTS.—The table of contents of part 1 of title 18, United States Code, is amended by striking

**"113A. Extraterritorial jurisdiction over terrorist acts abroad against United States nationals ..... 2331"**

and inserting

**"113A. Terrorism ..... 2331".**

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall apply to any pending case or any cause of action arising on or after 4 years before the date of enactment of this Act.

**TITLE XI—EFFECTIVE DATE**

**SEC. 1101. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as otherwise provided in this Act, the provisions of this Act and the amendments made by this Act shall take effect on January 1, 1993.

(b) AVAILABILITY OF APPROPRIATIONS.—Notwithstanding any provision of this Act, all sums expended pursuant to this Act shall be subject to the availability of appropriations.

Mr. HEFLIN. Mr. President, I rise today to urge immediate passage of the House substitute to S. 1569, the Federal Courts Administration Act of 1992. This comprehensive legislation would implement recommendations of the Federal Courts Study Committee and make other changes which are necessary to facilitate the operation of our Federal courts system.

The 100th Congress created within the Judicial Conference of the United States a 15-member Federal Courts Study Committee and directed it to "make a complete study of the courts of the United States and of the several States and transmit a report * * * on such study." The Federal Courts Study Committee included members of the Federal executive, legislative, and judicial branches and representatives from State governments, universities, and private practice, all of whom worked toward the goal of developing a long-range plan for the judicial system. I was privileged to serve as a member of this committee, as did Senator GRASSLEY.

The 101st Congress saw the first phase of Federal Courts Study Committee legislative recommendations enacted into law as title III of the Judicial Improvements Act of 1990. S. 1569 incorporates additional recommendations of the Federal Courts Study Committee. These important provisions are as follows:

Section 101 would delegate authority to the Supreme Court, under the Rules Enabling Act, to define what constitutes a final decision; and to define circumstances in which orders and actions of district courts not otherwise subject to appeal under acts of Congress may be appealed to the courts of appeals.

Section 102 would abolish the temporary emergency court of appeals and vest its remaining caseload in the court of appeals for the Federal circuit.

Section 103 would provide jurisdiction for magistrate judges to revoke, modify, or terminate the supervised release or probation of a defendant sentenced by a magistrate judge.

Section 104 would allow the Chief Justice of the United States, upon request, to designate and assign temporarily any circuit judge to another circuit.

Title II of S. 1569 addresses important needs and issues affecting the surviving spouses and dependents of Federal judges. This proposal would reduce the contribution of judges from 5 percent of salary to 2.2 percent of salary while in active service or while serving in senior or recalled status, and would set the rate of contribution at 3.5 percent to retirement salary for those judges leaving office. The reductions in the judges' contributions would attract more participants and extend protection to survivors of judges who otherwise would remain vulnerable to financial crisis.

Titles III–VII of S. 1569 contain various judicial housekeeping items which were included at the request of the Judicial Conference of the United States. These sections focus on judicial financial administration; jury matters; judiciary personnel administration, benefits, and protections; and criminal administrative matters.

The version of S. 1569 which originally passed the Senate contained a provision, section 403, since deleted, dealing with compensation for loss or damage to personal property of jurors. It is our opinion that it is within the power of the judicial Conference of the United States to delegate to the Administrative Office of the U.S. Courts the authority to pay for such losses, without the need or further legislation.

Moreover, section 602 of S. 1569 allows the Federal Judicial Center to work with other organizations to assist in the development of judicial systems in foreign countries. With new democracies forming all over the world, it is essential that our judicial branch officers and employees be authorized to share their expertise in judicial administration and the basic tenants of freedom that this country holds dear. I anticipate that there will be many beneficial developments from the efforts of the Federal Judicial Center, the Judicial Conference, and the Administrative Office of the U.S. Courts in this regard.

Title VIII of S. 1569 would reauthorize the State Justice Institute from 1993–96. This reauthorization, which I strongly support, would continue the mission of the State Justice Institute to improve the administration of justice in our Nation's State court systems.

Title IX would improve the Federal claims litigation process before the U.S. claims court and assist the court in providing better and more efficient service to its litigants. It would also ensure fair treatment for the judges of the court by providing certain benefits equivalent to those available to other Federal trial judges.

Finally, title X would provide a civil cause of action in Federal court for victims of terrorism. This provision has strong bipartisan support in the Congress, and I am pleased to support its inclusion here.

Mr. President, S. 1569 is the product of much effort on the part of many people. In particular, I would like to extend my deep gratitude to my colleagues on the Senate Judiciary Committee, especially Senators THURMOND and GRASSLEY. I would also like to thank Representative HUGHES, chairman of the House Judiciary Subcommittee on Intellectual Property and Judicial Administration, and Representative MOORHEAD, ranking minority member of the subcommittee and fellow Federal Courts Study Committee member. In addition, the staffs of these Members of Congress are to be commended for their fine work and dedication.

In formulating this Federal Courts Administration legislation, we have been mindful of the concerns of many parties expressing an interest. I feel that these efforts have produced a consensus bill which will benefit our Federal judiciary in many ways, for years to come.

Mr. GRASSLEY. Mr. President, I rise in support of final passage of S. 1569, the Federal courts bill, and ask that Senator HEFLIN add my name as a cosponsor of the bill.

A little more than 2 years ago, Senator HEFLIN and I were privileged to be members of the Federal Courts Study Committee. The committee issued an extensive report with recommendations for improving the Federal courts. We implemented some of those recommendations with a bill in 1990, and today we implement several more. Finally, we are abolishing the temporary emergency court of appeals. And we are empowering magistrates to make modifications in probation or supervised release, as well as making it easier for appeals court judges to be transferred temporarily to another circuit to accommodate heavier dockets.

There are many more good recommendations from the Federal Courts Study Committee, including changes in prisoner litigation procedures, that have not yet been adopted. I hope that Senator HEFLIN and I will have the opportunity to continue working on the improvement of the Federal courts. It cannot be disputed that our courts are clogged and the judges need assistance with some reforms.

This bill also contains a series of recommendations from the Administrative Office of the U.S. Courts which will enable the courts to function more efficiently. And, in this bill, we have made needed changes in the Judicial Survivor Annuity Act, which will enable the families and survivors of judges to have a more rational benefit plan. I am generally cautious on salaries and benefits for Federal employees, and have long been a fighter against congressional pay raises. But this improvement will be a small initial cost to the Government, and the judges will be contributing to the plan. The result will be a better plan for the families of very important public servants—Federal judges.

We have also provided for some changes in the U.S. Claims Court, the court with jurisdiction over money disputes with the Federal Government. The most significant change is an improvement in the contractor certification procedure. Under the Contract Disputes Act, a contractor is required to certify a claim against the Government. Often, that certification—a technical form—can be the subject of extensive litigation. Under the changes provided in this bill, the claims court or the board of contract appeals may allow a certification to be corrected for technical defects at any time prior to a final decision, unless the defective certification was fraudulent, made in bad faith, or made with reckless or gross negligence. Some contractors sought more expansive changes in the claims certification requirement, but this change should relieve the claims court of needless and wasteful litigation over the validity of certifications. But it also preserves the Government's need for the certification requirement—much needed insurance against bad faith claims against the Government.

Finally, Mr. President, I am pleased that this bill incorporates my legislation to create a new civil action for American victims of terrorism. The tragedies of Pan Am 103 and the *Achilles Lauro* still burn in our minds. Those responsible have not been called to account for destroying precious American lives. This provision, the product of 3 years of effort is now finally coming to fruition. American victims will be able to bring a claim against a terrorist group for money damages. The Justice Department had some concerns about protecting its criminal investigations in these kinds of cases. And we have been able to accommodate the Department's interests. After all, we agree that the first and best remedy is to bring these terrorists to justice in our courts of law. But often, the terrorists elude justice, as in the *Achilles Lauro* case where Leon Klinghoffer, an elderly American was callously murdered by PLO terrorists. And in the Pan Am 103 case, two Libyans have been indicted, but have not been apprehended. While this bill will not permit civil actions against sovereign leaders, it will allow the victims to pursue renegade terrorist organizations and their leaders, and go after the resource that keeps them in business—their money. We all hope that this new provision will not be invoked—that is, that there will not be American victims of terrorism. But in the event tragedy strikes, victims will be armed with this civil remedy.

Mr. FORD. Mr. President, I move that the Senate concur in the amendment of the House.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

## LATE PAYMENT OF MAINTENANCE FEES

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 5328, a bill to amend title 35, United States Code, with respect to the late payment of maintenance fees; that the bill be deemed read the third time, passed, and the motion to reconsider be laid upon the table.

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

So the bill (H.R. 5328) was deemed read the third time and passed.

## JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT AUTHORIZATION ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5194.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

*Resolved*, That the House agree to the amendments of the Senate to the bill (H.R. 5194) entitled "An Act to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to authorize appropriations for fiscal years 1993, 1994, 1995, and 1996, and for other purposes," with the following amendment:

Strike out all after the enacting clause, and insert:

**SECTION 1. FINDINGS AND DECLARATION OF PURPOSE.**

(a) FINDINGS.—Section 101(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601(a)) is amended—

(1) by redesignating paragraphs (2), (3), (4), (5), (6), (7), and (8) as paragraphs (4), (5), (6), (7), (8), (9), and (10), respectively;

(2) by inserting after paragraph (1) the following new paragraphs:

"(2) recent trends show an upsurge in arrests of adolescents for murder, assault, and weapon use;

"(3) the small number of youth who commit the most serious and violent offenses are becoming more violent;";

(3) in paragraph (4), as redesignated by paragraph (1), by inserting "prosecutorial and public defender offices," after "juvenile courts,";

(4) by striking "and" at the end of paragraph (9), as redesignated by paragraph (1);

(5) by striking the period at the end of paragraph (10), as redesignated by paragraph (1), and inserting ";"; and

(6) by adding at the end the following new paragraphs:

"(11) emphasis should be placed on preventing youth from entering the juvenile justice system to begin with; and

"(12) the incidence of juvenile delinquency can be reduced through public recreation programs and activities designed to provide youth with social skills, enhance self esteem, and encourage the constructive use of discretionary time.".

(b) PURPOSE.—Section 102 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5602) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking "delinquency" and inserting "justice and delinquency prevention";

(B) in paragraph (2) by striking "agencies, institutions, and individuals in developing and implementing juvenile delinquency programs" and inserting "nonprofit juvenile justice and delinquency prevention programs";

(C) by striking "and" at the end of paragraph (7);

(D) by redesignating paragraph (8) as paragraph (9);

(E) by inserting after paragraph (7) the following new paragraph:

"(8) to strengthen families in which juvenile delinquency has been a problem;";

(F) by striking the period at the end of paragraph (9), as redesignated by subparagraph (D), and inserting a semicolon; and

(G) by adding at the end the following new paragraphs:

"(10) to assist State and local governments in improving the administration of justice and services for juveniles who enter the system; and

"(11) to assist States and local communities to prevent youth from entering the justice system to begin with."; and

(2) in subsection (b)—

(A) by striking "maintaining and strengthening the family unit" and inserting "preserving and strengthening families";

(B) by striking "and (4)" and inserting "(4)"; and

(C) by inserting "; (5) to encourage parental involvement in treatment and alternative disposition programs; and (6) to provide for coordination of services between State, local, and community-based agencies and to promote interagency cooperation in providing such services" before the period at the end.

(c) DEFINITIONS.—Section 103 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603) is amended—

(1) by amending paragraph (16) to read as follows:

"(16) the term 'valid court order' means a court order given by a juvenile court judge to a juvenile—

"(A) who was brought before the court and made subject to such order;

"(B) who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States;

"(C) with respect to whom an appropriate public agency (other than a court or law enforcement agency), before the issuance of such order—

"(i) reviewed the behavior of such juvenile and the circumstances under which such juvenile was brought before the court and made subject to such order;

"(ii) determined the reasons for the behavior that caused such juvenile to be brought before the court and made subject to such order;

"(iii) determined that all dispositions (including treatment), other than placement in a secure detention facility or a secure correctional facility, have been exhausted or are clearly inappropriate; and

"(iv) submitted to the court a written report stating the results of the review conducted under clause (i) and the determinations made under clauses (ii) and (iii);";

(2) by striking "and" at the end of paragraph (17);

(3) by striking the period at the end of paragraph (18) and inserting a semicolon; and

(4) by adding at the end the following new paragraphs:

"(19) the term 'comprehensive and coordinated system of services' means a system that—

"(A) ensures that services and funding for the prevention and treatment of juvenile delinquency are consistent with policy goals of preserving families and providing appropriate services in the least restrictive environment so as to simultaneously protect juveniles and maintain public safety;

"(B) identifies, and intervenes early for the benefit of, young children who are at risk of developing emotional or behavioral problems because of physical or mental stress or abuse, and for the benefit of their families;

"(C) increases interagency collaboration and family involvement in the prevention and treatment of juvenile delinquency; and

"(D) encourages private and public partnerships in the delivery of services for the prevention and treatment of juvenile delinquency;

"(20) the term 'gender-specific services' means services designed to address needs unique to the gender of the individual to whom such services are provided;

"(21) the term 'home-based alternative services' means services provided to a juvenile in the home of the juvenile as an alternative to incarcerating the juvenile, and includes home detention;

"(22) the term 'jail or lockup for adults' means a locked facility that is used by a State, unit of local government, or any law enforcement authority to detain or confine adults—

"(i) pending the filing of a charge of violating a criminal law;

"(ii) awaiting trial on a criminal charge; or

"(iii) convicted of violating a criminal law; and

"(23) the term 'nonprofit organization' means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986.".

**SEC. 2. JUVENILE JUSTICE AND DELINQUENCY PREVENTION.**

(a) OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—Section 201(b) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 (b)) is amended by amending the third sentence to read as follows: "The Administrator shall have the same reporting relationship with the Attorney General as the directors of other offices and bureaus within the Office of Justice Programs have.".

(b) PERSONNEL, SPECIAL PERSONNEL, EXPERTS, AND CONSULTANTS.—Section 202 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5612) is amended—

(1) in subsection (b) by striking "prescribes for GS-18 of the General Schedule by section 5332" and inserting "payable under section 5376";

(2) in subsection (c) by striking "Act" and inserting "title"; and

(3) in subsection (d) by striking "prescribed for GS-18 of the General Schedule by section 5332" and inserting "payable under section 5376".

(c) CONCENTRATION OF EFFORT.—Section 204 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5614) is amended—

(1) in subsection (a)—

(A) in the first sentence—

(i) by inserting "(1)" after "(a)"; and

(ii) by striking "implement overall policy and develop objectives and priorities" and inserting "develop objectives, priorities, and a long-term plan, and implement overall policy and a strategy to carry out such plan,"; and

(B) by adding at the end the following new paragraph:

"(2)(A) The plan described in paragraph (1) shall—

"(i) contain specific goals and criteria for making grants and contracts, for conducting research, and for carrying out other activities under this title; and

"(ii) provide for coordinating the administration programs and activities under this title with the administration of all other Federal juvenile delinquency programs and activities, including proposals for joint funding to be coordinated by the Administrator.

"(B) The Administrator shall review the plan described in paragraph (1) annually, revise the plan as the Administrator considers appropriate, and publish the plan in the Federal Register—

"(i) not later than 240 days after the date of enactment of this paragraph, in the case of the initial plan required by paragraph (1); and

"(ii) except as provided in clause (i), in the 30-day period ending on October 1 of each year.";

(2) in subsection (b)—

(A) by striking "and" at the end of paragraph (5); and

(B) by striking the period at the end of paragraph (6) and inserting "; and";

(3) by adding at the end the following new paragraph:

"(7) not later than 1 year after the date of the enactment of this paragraph, issue model standards for providing health care to incarcerated juveniles."; and

(4) by striking subsections (f) and (g).

(d) COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5616) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking "the Director of the Office of Community Services" and all that follows through the period and inserting "the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of the Office of National Drug Control Policy, the Director of the ACTION Agency, the Commissioner of Immigra-

tion and Naturalization, such other officers of Federal agencies who hold significant decisionmaking authority as the President may designate, and individuals appointed under paragraph (2).''; and

(B) by amending paragraph (2) to read as follows:

''(2)(A) Nine members shall be appointed, without regard to political affiliation, to the Council in accordance with this paragraph from among individuals who are practitioners in the field of juvenile justice and who are not officers or employees of the United States.

''(B)(i) Three members shall be appointed by the Speaker of the House of Representatives, after consultation with the minority leader of the House of Representatives.

''(ii) Three members shall be appointed by the majority leader of the Senate, after consultation with the minority leader of the Senate.

''(iii) Three members shall be appointed by the President.

''(C)(i) Of the members appointed under each of clauses (i), (ii), and (iii)—

''(I) 1 shall be appointed for a term of 1 year;

''(II) 1 shall be appointed for a term of 2 years; and

''(III) 1 shall be appointed for a term of 3 years;

as designated at the time of appointment.

''(ii) Except as provided in clause (iii), a vacancy arising during the term for which an appointment is made may be filled only for the remainder of such term.

''(iii) After the expiration of the term for which a member is appointed, such member may continue to serve until a successor is appointed.'';

(2) in subsection (c)—

(A) by inserting ''(1)'' after ''(c)'';

(B) in the first sentence by inserting ''(in cooperation with State and local juvenile justice programs) all Federal programs and activities that detain or care for unaccompanied juveniles,'' after ''delinquency programs'';

(C) in the second sentence—

(i) by inserting ''shall examine how the separate programs can be coordinated among Federal, State, and local governments to better serve at-risk children and juveniles and'' after ''Council''; and

(ii) by inserting ''and all Federal programs and activities that detain or care for unaccompanied juveniles'' before the period; and

(D) by adding at the end the following new paragraph:

''(2) In addition to performing their functions as members of the Council, the members appointed under subsection (a)(2) shall collectively—

''(A) make recommendations regarding the development of the objectives, priorities, and the long-term plan, and the implementation of overall policy and the strategy to carry out such plan, referred to in section 204(a)(1); and

''(B) not later than 180 days after the date of the enactment of this paragraph, submit such recommendations to the Administrator, the Chairman of the Committee on Education and Labor of the House of Representatives, and the Chairman of the Committee on the Judiciary of the Senate.''; and

(3) in subsection (f)—

(A) by inserting ''Members appointed under subsection (a)(2) shall serve without compensation.'' after ''(f)''; and

(B) by striking ''who are employed by the Federal Government full time''.

(e) ANNUAL REPORT.—Section 207(1) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5617(1)) is amended—

(1) in subparagraph (D)—

(A) by inserting ''(including juveniles treated as adults for purposes of prosecution)'' after ''juveniles''; and

(B) by striking ''and'' at the end;

(2) in subparagraph (E) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(F) the educational status of juveniles, including information relating to learning disabilities, failing performance, grade retention, and dropping out of school.''.

(f) FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS.—

(1) AUTHORITY TO MAKE GRANTS AND CONTRACTS.—Section 221(b)(2) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5613(b)(2)) is amended—

(A) in the first sentence by striking ''existence'' and inserting ''experience''; and

(B) in the second sentence by striking ''section 291(c)(1)'' and inserting ''section 299(c)(1)''.

(2) ALLOCATION.—Section 222 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5632) is amended—

(A) by striking ''allotted'' each place it appears and inserting ''allocated'' and striking ''allotment'' each place it appears and inserting ''allocation'';

(B) in subsection (a)—

(i) in paragraph (2)(A)—

(I) by striking ''part D'' and inserting ''parts D and E'';

(II) by inserting ''or such greater amount, up to $400,000, as is available to be allocated without reducing the amount of any State or territory's allocation below the amount allocated for fiscal year 1992'' after ''$325,000,''; and

(III) by inserting '', or such greater amount, up to $100,000, as is available to be allocated without reducing the amount of any State or territory's allocation below the amount allocated for fiscal year 1992,'' after ''$75,000'';

(ii) in paragraph (2)(B)—

(I) by inserting ''or such greater amount, up to $600,000, as is available to be allocated if appropriations have been enacted and made available to carry out parts D and E in the full amounts authorized by section 299(a)(1) and (3)'' after ''$400,000,''; and

(II) by inserting '', or such greater amount, up to $100,000, as is available to be allocated without reducing the amount of any State or territory's allocation below the amount allocated for fiscal year 1992'' after ''$100,000''; and

(iii) in paragraph (3) by striking ''1988'' each place it appears and inserting ''1992''; and

(C) in subsection (c)—

(i) in the first sentence by striking ''and evaluation'' and inserting '', evaluation, and one full-time staff position''; and

(ii) in the second sentence by striking ''7½ per centum'' and inserting ''10 percent''.

(3) STATE PLANS.—(A) Section 223 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633) is amended—

(i) in subsection (a)—

(I) in the second sentence by striking ''programs, and the State'' and inserting ''programs and challenge activities subsequent to State participation in part E. The State'';

(II) in paragraph (1) by striking ''section 291(c)(1)'' and inserting ''section 299(c)(1)'';

(III) by amending paragraph (3) to read as follows:

''(3) provide for an advisory group, which—

''(A) shall consist of not less than 15 and not more than 33 members appointed by the chief executive officer of the State—

''(i) which members have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice;

''(ii) which members include—

''(I) at least 1 locally elected official representing general purpose local government;

''(II) representatives of law enforcement and juvenile justice agencies, including juvenile and family court judges, prosecutors, counsel for children and youth, and probation workers;

''(III) representatives of public agencies concerned with delinquency prevention or treatment, such as welfare, social services, mental health, education, special education, recreation, and youth services;

''(IV) representatives of private nonprofit organizations, including persons with a special focus on preserving and strengthening families, parent groups and parent self-help groups, youth development, delinquency prevention and treatment, neglected or dependent children, the quality of juvenile justice, education, and social services for children;

''(V) volunteers who work with delinquents or potential delinquents;

''(VI) youth workers involved with programs that are alternatives to incarceration, including programs providing organized recreation activities;

''(VII) persons with special experience and competence in addressing problems related to school violence and vandalism and alternatives to suspension and expulsion; and

''(VIII) persons with special experience and competence in addressing problems related to learning disabilities, emotional difficulties, child abuse and neglect, and youth violence;

''(iii) a majority of which members (including the chairperson) shall not be full-time employees of the Federal, State, or local government;

''(iv) at least one-fifth of which members shall be under the age of 24 at the time of appointment; and

''(v) at least 3 members who have been or are currently under the jurisdiction of the juvenile justice system;

''(B) shall participate in the development and review of the State's juvenile justice plan prior to submission to the supervisory board for final action;

''(C) shall be afforded the opportunity to review and comment, not later than 30 days after their submission to the advisory group, on all juvenile justice and delinquency prevention grant applications submitted to the State agency designated under paragraph (1);

''(D) shall, consistent with this title—

''(i) advise the State agency designated under paragraph (1) and its supervisory board;

''(ii) submit to the chief executive officer and the legislature of the State at least annually recommendations regarding State compliance with the requirements of paragraphs (12), (13), and (14) and with progress relating to challenge activities carried out pursuant to part E; and

''(iii) contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system; and

''(E) may, consistent with this title—

''(i) advise on State supervisory board and local criminal justice advisory board composition;

''(ii) review progress and accomplishments of projects funded under the State plan.'';

(IV) in paragraph (8)—

(aa) by inserting "(A)" after "(8)";

(bb) by striking "(A) an" and inserting "(i) an";

(cc) by striking "(B)" and inserting "(ii)";

(dd) by striking "(C)" and inserting "(iii)";

(ee) by inserting "(including educational needs)" after "delinquency prevention needs" each place it appears; and

(ff) by adding at the end the following new subparagraphs:

"(B) contain—

"(i) an analysis of gender-specific services for the prevention and treatment of juvenile delinquency, including the types of such services available and the need for such services for females; and

"(ii) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency;

"(C) contain—

"(i) an analysis of services for the prevention and treatment of juvenile delinquency in rural areas, including the need for such services, the types of such services available in rural areas, and geographically unique barriers to providing such services; and

"(ii) a plan for providing needed services for the prevention and treatment of juvenile delinquency in rural areas; and

"(D) contain—

"(i) an analysis of mental health services available to juveniles in the juvenile justice system (including an assessment of the appropriateness of the particular placements of juveniles in order to receive such services) and of barriers to access to such services; and

"(ii) a plan for providing needed mental health services to juveniles in the juvenile justice system;";

(V) in paragraph (9) by inserting "recreation," after "special education,";

(VI) by amending paragraph (10) to read as follows:

"(10) provide that not less than 75 percent of the funds available to the State under section 222, other than funds made available to the State advisory group under section 222(d), whether expended directly by the State, by the unit of general local government, or by a combination thereof, or through grants and contracts with public or private nonprofit agencies, shall be used for—

"(A) community-based alternatives (including home-based alternatives) to incarceration and institutionalization, specifically—

"(i) for youth who can remain at home with assistance: home probation and programs providing professional supervised group activities or individualized mentoring relationships with adults that involve the family and provide counseling and other supportive services;

"(ii) for youth who need temporary placement: crisis intervention, shelter, and aftercare; and

"(iii) for youth who need residential placement: a continuum of foster care or group home alternatives that provide access to a comprehensive array of services;

"(B) community-based programs and services to work with—

"(i) parents and other family members to strengthen families, including parent self-help groups, so that juveniles may be retained in their homes;

"(ii) juveniles during their incarceration, and with their families, to ensure the safe return of such juveniles to their homes and to strengthen the families; and

"(iii) parents with limited English-speaking ability, particularly in areas where there is a large population of families with limited-English speaking ability;

"(C) comprehensive juvenile justice and delinquency prevention programs that meet the needs of youth through the collaboration of the many local systems before which a youth may appear, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies, and private nonprofit agencies offering youth services;

"(D) projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth affected by the juvenile justice system;

"(E) educational programs or supportive services for delinquent or other juveniles, provided equitably regardless of sex, race, or family income, designed to—

"(i) encourage juveniles to remain in elementary and secondary schools or in alternative learning situations, including—

"(I) education in settings that promote experiential, individualized learning and exploration of academic and career options;

"(II) assistance in making the transition to the world of work and self-sufficiency;

"(III) alternatives to suspension and expulsion; and

"(IV) programs to counsel delinquent juveniles and other juveniles regarding the opportunities that education provides; and

"(ii) enhance coordination with the local schools that such juveniles would otherwise attend, to ensure that—

"(I) the instruction that juveniles receive outside school is closely aligned with the instruction provided in school; and

"(II) information regarding any learning problems identified in such alternative learning situations are communicated to the schools;

"(F) expanded use of home probation and recruitment and training of home probation officers, other professional and paraprofessional personnel, and volunteers to work effectively to allow youth to remain at home with their families as an alternative to incarceration or institutionalization;

"(G) youth-initiated outreach programs designed to assist youth (including youth with limited proficiency in English) who otherwise would not be reached by traditional youth assistance programs;

"(H) programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist community services, law enforcement, and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped youth;

"(I) projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of youth;

"(J) programs and projects designed to provide for the treatment of youths' dependence on or abuse of alcohol or other addictive or nonaddictive drugs;

"(K) law-related education programs (and projects) for delinquent and at-risk youth designed to prevent juvenile delinquency;

"(L) programs for positive youth development that assist delinquent and other at-risk youth in obtaining—

"(i) a sense of safety and structure;

"(ii) a sense of belonging and membership;

"(iii) a sense of self-worth and social contribution;

"(iv) a sense of independence and control over one's life;

"(v) a sense of closeness in interpersonal relationships; and

"(vi) a sense of competence and mastery including health and physical competence, personal and social competence, cognitive and creative competence, vocational competence, and citizenship competence, including ethics and participation;

"(M) programs that, in recognition of varying degrees of the seriousness of delinquent behavior and the corresponding gradations in the responses of the juvenile justice system in response to that behavior, are designed to—

"(i) encourage courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting (including expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, boot camps and similar programs, and secure community-based treatment facilities linked to other support services such as health, mental health, education (remedial and special), job training, and recreation); and

"(ii) assist in the provision by the provision by the Administrator of information and technical assistance, including technology transfer, to States in the design and utilization of risk assessment mechanisms to aid juvenile justice personnel in determining appropriate sanctions for delinquent behavior;

"(N) programs designed to prevent and reduce hate crimes committed by juveniles, including educational programs and sentencing programs designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration; and

"(O) programs (including referral to literacy programs and social service programs) to assist families with limited English-speaking ability that include delinquent juveniles to overcome language and cultural barriers that may prevent the complete treatment of such juveniles and the preservation of their families.";

(VII) in paragraph (12)(A) by inserting "or alien juveniles in custody," after "court orders,";

(VIII) in paragraph (13)—

(aa) by striking "regular", and

(bb) by inserting before the semicolon at the end "or with the part-time or full-time security staff (including management) or direct-care staff of a jail or lockup for adults";

(IX) in paragraph (14)—

(aa) by striking "; beginning after the five-year period following December 8, 1980,";

(bb) by striking "1993" and inserting "1997"; and

(cc) by striking "areas which" and all that follows through the end of the paragraph and inserting "areas that are in compliance with paragraph (13) and—

"(A)(i) are outside a Standard Metropolitan Statistical Area; and

"(ii) have no existing acceptable alternative placement available;

"(B) are located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, so that a brief (not to exceed 48 hours) delay is excusable; or

"(C) are located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel;";

(X) by amending paragraph (16) to read as follows:

"(16) provide assurance that youth in the juvenile justice system are treated equitably on the basis of gender, race, family income, and mentally, emotionally, or physically handicapping conditions;"; and

(XI) in paragraph (17)—

(aa) by striking "and maintain the family units" and inserting "the families";

(bb) by striking "deliquency. Such" and inserting "delinquency (which"; and

(cc) by inserting "and the provision of family counseling during the incarceration of juvenile family members and coordination of family services when appropriate and feasible)" before the semicolon;

(XII) by striking "and" at the end of paragraph (23);

(XIII) by striking the period at the end of paragraph (24) and inserting "; and"; and

(XIV) by adding at the end the following new paragraph:

"(25) provide an assurance that if the State receives under section 222 for any fiscal year an amount that exceeds 105 percent of the amount the State received under such section for fiscal year 1992, all of such excess shall be expended through or for programs that are part of a comprehensive and coordinated community system of services."; and

(ii) by amending subsection (c) to read as follows:

"(c)(1) Subject to paragraph (2), the Administrator shall approve any State plan and any modification thereof that meets the requirements of this section.

"(2) Failure to achieve compliance with the subsection (a)(12)(A) requirement within the 3-year time limitation shall terminate any State's eligibility for funding under this part for a fiscal year beginning before January 1, 1993, unless the Administrator determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 percent of such juveniles or through removal of 100 percent of such juveniles from secure correctional facilities, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding 2 additional years.

"(3) If a State fails to comply with the requirements of subsection (a), (12)(A), (13), (14), or (23) in any fiscal year beginning after January 1, 1993—

"(A) subject to subparagraph (B), the amount allotted under section 222 to the State for that fiscal year shall be reduced by 25 percent for each such paragraph with respect to which noncompliance occurs; and

"(B) the State shall be ineligible to receive any allotment under that section for such fiscal year unless—

"(i) the State agrees to expend all the remaining funds the State receives under this part (excluding funds required to be expended to comply with section 222 (c) and (d) and with section 223(a)(5)(C)) for that fiscal year only to achieve compliance with any such paragraph with respect to which the State is in noncompliance; or

"(ii) the Administrator determines, in the discretion of the Administrator, that the State—

"(I) has achieved substantial compliance with each such paragraph with respect to which the State was not in compliance; and

"(II) has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time."; and

(iii) in subsection (d)—

(I) by inserting ", excluding funds the Administrator shall make available to satisfy the requirement specified in section 222(d)," after "section 222(a)";

(II) by striking "the purposes of subsection (a)(12)(A), subsection (a)(13), or subsection (a)(14)" and inserting "activities of the kinds described in subsection (a) (12)(A), (13), (14) and (23)"; and

(III) by striking "subsection (a)(12)(A) and subsection (a)(13)" and inserting "subsection (a) (12)(A), (13), (14) and (23)".

(B) Notwithstanding the amendment made by subparagraph (A)(ii), section 223(c)(3) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(c)(3)), as in effect on the day prior to the date of enactment of this Act, shall remain in effect to the extent that it provides the Administrator authority to grant a waiver with respect to a fiscal year prior to a fiscal year beginning before January 1, 1993.

(f) NATIONAL PROGRAMS.—

(1) NATIONAL INSTITUTE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—Section 241(d) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5651(d)(2)) is amended—

(A) in subsection (d)—

(i) by inserting "recreation and park personnel," after "special education personnel"; and

(ii) by inserting "prosecutors and defense attorneys," after "probation personnel,"; and

(B) in subsection (e)—

(i) in paragraph (5) by striking "prescribed for GS-18 of the General Schedule by section 5332" and inserting "payable under section 5376"; and

(ii) in paragraph (6) by striking "Act" and inserting "title".

(2) INFORMATION FUNCTION.—Section 242(3) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5652(3)) is amended by inserting "(including drug and alcohol programs and gender-specific programs)" after "treatment programs".

(3) RESEARCH, DEMONSTRATION, AND EVALUATION FUNCTIONS.—Section 243 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5653) is amended—

(A) by striking "The" and inserting "(a) The";

(B) in paragraph (1) by striking "maintain the family unit" and inserting "preserve families";

(C) by redesignating paragraphs (3), (4), (5), (6), (7), (8), and (9) as paragraphs (5), (6), (7), (8), (9), (10), and (11), respectively;

(D) by inserting after paragraph (2) the following new paragraphs:

"(3) establish or expand programs that, in recognition of varying degrees of the seriousness of delinquent behavior and the corresponding gradations in the responses of the juvenile justice system in response to that behavior, are designed to—

"(i) encourage courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting (including expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, boot camps and similar programs, and secure community-based treatment facilities linked to other support services such as health, mental health, education (remedial and special), job training, and recreation); and

"(ii) assist in the provision by the Administrator of information and technical assistance, including technology transfer, to States in the design and utilization of risk assessment mechanisms to aid juvenile justice personnel in determining appropriate sanctions for delinquent behavior;

"(4) Encourage the development of programs which, in addition to helping youth take responsibility for their behavior, take into consideration life experiences which may have contributed to their delinquency when developing intervention and treatment programs;

"(5) encourage the development and establishment of programs to enhance the States' ability to identify chronic serious and violent juvenile offenders who commit crimes such as rape, murder, firearms offenses, gang-related crimes, violent felonies, and serious drug offenses;";

(E) in subparagraph (D) of paragraph (7), as redesignated by subparagraph (C), by inserting "(including the productive use of discretionary time through organized recreational" after "lawful activities";

(F) by striking "and" at the end of paragraph (10), as redesignated by subparagraph (C);

(G) by striking the period at the end of paragraph (11), as redesignated by subparagraph (C), and inserting "; and"; and

(H) by adding at the end the following new paragraphs and subsection:

"(12) support independent and collaborative research, research training, and consultation on social, psychological, educational, economic, and legal issues affecting children and families;

"(13) support research related to achieving a better understanding of the commission of hate crimes by juveniles and designed to identify educational programs best suited to prevent and reduce the incidence of hate crimes committed by juveniles; and

"(14) routinely collect, analyze, compile, publish, and disseminate uniform national statistics concerning—

"(A) all aspects of juveniles as victims and offenders;

"(B) the processing and treatment, in the juvenile justice system, of juveniles who are status offenders, delinquent, neglected, or abused; and

"(C) the processing and treatment of such juveniles who are treated as adults for purposes of the criminal justice system.

"(b) The Administrator shall make available to the public—

"(1) the results of evaluations and research and demonstration activities referred to in subsection (a)(8); and

"(2) the data and studies referred to in subsection (a)(9);

that the Administrator is authorized to disseminate under subsection (a).".

(3) TECHNICAL ASSISTANCE AND TRAINING FUNCTIONS.—Section 244 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5654) is amended—

(A) in paragraph (2) by inserting "(including juveniles who commit hate crimes)" after "offenders";

(B) in paragraph (3)—

(i) by inserting "prosecutors and defense attorneys," after "judges";

(ii) by striking "and" at the end;

(C) by striking the period at the end of paragraph (4) and inserting "; and"; and

(D) by adding at the end the following new paragraph:

"(5) provide technical assistance and training to assist States and units of general local government to adopt the model standards issued under section 204(b)(7).".

(4) ESTABLISHMENT OF TRAINING PROGRAM.—Section 245 of the Juvenile Justice and De-

linquency Prevention Act of 1974 (42 U.S.C. 5659) is amended in the first sentence by inserting ", including methods and techniques specifically designed to prevent and reduce the incidence of hate crimes committed by juveniles" before the period.

(5) CURRICULUM FOR TRAINING PROGRAM.—Section 246 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5660) is amended in the second sentence by inserting "and shall include training designed to prevent juveniles from committing hate crimes" before the period.

(6) SPECIAL STUDIES AND REPORTS.—Section 248 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5662) is amended—

(A) by striking "(a) Not later than 1 year after the date" and inserting "(a) PURSUANT TO 1988 AMENDMENTS.—(1) Not later than 1 year after the date";

(B) by striking "(1) to review" and inserting "(A) to review";

(C) by striking "(A) conditions" and inserting "(i) conditions";

(D) by striking "(B) the extent" and inserting "(ii) the extent";

(E) by striking "(2) to make" and inserting "(B) to make";

(F) by striking "(b)(1) Not later" and inserting "(2)(A) Not later";

(G) by striking "(A) how" and inserting "(i) how";

(H) by striking "(B) the amount" and inserting "(ii) the amount";

(I) by striking "(C) the extent" and inserting "(iii) the extent";

(J) by striking "(2)(A) for purposes" and inserting "(B)(i) for purposes";

(K) by striking "(B) For purposes" and inserting "(ii) for purposes";

(L) by striking "(c) Not later" and inserting "(3) Not later";

(M) by striking "subsection (a) or (b)" and inserting "paragraph (1) or (2)"; and

(N) by adding at the end the following new subsection:

"(b) PURSUANT TO 1992 AMENDMENTS.—(1) Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall—

"(A) conduct a study with respect to juveniles waived to adult court that reviews—

"(i) the frequency and extent to which juveniles have been transferred, certified, or waived to criminal court for prosecution during the 5-year period ending December 1992;

"(ii) conditions of confinement in adult detention and correctional facilities for juveniles waived to adult court; and

"(iii) sentencing patterns, comparing juveniles waived to adult court with juveniles who have committed similar offenses but have not been waived; and

"(B) submit to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report (including a compilation of State waiver statutes) on the findings made in the study and recommendations to improve conditions for juveniles waived to adult court.

"(2) Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall—

"(A) conduct a study with respect to admissions of juveniles for behavior disorders to private psychiatric hospitals, and to other residential and nonresidential programs that serve juveniles admitted for behavior disorders, that reviews—

"(i) the frequency with which juveniles have been admitted to such hospitals and programs during the 5-year period ending December 1992; and

"(ii) conditions of confinement, the average length of stay, and methods of payment for the residential care of such juveniles; and

"(B) submit to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings made in the study and recommendations to improve procedural protections and conditions for juveniles with behavior disorders admitted to such hospitals and programs.

"(3) Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall—

"(A) conduct a study of gender bias within State juvenile justice systems that reviews—

"(i) the frequency with which females have been detained for status offenses (such as frequently running away, truancy, and sexual activity), as compared with the frequency with which males have been detained for such offenses during the 5-year period ending December 1992; and

"(ii) the appropriateness of the placement and conditions of confinement for females; and

"(B) submit to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings made in the study and recommendations to combat gender bias in juvenile justice and provide appropriate services for females who enter the juvenile justice system.

"(4) Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall—

"(A) conduct a study of the Native American pass-through grant program authorized under section 223(a)(5)(C) that reviews the cost-effectiveness of the funding formula utilized; and

"(B) submit to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings made in the study and recommendations to improve the Native American pass-through grant program.

"(5) Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall—

"(A) conduct a study of access to counsel in juvenile court proceedings that reviews—

"(i) the frequency with which and the extent to which juveniles in juvenile court proceedings either have waived counsel or have obtained access to counsel during the 5-year period ending December 1992; and

"(ii) a comparison of access to and the quality of counsel afforded juveniles charged in adult court proceedings with those of juveniles charged in juvenile court proceedings; and

"(B) submit to Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings made in the study and recommendations to improve access to counsel for juveniles in juvenile court proceedings.

"(6)(A) Not later than 180 days after the date of enactment of this subsection, the Administrator shall begin to conduct a study and continue any pending study of the incidence of violence committed by or against juveniles in urban and rural areas in the United States.

"(B) The urban areas shall include—

"(i) the District of Columbia;

"(ii) Los Angeles, California;

"(iii) Milwaukee, Wisconsin;

"(iv) Denver, Colorado;

"(v) Pittsburgh, Pennsylvania;

"(vi) Rochester, New York; and

"(vii) such other cities as the Administrator determines to be appropriate.

"(C) At least one rural area shall be included.

"(D) With respect to each urban and rural area included in the study, the objectives of the study shall be—

"(i) to identify characteristics and patterns of behavior of juveniles who are at risk of becoming violent or victims of homicide;

"(ii) to identify factors particularly indigenous to such area that contribute to violence committed by or against juveniles;

"(iii) to determine the accessibility of firearms, and the use of firearms by or against juveniles;

"(iv) to determine the conditions that cause any increase in violence committed by or against juveniles;

"(v) to identify existing and new diversion, prevention, and control programs to ameliorate such conditions;

"(vi) to improve current systems to prevent and control violence by or against juveniles; and

"(vii) to develop a plan to assist State and local governments to establish viable ways to reduce homicide committed by or against juveniles.

"(E) Not later than 3 years after the date of enactment of this subsection, the Administrator shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate detailing the results of the study addressing each objective specified in subparagraph (D).

"(7)(A) Not later than 1 year after the date of the enactment of this subsection, the Administrator shall—

"(i) conduct a study described in subparagraph (B); and

"(ii) submit to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate the results of the study.

"(B) The study required by subparagraph (A) shall assess—

"(i) the characteristics of juveniles who commit hate crimes, including a profile of such juveniles based on—

"(I) the motives for committing hate crimes;

"(II) the age, sex, race, ethnicity, education level, locality, and family income of such juveniles; and

"(III) whether such juveniles are familiar with publications or organized groups that encourage the commission of hate crimes;

"(ii) the characteristics of hate crimes committed by juveniles, including—

"(I) the types of hate crimes committed;

"(II) the frequency with which institutions and natural persons, separately determined, were the targets of such crimes;

"(III) the number of persons who participated with juveniles in committing such crimes;

"(IV) the types of law enforcement investigations conducted with respect to such crimes;

"(V) the law enforcement proceedings commenced against juveniles for committing hate crimes; and

"(VI) the penalties imposed on such juveniles as a result of such proceedings; and

"(iii) the characteristics of the victims of hate crimes committed by juveniles, including—

"(I) the age, sex, race, ethnicity, locality of the victims and their familiarity with the offender; and

"(II) the motivation behind the attack.".

(7) AUTHORITY TO MAKE GRANTS AND CONTRACTS.—Section 261 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5665) is amended—

(A) in subsection (a)—

(i) by striking "(a) The" and inserting "(a) Except as provided in subsection (f), the";

(ii) in paragraph (1) by inserting "(including home-based treatment programs)" after "alternatives"; and

(iii) by amending paragraph (3) to read as follows:

"(3) Establishing or supporting advocacy programs and services that encourage the improvement of due process available to juveniles in the juvenile justice system and the quality of legal representation for such juveniles.";

(iv) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively;

(v) by inserting after paragraph (3) the following new paragraph:

"(4) Establishing or supporting programs stressing advocacy activities aimed at improving services to juveniles affected by the juvenile justice system, including services that provide for the appointment of special advocates by courts for such juveniles.";

(vi) in paragraph (4), as redesignated by clause (iv)—

(I) by inserting "(including self-help programs for parents)" after "programs"; and

(II) by inserting ", including programs that work with families during the incarceration of juvenile family members and which take into consideration the special needs of families with limited-English speaking ability" before the period at the end;

(vii) in paragraph (7), as redesignated by clause (iv)—

(I) by striking the period at the end of subchapter (C) and inserting a comma; and

(II) by adding at the end the following: "that targets juveniles who have had contact with the juvenile justice system or who are likely to have contact with the system."; and

(viii) by adding at the end the following new paragraph:

"(9) Establishing or supporting programs designed to prevent and to reduce the incidence of hate crimes by juveniles, including—

"(A) model educational programs that are designed to reduce the incidence of hate crimes by means such as—

"(i) addressing the specific prejudicial attitude of each offender;

"(ii) developing an awareness in the offender of the effect of the hate crime on the victim; and

"(iii) educating the offender about the importance of tolerance in our society; and

"(B) sentencing programs that are designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration."; and

(B) in subsection (b)(5) by inserting "community service personnel," after "law enforcement personnel,";

(C) in subsection (b)—

(i) by striking "(b) The" and inserting "(b) Except as provided in subsection (f), the"; and

(ii) in paragraph (2) by inserting "to assist in identifying learning difficulties (including learning disabilities)," after "schools,"; and

(D) by adding at the end the following new subsection:

"(f) The Administrator shall not make a grant or a contract under subsection (a) or (b) to the Department of Justice or to any administrative unit or other entity that is part of the Department of Justice.".

(g) CONSIDERATIONS FOR APPROVAL OF APPLICATIONS.—Section 262(d)(1) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5665a(d)(1)) is amended—

(1) by amending subparagraph (B) to read as follows:

"(B) The competitive process described in subparagraph (A) shall not be required if the Administrator makes a written determination waiving the competitive process—

"(i) with respect to programs to be carried out in areas with respect to which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) that a major disaster or emergency exists; or

"(ii) with respect to a particular program described in part C that is uniquely qualified."; and

(2) by striking subparagraph (C).

(h) PREVENTION, INTERVENTION, AND TREATMENT PROGRAM RELATING TO JUVENILE GANGS AND DRUG ABUSE AND DRUG TRAFFICKING.—Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5667 et seq.) is amended to read as follows:

"PART D—GANG-FREE SCHOOLS AND COMMUNITIES; COMMUNITY-BASED GANG INTERVENTION

"Subpart I—Gang-Free Schools and Communities

"AUTHORITY TO MAKE GRANTS AND CONTRACTS

"SEC. 281. (a) The Administrator shall make grants to or enter into contracts with public agencies (including local educational agencies) and private nonprofit agencies, organizations, and institutions to establish and support programs and activities that involve families and communities and that are designed to carry out any of the following purposes:

"(1) To prevent and to reduce the participation of juveniles in the activities of gangs that commit crimes. Such programs and activities may include—

"(A) individual, peer, family, and group counseling, including the provision of life skills training and preparation for living independently, which shall include cooperation with social services, welfare, and health care programs;

"(B) education and social services designed to address the social and developmental needs of juveniles which such juveniles would otherwise seek to have met through membership in gangs;

"(C) crisis intervention and counseling to juveniles, who are particularly at risk of gang involvement, and their families, including assistance from social service, welfare, health care, mental health, and substance abuse prevention and treatment agencies where necessary;

"(D) the organization of neighborhood and community groups to work closely with parents, schools, law enforcement, and other public and private agencies in the community; and

"(E) training and assistance to adults who have significant relationships with juveniles who are or may become members of gangs, to assist such adults in providing constructive alternatives to participating in the activities of gangs.

"(2) To develop within the juvenile adjudicatory and correctional systems new and innovative means to address the problems of juveniles convicted of serious drug-related and gang-related offenses.

"(3) To target elementary school students, with the purpose of steering students away from gang involvement.

"(4) To provide treatment to juveniles who are members of such gangs, including members who are accused of committing a serious crime and members who have been adjudicated as being delinquent.

"(5) To promote the involvement of juveniles in lawful activities in geographical areas in which gangs commit crimes.

"(6) To promote and support, with the cooperation of community-based organizations experienced in providing services to juveniles engaged in gang-related activities and the cooperation of local law enforcement agencies, the development of policies and activities in public elementary and secondary schools which will assist such schools in maintaining a safe environment conducive to learning.

"(7) To assist juveniles who are or may become members of gangs to obtain appropriate educational instruction, in or outside a regular school program, including the provision of counseling and other services to promote and support the continued participation of such juveniles in such instructional programs.

"(8) To expand the availability of prevention and treatment services relating to the illegal use of controlled substances and controlled substances analogues (as defined in paragraphs (6) and (32) of section 102 of the Controlled Substances Act (21 U.S.C. 802) by juveniles, provided through State and local health and social services agencies.

"(9) To provide services to prevent juveniles from coming into contact with the juvenile justice system again as a result of gang-related activity.

"(10) To provide services authorized in this section at a special location in a school or housing project.

"(11) To support activities to inform juveniles of the availability of treatment and services for which financial assistance is available under this subpart.

"(b) From not more than 15 percent of the amount appropriated to carry out this part in each fiscal year, the Administrator may make grants to and enter into contracts with public agencies and private nonprofit agencies, organizations, and institutions—

"(1) to conduct research on issues related to juvenile gangs;

"(2) to evaluate the effectiveness of programs and activities funded under subsection (a); and

"(3) to increase the knowledge of the public (including public and private agencies that operate or desire to operate gang prevention and intervention programs) by disseminating information on research and on effective programs and activities funded under this subpart.

"APPROVAL OF APPLICATIONS

"SEC. 281A. (a) Any agency, organization, or institution desiring to receive a grant, or to enter into a contract, under this subpart shall submit an application at such time, in such manner, and containing such information as the Administrator may prescribe.

"(b) In accordance with guidelines established by the Administrator, each application submitted under subsection (a) shall—

"(1) set forth a program or activity for carrying out one or more of the purposes specified in section 281 and specifically identify each such purpose such program or activity is designed to carry out;

"(2) provide that such program or activity shall be administered by or under the supervision of the applicant;

"(3) provide for the proper and efficient administration of such program or activity;

"(4) provide for regular evaluation of such program or activity;

"(5) provide an assurance that the proposed program or activity will supplement, not supplant, similar programs and activities already available in the community;

"(6) describe how such program or activity is coordinated with programs, activities, and services available locally under parts B or C of this title, and under chapter 1 of subtitle B of title III of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801–11805);

"(7) certify that the applicant has requested the State planning agency to review and comment on such application and summarizes the responses of such State planning agency to such request;

"(8) provide that regular reports on such program or activity shall be sent to the Administrator and to such State planning agency; and

"(9) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subpart.

"(c) In reviewing applications for grants and contracts under section 281(a), the Administrator shall give priority to applications—

"(1) submitted by, or substantially involving, local educational agencies (as defined in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891));

"(2) based on the incidence and severity of crimes committed by gangs whose membership is composed primarily of juveniles in the geographical area in which the applicants propose to carry out the programs and activities for which such grants and contracts are requested; and

"(3) for assistance for programs and activities that—

"(A) are broadly supported by public and private nonprofit agencies, organizations, and institutions located in such geographical area; and

"(B) will substantially involve the families of juvenile gang members in carrying out such programs or activities.

"Subpart II—Community-Based Gang Intervention

"SEC. 282. (a) The Administrator shall make grants to or enter into contracts with public and private nonprofit agencies, organizations, and institutions to carry out programs and activities—

"(1) to reduce the participation of juveniles in the illegal activities of gangs;

"(2) to develop regional task forces involving State, local, and community-based organizations to coordinate enforcement, intervention, and treatment efforts for juvenile gang members and to curtail interstate activities of gangs; and

"(3) to facilitate coordination and cooperation among—

"(A) local education, juvenile justice, employment, and social service agencies;

"(B) community-based programs with a proven record of effectively providing intervention services to juvenile gang members for the purpose of reducing the participation of juveniles in illegal gang activities; and

"(4) to support programs that, in recognition of varying degrees of the seriousness of delinquent behavior and the corresponding gradations in the responses of the juvenile justice system in response to that behavior, are designed to—

"(A) encourage courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting (including expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, boot camps and similar programs, and secure community-based treatment facilities linked to other support services such as health, mental health, education (remedial and special), job training, and recreation); and

"(B) assist in the provision by the provision by the Administrator of information and technical assistance, including technology transfer, to States in the design and utilization of risk assessment mechanisms to aid juvenile justice personnel in determining appropriate sanctions for delinquent behavior.

"(b) Programs and activities for which grants and contracts are to be made under subsection (a) may include—

"(1) developing within the juvenile adjudicatory and correctional systems new and innovative means to address the problems of juveniles convicted of serious drug-related and gang-related offenses;

"(2) providing treatment to juveniles who are members of such gangs, including members who are accused of committing a serious crime and members who have been adjudicated as being delinquent;

"(3) promoting the involvement of juveniles in lawful activities in geographical areas in which gangs commit crimes;

"(4) expanding the availability of prevention and treatment services relating to the illegal use of controlled substances and controlled substances analogues (as defined in paragraphs (6) and (32) of section 102 of the Controlled Substances Act (21 U.S.C. 802) by juveniles, provided through State and local health and social services agencies;

"(5) providing services to prevent juveniles from coming into contact with the juvenile justice system again as a result of gang-related activity; or

"(6) supporting activities to inform juveniles of the availability of treatment and services for which financial assistance is available under this subpart.

"APPROVAL OF APPLICATIONS

"SEC. 282A. (a) Any agency, organization, or institution desiring to receive a grant, or to enter into a contract, under this subpart shall submit an application at such time, in such manner, and containing such information as the Administrator may prescribe.

"(b) In accordance with guidelines established by the Administrator, each application submitted under subsection (a) shall—

"(1) set forth a program or activity for carrying out one or more of the purposes specified in section 282 and specifically identify each such purpose such program or activity is designed to carry out;

"(2) provide that such program or activity shall be administered by or under the supervision of the applicant;

"(3) provide for the proper and efficient administration of such program or activity;

"(4) provide for regular evaluation of such program or activity;

"(5) provide an assurance that the proposed program or activity will supplement, not supplant, similar programs and activities already available in the community;

"(6) describe how such program or activity is coordinated with programs, activities, and services available locally under parts B or C of this title, and under chapter 1 of subtitle B of title III of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801–11805);

"(7) certify that the applicant has requested the State planning agency to review and comment on such application and summarizes the responses of such State planning agency to such request;

"(8) provide that regular reports on such program or activity shall be sent to the Administrator and to such State planning agency; and

"(9) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subpart.

"(c) In reviewing applications for grants and contracts under section 285(a), the Administrator shall give priority to applications—

"(1) submitted by, or substantially involving, community-based organizations experienced in providing services to juveniles;

"(2) based on the incidence and severity of crimes committed by gangs whose membership is composed primarily of juveniles in the geographical area in which the applicants propose to carry out the programs and activities for which such grants and contracts are requested; and

"(3) for assistance for programs and activities that—

"(A) are broadly supported by public and private nonprofit agencies, organizations, and institutions located in such geographical area; and

"(B) will substantially involve the families of juvenile gang members in carrying out such programs or activities.

"Subpart III—General Provisions

"DEFINITION

"SEC. 283. For purposes of this part, the term 'juvenile' means an individual who is less than 22 years of age.".

(i) ADDITIONAL PARTS IN TITLE II.—(1) Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended—

(A) by redesignating part E as part I;

(B) by redesignating sections 291, 292, 293, 294, 295, and 296 as sections 299, 299A, 299B, 299C, 299D, and 299E, respectively; and

(C) by inserting after part D the following new parts:

"PART E—STATE CHALLENGE ACTIVITIES

"ESTABLISHMENT OF PROGRAM

"SEC. 285. (a) IN GENERAL.—The Administrator may make a grant to a State that receives an allocation under section 222, in the amount of 10 percent of the amount of the allocation, for each challenge activity in which the State participates for the purpose of funding the activity.

"(b) DEFINITIONS.—For purposes of this part—

"(1) the term 'case review system' means a procedure for ensuring that—

"(A) each youth has a case plan, based on the use of objective criteria for determining a youth's danger to the community or himself or herself, that is designed to achieve appropriate placement in the least restrictive and most family-like setting available in close proximity to the parents' home, consistent with the best interests and special needs of the youth;

"(B) the status of each youth is reviewed periodically but not less frequently than once every 3 months, by a court or by administrative review, in order to determine the continuing necessity for and appropriateness of the placement;

"(C) with respect to each youth, procedural safeguards will be applied to ensure that a dispositional hearing is held to consider the future status of each youth under State supervision, in a juvenile or family court or an-

other court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, not later than 12 months after the original placement of the youth and periodically thereafter during the continuation of out-of-home placement; and

"(D) a youth's health, mental health, and education record is reviewed and updated periodically; and

"(2) the term 'challenge activity' means a program maintained for 1 of the following purposes:

"(A) Developing and adopting policies and programs to provide basic health, mental health, and appropriate education services, including special education, for youth in the juvenile justice system as specified in standards developed by the National Advisory Committee for Juvenile Justice and Delinquency Prevention prior to October 12, 1984.

"(B) Developing and adopting policies and programs to provide access to counsel for all juveniles in the justice system to ensure that juveniles consult with counsel before waiving the right to counsel.

"(C) Increasing community-based alternatives to incarceration by establishing programs (such as expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, and electronic monitoring) and developing and adopting a set of objective criteria for the appropriate placement of juveniles in detention and secure confinement.

"(D) Developing and adopting policies and programs to provide secure settings for the placement of violent juvenile offenders by closing down traditional training schools and replacing them with secure settings with capacities of no more than 50 violent juvenile offenders with ratios of staff to youth great enough to ensure adequate supervision and treatment.

"(E) Developing and adopting policies to prohibit gender bias in placement and treatment and establishing programs to ensure that female youth have access to the full range of health and mental health services, treatment for physical or sexual assault and abuse, self defense instruction, education in parenting, education in general, and other training and vocational services.

"(F) Establishing and operating, either directly or by contract or arrangement with a public agency or other appropriate private nonprofit organization (other than an agency or organization that is responsible for licensing or certifying out-of-home care services for youth), a State ombudsman office for children, youth, and families to investigate and resolve complaints relating to action, inaction, or decisions of providers of out-of-home care to children and youth (including secure detention and correctional facilities, residential care facilities, public agencies, and social service agencies) that may adversely affect the health, safety, welfare, or rights of resident children and youth.

"(G) Developing and adopting policies and programs designed to remove, where appropriate, status offenders from the jurisdiction of the juvenile court to prevent the placement in secure detention facilities or secure correctional facilities of juveniles who are nonoffenders or who are charged with or who have committed offenses that would not be criminal if committed by an adult.

"(H) Developing and adopting policies and programs designed to serve as alternatives to suspension and expulsion from school.

"(I) Increasing aftercare services for juveniles involved in the justice system by establishing programs and developing and adopting policies to provide comprehensive health, mental health, education, and vocational services and services that preserve and strengthen the families of such juveniles.

"(J) Developing and adopting policies to establish—

"(i) a State administrative structure to coordinate program and fiscal policies for children who have emotional and behavioral problems and their families among the major child serving systems, including schools, social services, health services, mental health services, and the juvenile justice system; and

"(ii) a statewide case review system.

"PART F—TREATMENT FOR JUVENILE OFFENDERS WHO ARE VICTIMS OF CHILD ABUSE OR NEGLECT

"DEFINITION

"SEC. 287. For the purposes of this part, the term 'juvenile' means a person who is less than 18 years of age.

"AUTHORITY TO MAKE GRANTS

"SEC. 287A. The Administrator, in consultation with the Secretary of Health and Human Services, shall make grants to public and nonprofit private organizations to develop, establish, and support projects that—

"(1) provide treatment to juvenile offenders who are victims of child abuse or neglect and to their families so as to reduce the likelihood that the juvenile offenders will commit subsequent violations of law;

"(2) based on the best interests of juvenile offenders who receive treatment for child abuse or neglect, provide transitional services (including individual, group, and family counseling) to juvenile offenders—

"(A) to strengthen the relationships of juvenile offenders with their families and encourage the resolution of intrafamily problems related to the abuse or neglect;

"(B) to facilitate their alternative placement; and

"(C) to prepare juveniles aged 16 years and older to live independently; and

"(3) carry out research (including surveys of existing transitional services, identification of exemplary treatment modalities, and evaluation of treatment and transitional services) provided with grants made under this section.

"ADMINISTRATIVE REQUIREMENTS

"SEC. 287B. The Administrator shall administer this part subject to the requirements of sections 262, 299B, and 299E.

"PRIORITY

"SEC. 287C. In making grants under section 287A, the Administrator—

"(1) shall give priority to applicants that have experience in treating juveniles who are victims of child abuse or neglect; and

"(2) may not disapprove an application solely because the applicant proposes to provide treatment or transitional services to juveniles who are adjudicated to be delinquent for having committed offenses that are not serious crimes.

"PART G—MENTORING

"PURPOSES

"SEC. 288. The purposes of this part are—

"(1) to reduce juvenile delinquency and gang participation;

"(2) to improve academic performance; and

"(3) to reduce the dropout rate,

through the use of mentors for at-risk youth.

"DEFINITIONS

"SEC. 288A. For purposes of this part—

"(1) the term 'at-risk youth' means a youth at risk of educational failure or dropping out of school or involvement in delinquent activities; and

"(2) the term 'mentor' means a person who works with an at-risk youth on a one-to-one basis, establishing a supportive relationship with the youth and providing the youth with academic assistance and exposure to new experiences that enhance the youth's ability to become a responsible citizen.

"GRANTS

"SEC. 288B. The Administrator shall, by making grants to and entering into contracts with local educational agencies (each which agency shall be in partnership with a public or private agency, institution, or business), establish and support programs and activities for the purpose of implementing mentoring programs that—

"(1) are designed to link at-risk children, particularly children living in high crime areas and children experiencing educational failure, with responsible adults such as law enforcement officers, persons working with local businesses, and adults working for community-based organizations and agencies; and

"(2) are intended to achieve 1 or more of the following goals:

"(A) Provide general guidance to at-risk youth.

"(B) Promote personal and social responsibility among at-risk youth.

"(C) Increase at-risk youth's participation in and enhance their ability to benefit from elementary and secondary education.

"(D) Discourage at-risk youth's use of illegal drugs, violence, and dangerous weapons, and other criminal activity.

"(E) Discourage involvement of at-risk youth in gangs.

"(F) Encourage at-risk youth's participation in community service and community activities.

"REGULATIONS AND GUIDELINES

"SEC. 288C. (a) REGULATIONS.—The Administrator, after consultation with the Secretary of Health and Human Services, the Secretary of Education, and the Secretary of Labor, shall promulgate regulations to implement this part.

"(b) GUIDELINES.—The Administrator shall develop and distribute to program participants specific model guidelines for the screening of prospective program mentors.

"USE OF GRANTS

"SEC. 288D. (a) PERMITTED USES.—Grants awarded pursuant to this part shall be used to implement mentoring programs, including—

"(1) hiring of mentoring coordinators and support staff;

"(2) recruitment, screening, and training of adult mentors;

"(3) reimbursement of mentors for reasonable incidental expenditures such as transportation that are directly associated with mentoring; and

"(4) such other purposes as the Administrator may reasonably prescribe by regulation.

"(b) PROHIBITED USES.—Grants awarded pursuant to this part shall not be used—

"(1) to directly compensate mentors, except as provided pursuant to subsection (a)(3);

"(2) to obtain educational or other materials or equipment that would otherwise be used in the ordinary course of the grantee's operations;

"(3) to support litigation of any kind; or

"(4) for any other purpose reasonably prohibited by the Administrator by regulation.

"PRIORITY

"SEC. 288E. (a) IN GENERAL.—In making grants under this part, the Administrator

shall give priority for awarding grants to applicants that—

"(1) serve at-risk youth in high crime areas;

"(2) have 60 percent or more of their youth eligible to receive funds under chapter 1 of the Elementary and Secondary Education Act of 1965; and

"(3) have a considerable number of youth who drop out of school each year.

"(b) OTHER CONSIDERATIONS.—In making grants under this part, the Administrator shall give consideration to—

"(1) the geographic distribution (urban and rural) of applications;

"(2) the quality of a mentoring plan, including—

"(A) the resources, if any, that will be dedicated to providing participating youth with opportunities for job training or post-secondary education; and

"(B) the degree to which parents, teachers, community-based organizations, and the local community participate in the design and implementation of the mentoring plan; and

"(3) the capability of the applicant to effectively implement the mentoring plan.

"APPLICATIONS

"SEC. 288F. An application for assistance under this part shall include—

"(1) information on the youth expected to be served by the program;

"(2) a provision for a mechanism for matching youth with mentors based on the needs of the youth;

"(3) an assurance that no mentor will be assigned to more than one youth, so as to ensure a one-to-one relationship;

"(4) an assurance that projects operated in secondary schools will provide youth with a variety of experiences and support, including—

"(A) an opportunity to spend time in a work environment and, when possible, participate in the work environment;

"(B) an opportunity to witness the job skills that will be required for youth to obtain employment upon graduation;

"(C) assistance with homework assignments; and

"(D) exposure to experiences that youth might not otherwise encounter;

"(5) an assurance that projects operated in elementary schools will provide youth with—

"(A) academic assistance;

"(B) exposure to new experiences and activities that youth might not encounter on their own; and

"(C) emotional support;

"(6) an assurance that projects will be monitored to ensure that each youth benefits from a mentor relationship, with provision for a new mentor assignment if the relationship is not beneficial to the youth;

"(7) the method by which mentors and youth will be recruited to the project;

"(8) the method by which prospective mentors will be screened; and

"(9) the training that will be provided to mentors.

"GRANT CYCLES

"SEC. 288G. Grants under this part shall be made for 3-year periods.

"REPORTS

"SEC. 288H. Not later than 120 days after the completion of the first cycle of grants under this part, the Administrator shall submit to Congress a report regarding the success and effectiveness of the grant program in reducing juvenile delinquency and gang participation, improving academic performance, and reducing the dropout rate.

"PART H—BOOT CAMPS

"ESTABLISHMENT OF PROGRAM

"SEC. 289. (a) IN GENERAL.—The Administrator may make grants to the appropriate agencies of 1 or more States for the purpose of establishing up to 10 military-style boot camps for juvenile delinquents (referred to as "boot camps").

"(b) LOCATION.—(1) The boot camps shall be located on existing or closed military installations on sites to be chosen by the agencies in one or more States, or in other facilities designated by the agencies on such sites, after consultation with the Secretary of Defense, if appropriate, and the Administrator.

"(2) The Administrator shall—

"(A) try to achieve to the extent possible equitable geographic distribution in approving boot camp sites; and

"(B) give priority to grants where more than one State enters into formal cooperative arrangements to jointly administer a boot camp; and

"(c) REGIMEN.—The boot camps shall provide—

"(1) a highly regimented schedule of discipline, physical training, work, drill, and ceremony characteristic of military basic training;

"(2) regular, remedial, special, and vocational education; and

"(3) counseling and treatment for substance abuse and other health and mental health problems.

"CAPACITY

"SEC. 289A. Each boot camp shall be designed to accommodate between 150 and 250 juveniles for such time as the grant recipient agency deems to be appropriate.

"ELIGIBILITY AND PLACEMENT

"SEC. 289B. (a) ELIGIBILITY.—A person shall be eligible for assignment to a boot camp if he or she—

"(1) is considered to be a juvenile under the laws of the State of jurisdiction; and

"(2) has been adjudicated to be delinquent in the State of jurisdiction or, upon approval of the court, voluntarily agrees to the boot camp assignment without a delinquency adjudication.

"(b) PLACEMENT.—Prior to being placed in a boot camp, an assessment of a juvenile shall be preformed to determine that—

"(1) the boot camp is the least restrictive environment that is appropriate for the juvenile considering the seriousness of the juvenile's delinquent behavior and the juvenile's treatment need; and

"(2) the juvenile is physically and emotionally capable of participating in the boot camp regimen.

"POST-RELEASE SUPERVISION

"SEC. 289C. A State that seeks to establish a boot camp, or participate in the joint administration of a boot camp, shall submit to the Administrator a plan describing—

"(1) the provisions that the State will make for the continued supervision of juveniles following release; and

"(2) provisions for educational and vocational training, drug or other counseling and treatment, and other support services.

"PART I—WHITE HOUSE CONFERENCE ON JUVENILE JUSTICE

"SEC. 291. (a) IN GENERAL.—The President may call and conduct a National White House Conference on Juvenile Justice (referred to as the "Conference") in accordance with this part.

"(b) PURPOSES OF CONFERENCE.—The purposes of the Conference shall be—

"(1) to increase public awareness of the problems of juvenile offenders and the juvenile justice system;

"(2) to examine the status of minors currently in the juvenile and adult justice systems;

"(3) to examine the increasing number of violent crimes committed by juveniles;

"(4) to examine the growing phenomena of youth gangs, including the number of young women who are involved;

"(5) to assemble persons involved in policies and programs related to juvenile delinquency prevention and juvenile justice enforcement;

"(6) to examine the need for improving services for girls in the juvenile justice system;

"(7) to create a forum in which persons and organizations from diverse regions may share information regarding successes and failures of policy in their juvenile justice and juvenile delinquency prevention programs; and

"(8) to develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate to address the problems of juvenile delinquency and juvenile justice.

"(c) SCHEDULE OF CONFERENCES.—The Conference under this part shall be concluded not later than 18 months after the date of enactment of this part.

"(d) PRIOR STATE AND REGIONAL CONFERENCES.—

"(1) IN GENERAL.—Participants in the Conference and other interested persons and organizations may conduct conferences and other activities at the State and regional levels prior to the date of the Conference, subject to the approval of the executive director of the Conference.

"(2) PURPOSE OF STATE AND REGIONAL CONFERENCES.—State and regional conferences and activities shall be directed toward the consideration of the purposes of this part. State conferences shall elect delegates to the National Conferences.

"(3) ADMITTANCE.—No person involved in administering State juvenile justice programs or in providing services to or advocacy of juvenile offenders may be denied admission to a State or regional conference.

"CONFERENCE PARTICIPANTS

"SEC. 291A. (a) IN GENERAL.—The Conference shall bring together persons concerned with issues and programs, both public and private, relating to juvenile justice, and juvenile delinquency prevention.

"(b) SELECTION.—

"(1) STATE CONFERENCES.—Delegates, including alternates, to the National Conference shall be elected by participants at the State conferences.

"(2) DELEGATES.—(A) In addition to delegates elected pursuant to paragraph (1)—

"(i) each Governor may appoint 1 delegate and 1 alternate;

"(ii) the majority leader of the Senate, in consultation with the minority leader, may appoint 10 delegates and 3 alternates;

"(iii) the Speaker of the House of Representatives, in consultation with the minority leader, may appoint 10 delegates and 3 alternates;

"(iv) the President may appoint 20 delegates and 5 alternates;

"(v) the chief law enforcement official and the chief juvenile corrections official of each State may appoint 1 delegate and 1 alternate each; and

"(vi) the Chairperson of the Juvenile Justice and Delinquency Prevention Advisory Committee of each State, or his or her designate, may appoint 1 delegate.

"(B) Only persons involved in administering State juvenile justice programs or in pro-

viding services to or advocacy of juvenile offenders shall be eligible for appointment as a delegate.

"(c) PARTICIPANT EXPENSES.—Each participant in the Conference shall be responsible for his or her expenses related to attending the Conference and shall not be reimbursed from funds appropriated pursuant to this Act.

"(d) NO FEES.—No fee may be imposed on a person who attends a Conference except a registration fee of not to exceed $10.

"STAFF AND EXECUTIVE BRANCH

"SEC. 291B. (a) IN GENERAL.—The President may appoint and compensate an executive director of the National White House Conference on Juvenile Justice and such other directors and personnel for the Conference as the President may deem to be advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates. The staff of the Conference may not exceed 20, including the executive director.

"(b) DETAILEES.—Upon request by the executive director, the heads of the executive and military departments may detail employees to work with the executive director in planning and administering the Conference without regard to section 3341 of title 5, United States Code.

"PLANNING AND ADMINISTRATION OF CONFERENCE

"SEC. 291C. (a) FEDERAL AGENCY SUPPORT.—All Federal departments, agencies, and instrumentalities shall provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

"(b) DUTIES OF THE EXECUTIVE DIRECTOR.—In carrying out this part, the executive director of the White House Conference on Juvenile Justice—

"(1) shall provide such assistance as may be necessary for the organization and conduct of conferences at the State and regional levels authorized by section 291(d);

"(2) may enter into contracts and agreements with public and private agencies and organizations and academic institutions to assist in carrying out this part; and

"(3) shall prepare and provide background materials for use by participants in the Conference and by participants in State and regional conferences.

"REPORTS

"SEC. 291D. (a) IN GENERAL.—Not later than 6 months after the date on which a National Conference is convened, a final report of the Conference shall be submitted to the President and the Congress.

"(b) CONTENTS.—A report described in subsection (a)—

"(1) shall include the findings and recommendations of the Conference and proposals for any legislative action necessary to implement the recommendations of the Conference; and

"(2) shall be made available to the public.

"OVERSIGHT

"SEC. 291E. The Administrator shall report to the Congress annually during the 3-year period following the submission of the final report of a Conference on the status and implementation of the findings and recommendations of the Conference.".

(2) REPEALER.—Subtitle G of title II of the Crime Control Act of 1990 (42 U.S.C. 13051 et seq.) is repealed effective September 30, 1993.

(j) GENERAL AND ADMINISTRATIVE PROVISIONS.—Section 299 of the Juvenile Justice and Delinquency Prevention Act of 1974, as redesignated by subsection (g), is amended—

(1) by amending subsection (a) to read as follows:

"(a)(1) To carry out the purposes of this title (other than parts D, E, F, G, H, and I) there are authorized to be appropriated $150,000,000 for fiscal years 1993, 1994, 1995, and 1996. Funds appropriated for any fiscal year shall remain available for obligation until expended.

"(2)(A) Subject to subparagraph (B), to carry out part D, there are authorized to be appropriated—

"(i) to carry out subpart 1, $25,000,000 for fiscal year 1993 and such sums as are necessary for fiscal years 1994, 1995, and 1996; and

"(ii) to carry out subpart 2, $25,000,000 for fiscal year 1993 and such sums as are necessary for fiscal years 1994, 1995, and 1996.

"(B) No funds may be appropriated to carry out part D, E, F, G, or I of this title or title V or VI for a fiscal year unless the aggregate amount appropriated to carry out this title (other than part D, E, F, G, or I of this title or title V or VI) for the fiscal year is not less than the aggregate amount appropriated to carry out this title (other than part D, E, F, G, or I of this title or title V or VI) for the preceding fiscal year.

"(3) To carry out part E, there are authorized to be appropriated $50,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, and 1996.

"(4)(A) Subject to subparagraph (B), there are authorized to be appropriated to carry out part F—

"(i) $15,000,000 for fiscal year 1993; and

"(ii) such sums as are necessary for fiscal years 1994, 1995, and 1996.

"(B) No amount is authorized to be appropriated for a fiscal year to carry out part F unless the aggregate amount appropriated to carry out this title for that fiscal year is not less than the aggregate amount appropriated to carry out this title for the preceding fiscal year.

"(C) From the amount appropriated to carry out part F in a fiscal year, the Administrator shall use—

"(i) not less than 85 percent to make grants for treatment and transitional services;

"(ii) not to exceed 10 percent for grants for research; and

"(iii) not to exceed 5 percent for salaries and expenses of the Office of Juvenile Justice and Delinquency Prevention related to administering part F.

"(5)(A) Subject to subparagraph (B), there are authorized to be appropriated to carry out part G such sums as are necessary for fiscal years 1993, 1994, 1995, and 1996.

"(6)(A) There are authorized to be appropriated to carry out part H such sums as are necessary for fiscal year 1993, to remain available until expended, of which—

"(i) not more than $12,500,000 shall be used to convert any 1 closed military base or to modify any 1 existing military base or other designated facility to a boot camp; and

"(ii) not more than $2,500,000 shall be used to operate any 1 boot camp during a fiscal year.

"(B) No amount is authorized to be appropriated for a fiscal year to carry out part H unless the aggregate amount appropriated to carry out parts A, B, and C of this title for that fiscal year is not less than 120 percent of the aggregate amount appropriated to carry out those parts for fiscal year 1992.

"(7)(A) There are authorized to be appropriated such sums as are necessary for each National Conference and associated State and regional conferences under part I, to remain available until expended.

"(B) New spending authority or authority to enter into contracts under part I shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

"(C) No funds appropriated to carry out this Act shall be made available to carry out part I other than funds appropriated specifically for the purpose of conducting the Conference.

"(D) Any funds remaining unexpended at the termination of the Conference under part I, including submission of the report pursuant to section 291D, shall be returned to the Treasury of the United States and credited as miscellaneous receipts."; and

(2) by adding at the end the following new subsection:

"(e) Of such sums as are appropriated to carry out section 261(a)(6), not less than 20 percent shall be reserved by the Administrator for each of fiscal years 1993, 1994, 1995, and 1996, for not less than 2 programs that have not received funds under subpart II of part C prior to October 1, 1992, which shall be selected through the application and approval process set forth in section 262.".

**SEC. 3. RUNAWAY AND HOMELESS YOUTH.**

(a) FINDINGS.—Section 302 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5701) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) juveniles who have become homeless or who leave and remain away from home without parental permission, are at risk of developing serious health and other problems because they lack sufficient resources to obtain care and may live on the street for extended periods thereby endangering themselves and creating a substantial law enforcement problem for communities in which they congregate;";

(2) by striking "and" at the end of paragraph (4);

(3) in paragraph (5) by striking "temporary" and all that follows through the period at the end and inserting "care (including preventive services, emergency shelter services, and extended residential shelter) outside the welfare system and the law enforcement system;" and

(4) by adding at the end the following new paragraphs:

"(6) runaway and homeless youth have a disproportionate share of health, behavioral, and emotional problems compared to the general population of youth, but have less access to health care and other appropriate services and therefore may need access to longer periods of residential care, more intensive aftercare service, and other assistance;

"(7) to make a successful transition to adulthood, runaway youth, homeless youth, and other street youth need opportunities to complete high school or earn a general equivalency degree, learn job skills, and obtain employment;

"(8) in view of the interstate nature of the problem, it is the responsibility of the Federal Government to develop an accurate national reporting system and to develop an effective system of care including prevention, emergency shelter services, and longer residential care outside the public welfare and law enforcement structures;

"(9) early intervention services (such as home-based services) are needed to prevent runaway and homeless youth from becoming involved in the juvenile justice system and other law enforcement systems; and

"(10) street-based services that target runaway and homeless youth where they congregate are needed to reach youth who require assistance but who would not otherwise avail themselves of such assistance or services without street-based outreach.".

(b) AUTHORITY TO MAKE GRANTS.—

(1) AUTHORITY.—Section 311(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5711(a)) is amended by striking "structure and" and inserting "system, the child welfare system, the mental health system, and".

(2) ALLOTMENT OF FUNDS.—Section 311(b) of the Runaway and Homeless Youth Act (42 U.S.C. 5711(b)) is amended—

(A) in paragraph (2)—

(i) by striking "$75,000" and inserting "$100,000"; and

(ii) by striking "$30,000" and inserting "$45,000"; and

(B) in paragraph (3) by striking "1988" each place it appears and inserting "1992".

(3) STREET-BASED SERVICES; HOME-BASED SERVICES.—Section 311 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633) is amended by striking subsection (c) and inserting the following:

"(c)(1) If for a fiscal year the amount appropriated under section 385(a)(1) exceeds $50,000,000, the Secretary may make grants under this subsection for that fiscal year to entities that receive grants under subsection (a) to establish and operate street-based service projects for runaway and homeless youth.

"(2) For purposes of this part, the term 'street-based services' includes—

"(i) street-based crisis intervention and counseling;

"(ii) information and referral for housing;

"(iii) information and referral for transitional living and health care services; and

"(iv) advocacy, education, and prevention services for—

"(I) alcohol and drug abuse;

"(II) sexually transmitted diseases including HIV/AIDS infection; and

"(III) physical and sexual assault.

"(d)(1) If for a fiscal year the amount appropriated under section 385(a)(1) exceeds $50,000,000, the Secretary may make grants for that fiscal year to entities that receive grants under subsection (a) to establish and operate home-based service projects for families that are separated, or at risk of separation, as a result of the physical absence of a runaway youth or youth at risk of family separation.

"(2) For purposes of this part—

"(A) the term 'home-based service project' means a project that provides—

"(i) case management; and

"(ii) in the family residence (to the maximum extent practicable)—

"(I) intensive, time-limited, family and individual counseling;

"(II) training relating to life skills and parenting; and

"(III) other services;

designed to prevent youth from running away from their families or to cause runaway youth or to return to their families;

"(B) the term 'youth at risk of family separation' means an individual—

"(i) who is less than 18 years of age; and

"(ii)(I) who has a history of running away from the family of such individual;

"(II) whose parent, guardian, or custodian is not willing to provide for the basic needs of such individual; or

"(III) who is at risk of entering the child welfare system or juvenile justice system, as a result of the lack of services available to the family to meet such needs; and

"(C) the term 'time-limited' means for a period not to exceed 6 months.".

(c) ELIGIBILITY.—Section 312 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5712) is amended—

(1) in subsection (a) by striking "facility providing" and inserting "project (including a host family home) that provides"; and

(2) in subsection (b)—

(A) by amending paragraph (2) to read as follows:

"(2) shall use such assistance to establish, to strengthen, or to fund a runaway and homeless youth center, or a locally controlled facility providing temporary shelter, that has—

"(A) a maximum capacity of not more than 20 youth; and

"(B) a ratio of staff to youth that is sufficient to ensure adequate supervision and treatment;";

(B) in paragraph (3)—

(i) by striking "child's parents or relatives and assuring" and inserting "parents or other relatives of the youth and ensuring"; and

(ii) by striking "child" each place it appears and inserting "youth";

(C) by amending paragraph (4) to read as follows:

"(4) shall develop an adequate plan for ensuring—

"(A) proper relations with law enforcement personnel, health and mental health care personnel, social service personnel, school system personnel, and welfare personnel;

"(B) coordination with personnel of the schools to which runaway and homeless youth will return, to assist such youth to stay current with the curricula of those schools; and

"(C) the return of runaway and homeless youth from correctional institutions;";

(D) in paragraph (5)—

(i) by striking "aftercare" and all that follows through "assuring" and inserting "providing counseling and aftercare services to such youth, for encouraging the involvement of their parents or legal guardians in counseling, and for ensuring"; and

(ii) by striking "children" and inserting "youth";

(E) in paragraph (6) by striking "children and family members which it serves" and inserting "youth and family members whom it serves (including youth who are not referred to out-of-home shelter services)";

(F) by redesignating paragraphs (6), (7), (8), (9), and (10) as paragraphs (7), (8), (9), (10), and (11), respectively;

(G) by inserting after paragraph (5) the following new paragraph:

"(6) shall develop an adequate plan for establishing or coordinating with outreach programs designed to attract persons (including, where applicable, persons who are members of a cultural minority and persons with limited ability to speak English) who are eligible to receive services for which a grant under subsection (a) may be expended;"; and

(H) by adding at the end the following new subsections:

"(c) To be eligible for assistance under section 311(c), an applicant shall propose to establish, strengthen, or fund a street-based service project for runaway and homeless youth and shall submit to the Secretary a plan in which the applicant agrees, as part of the project—

"(1) to provide qualified supervision of staff, including on-street supervision by appropriately trained staff;

"(2) to provide backup personnel for on-street staff;

"(3) to provide informational and health educational material to runaway and homeless youth in need of services;

"(4) to provide initial and periodic training of staff who provide services under the project;

"(5) to carry out outreach activities for runaway and homeless youth and to collect statistical information on runaway and homeless youth contacted through such activities;

"(6) to develop referral relationships with agencies and organizations that provide services or assistance to runaway and homeless youth, including law enforcement, education, social services, vocational education and training, public welfare, legal assistance, mental health and health care;

"(7) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds received under section 311(c), the achievements of the project under section 311(c) carried out by the applicant, and statistical summaries describing the number and the characteristics of the runaway and homeless youth who participate in such project in the year for which the report is submitted;

"(8) to implement such accounting procedures and fiscal control devices as the Secretary may require;

"(9) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under subsection 311(c);

"(10) to keep adequate statistical records that profile runaway and homeless youth whom it serves and not to disclose the identity such youth in reports or other documents based on such statistical records;

"(11) not to disclose records maintained on an individual runaway and homeless youth without the informed consent of the youth, to any person other than an agency compiling statistical records; and

"(12) to provide to the Secretary such other information as the Secretary may reasonably require.

"(d) To be eligible for assistance under section 311(d), an applicant shall propose to establish, strengthen, or fund a home-based service project for runaway youth or youth at risk of family separation and shall submit to the Secretary a plan in which the applicant agrees, as part of the project—

"(1) to provide counseling and information services needed by runaway youth, youth at risk of family separation, and the family (including unrelated individuals in the family household) of such youth, including services relating to basic life skills, interpersonal skill building, educational advancement, job attainment skills, mental and physical health care, parent training, financial planning, and referral to sources of other needed services;

"(2) to provide directly, or through an arrangement made by the applicant, 24-hour service to respond to family crises (including immediate access to temporary shelter for runaway youth and youth at risk of family separation affected by family crises);

"(3) to establish in partnership with the families of runaway youth and youth at risk of family separation, objectives and measures of success to be achieved as a result of participating in such project;

"(4) to provide informational and health educational material to runaway youth and youth at risk of family separation in need of services;

"(5) to provide initial and periodic training of staff who provide services under the project;

"(6) to carry out outreach activities for runaway youth and youth at risk of family separation, and to collect statistical information on runaway youth and youth at risk of family separation contacted through such activities;

"(7) to ensure that—

"(i) caseloads will remain sufficiently low to allow for intensive (5 to 20 hours per week) involvement with each family participating in such project; and

"(ii) qualified supervision will be provided to staff who provide services under the project;

"(8) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds under section 311(d), the achievements of the project under this part carried out by the applicant and statistical summaries describing the number and the characteristics of the runaway youth and youth at risk of family separation who participate in such project in the year for which the report is submitted;

"(9) to implement such accounting procedures and fiscal control devices as the Secretary may require;

"(10) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under section 311(d);

"(11) to keep adequate statistical records that profile runaway youth and youth at risk of family separation whom it serves and not to disclose the identity of such youth in reports or other documents based on such statistical records;

"(12) not to disclose records maintained on an individual runaway youth or youth at risk of family separation without the informed consent of the youth, to any person other than an agency compiling statistical records; and

"(13) to provide to the Secretary such other information as the Secretary may reasonably require.".

(d) APPROVAL BY SECRETARY.—Section 316 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5713) is amended—

(1) in the first sentence by striking "section 311(a)" each place it appears and inserting "section 311 (a), (c), or (d)"; and

(2) in the second sentence by striking "$150,000" and inserting "$200,000".

(e) GRANTS TO PRIVATE ENTITIES; STAFFING.—Section 317 of the Runaway and Homeless Youth Act (42 U.S.C. 5714) is amended—

(1) by striking "part" each place it appears and inserting "title";

(2) in the first sentence inserting "and the programs, projects, and activities they carry out under this title" after "center"; and

(3) in the last sentence by inserting "under this title" before the period.

(f) TRANSITIONAL LIVING GRANT PROGRAM.—Section 322(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5714-2(a)) is amended—

(1) in paragraph (1) by inserting "which shall include money management, budgeting, consumer education, and use of credit" after "basic life skills"; and

(2) in paragraph (13)—

(A) by striking "consent of the individual youth and parent or legal guardian" and inserting "informed consent of the individual youth"; and

(B) by striking "or a government agency involved in the disposition of criminal charges against youth".

(g) NATIONAL COMMUNICATION SYSTEM; STREET-BASED SERVICES PROGRAM; HOME-BASED SERVICES PROGRAM; COORDINATING ACTIVITIES.—

(1) ADDITIONAL PARTS.—The Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.) is amended—

(A) in part D—

(i) by striking "PART D" and inserting "PART F"; and

(ii) by redesignating sections 361, 362, 363, 364, and 366 as sections 381 through 385, respectively;

(B) in part C—

(i) by striking PART C" and inserting "PART E"; and

(ii) by redesignating sections 341 and 342 as sections 371 and 372, respectively; and

(C) by inserting after part B the following new parts:

"PART C—NATIONAL COMMUNICATIONS SYSTEM

"AUTHORITY TO MAKE GRANTS

"SEC. 331. With funds reserved under section 385(a)(3), the Secretary shall make grants for a national communication system to assist runaway and homeless youth in communicating with their families and with service providers. The Secretary shall give priority to grant applicants that have experience in providing telephone services to runaway and homeless youth.

"PART D—COORDINATING, TRAINING, RESEARCH, AND OTHER ACTIVITIES

"COORDINATION

"SEC. 341. With respect to matters relating to the health, education, employment, and housing of runaway and homeless youth, the Secretary shall coordinate the activities of agencies of the Department of Health and Human Services with the activities of other Federal entities and with the activities of entities that are eligible to receive grants under this title.

"GRANTS FOR TECHNICAL ASSISTANCE AND TRAINING

"SEC. 342. The Secretary may make grants to statewide and regional nonprofit organizations (and combinations of such organizations) to provide technical assistance and training to public and private entities (and combinations of such entities) that are eligible to receive grants under this title, for the purpose of carrying out the programs, projects, or activities for which such grants are made.

"AUTHORITY TO MAKE GRANTS FOR RESEARCH, DEMONSTRATION, AND SERVICE PROJECTS

"SEC. 343. (a) The Secretary may make grants to States, localities, and private entities (and combinations of such entities) to carry out research, demonstration, and service projects designed to increase knowledge concerning, and to improve services for, runaway youth and homeless youth.

"(b) In selecting among applications for grants under subsection (a), the Secretary shall give special consideration to proposed projects relating to—

"(1) youth who repeatedly leave and remain away from their homes;

"(2) home-based and street-based services for, and outreach to, runaway youth and homeless youth;

"(3) transportation of runaway youth and homeless youth in connection with services authorized to be provided under this title;

"(4) the special needs of runaway youth and homeless youth programs in rural areas;

"(5) the special needs of programs that place runaway youth and homeless youth in host family homes;

"(6) staff training in—

"(A) the behavioral and emotional effects of sexual abuse and assault;

"(B) responding to youth who are showing effects of sexual abuse and assault; and

"(C) agency-wide strategies for working with runaway and homeless youth who have been sexually victimized;

"(7) innovative methods of developing resources that enhance the establishment or operation of runaway and homeless youth centers;

"(8) training for runaway youth and homeless youth, and staff training, related to preventing and obtaining treatment for infection by the human immunodeficiency virus (HIV);

"(9) increasing access to health care (including mental health care) for runaway youth and homeless youth; and

"(10) increasing access to education for runaway youth and homeless youth.

"(c) In selecting among applicants for grants under subsection (a), the Secretary shall give priority to applicants who have experience working with runaway youth or homeless youth.

"TEMPORARY DEMONSTRATION PROJECTS TO PROVIDE SERVICES TO YOUTH IN RURAL AREAS

"SEC. 344. (a)(1) With funds appropriated under section 385(c), the Secretary may make grants on a competitive basis to States, localities, and private entities (and combinations of such entities) to provide services (including transportation) authorized to be provided under part A, to runaway and homeless youth in rural areas.

"(2)(A) Each grant made under paragraph (1) may not exceed $100,000.

"(B) In each fiscal year for which funds are appropriated to carry out this section, grants shall be made under paragraph (1) to eligible applicants carry out projects in not fewer than 10 States.

"(C) Not more than 2 grants may be made under paragraph (1) in each fiscal year to carry out projects in a particular State.

"(3) Each eligible applicant that receives a grant for a fiscal year to carry out a project under this section shall have priority to receive a grant for the subsequent fiscal year to carry out a project under this section.

"(b) To be eligible to receive a grant under subsection (a), an applicant shall—

"(1) submit to the Secretary an application in such form and containing such information and assurances as the Secretary may require by rule; and

"(2) propose to carry out such project in a geographical area that—

"(A) has a population under 20,000;

"(B) is located outside a Standard Metropolitan Statistical Area; and

"(C) agree to provide to the Secretary an annual report identifying—

"(i) the number of runaway and homeless youth who receive services under the project carried out by the applicant;

"(ii) the types of services authorized under part A that were needed by, but not provided to, such youth in the geographical area served by the project;

"(iii) the reasons the services identified under clause (ii) were not provided by the project; and

"(iv) such other information as the Secretary may require.".

(2) TECHNICAL AMENDMENTS.—(A) Section 313 of the Runaway and Homeless Youth Act (42 U.S.C. 5712a) is repealed.

(B) Section 314 of the Runaway and Homeless Youth Act (42 U.S.C. 5712b) is repealed.

(C) Section 315 of the Runaway and Homeless Youth Act (42 U.S.C. 5712c) is repealed.

(D) Sections 316 and 317 of the Runaway and Homeless Youth Act (42 U.S.C. 5713, 5714) are redesignated as sections 313 and 314, respectively.

(E) Section 365 of the Runaway and Homeless Youth Act (42 U.S.C. 5733) is repealed.

(h) REPORTS.—Section 361 of the Juvenile Justice and Delinquency Act of 1974 (42 U.S.C. 5715) is amended to read as follows:

"REPORTS

"SEC. 361. (a) Not later than 180 days after the end of each fiscal year, the Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate on the status, activities, and accomplishments of the runaway and homeless youth centers that are funded under parts A, B, C, D, and E, with particular attention to—

"(1) in the case of centers funded under part A—

"(A) their effectiveness in alleviating the problems of runaway and homeless youth;

"(B) their ability to reunite children with their families and to encourage the resolution of intrafamily problems through counseling and other services;

"(C) their effectiveness in strengthening family relationships and encouraging stable living conditions for children; and

"(D) their effectiveness in helping youth decide upon a future course of action; and

"(2) in the case of centers funded under part B—

"(A) the number and characteristic of homeless youth served by such projects;

"(B) describing the types of activities carried out under such projects;

"(C) the effectiveness of such projects in alleviating the immediate problems of homeless youth;

"(D) the effectiveness of such projects in preparing homeless youth for self-sufficiency;

"(E) the effectiveness of such projects in helping youth decide upon future education, employment, and independent living;

"(F) the ability of such projects to strengthen family relationships, and encourage the resolution of intrafamily problems through counseling and the development of self-sufficient living skills; and

"(G) plans for the following fiscal year.".

(2) by adding at the end the following:

"(b)(1) The Secretary shall include in the report required by subsection (a) an evaluation of the results of Federal evaluation of the programs, projects, and activities carried out under this title and a description of the training provided to the persons who carry out the evaluation.

"(2) As part of the evaluation described in paragraph (1), the Secretary shall require the persons who carry out the evaluation to visit each grantee on-site not less frequently than every 3 years.".

(i) AUTHORIZATION OF APPROPRIATIONS.—Section 366 of the Juvenile Justice and Delinquency Act of 1974 (42 U.S.C. 5751) is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

"(1) There are authorized to be appropriated to carry out this title (other than part B and section 344) $75,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996."; and

(B) by adding at the end the following new paragraphs:

"(3) After making the allocation required by paragraph (2), the Secretary shall reserve for the purpose of carrying out section 331—

"(A) for fiscal year 1993 not less than $912,500, of which $125,000 shall be available for the acquisition of communications equipment;

"(B) for fiscal year 1994 not less than $826,900;

"(C) for fiscal year 1995 not less than $868,300; and

"(D) for fiscal year 1996 not less than $911,700.

"(4) In the use of funds appropriated under paragraph (1) that are in excess of $38,000,000 but less than $42,600,000, priority may be given to awarding enhancement grants to programs (with priority to programs that receive grants of less than $85,000), for the purpose of allowing such programs to achieve higher performance standards, including—

"(A) increasing and retaining trained staff;

"(B) strengthening family reunification efforts;

"(C) improving aftercare services;

"(D) fostering better coordination of services with public and private entities;

"(E) providing comprehensive services, including health and mental health care, education, prevention and crisis intervention, and vocational services; and

"(F) improving data collection efforts.

"(5) In the use of funds appropriated under paragraph (1) that are in excess of $42,599,999—

"(A) 50 percent may be targeted at developing new programs in unserved or underserved communities; and

"(B) 50 percent may be targeted at program enhancement activities described in paragraph (3).";

(2) in subsection (b) by amending paragraph (1) to read as follows:

"(1) Subject to paragraph (2), there are authorized to be appropriated to carry out B $25,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996."

(3) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(4) by inserting after subsection (b) the following new subsection:

"(c) There is authorized to be appropriated to carry out section 344 $1,000,000 for each of fiscal years 1993, 1994, 1995, and 1996.".

**SEC. 4. MISSING CHILDREN.**

Section 407 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5777) is amended by striking "fiscal years 1989, 1990, 1991, and 1992" and inserting "fiscal years 1993, 1994, 1995, and 1996".

**SEC. 5. INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS.**

(a) ESTABLISHMENT OF PROGRAM.—The Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) is amended by adding at the end the following new title:

**"TITLE V—INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS**

**"SEC. 501. SHORT TITLE.**

"This title may be cited as the 'Incentive Grants for Local Delinquency Prevention Programs Act'.

**"SEC. 502. FINDINGS.**

"The Congress finds that—

"(1) approximately 700,000 youth enter the juvenile justice system every year;

"(2) Federal, State, and local governments spend close to $2,000,000,000 a year confining many of those youth;

"(3) it is more effective in both human and fiscal terms to prevent delinquency than to attempt to control or change it after the fact;

"(4) half or more of all States are unable to spend any juvenile justice formula grant funds on delinquency prevention because of other priorities;

"(5) few Federal resources are dedicated to delinquency prevention; and

"(6) Federal incentives are needed to assist States and local communities in mobilizing delinquency prevention policies and programs.

**"SEC. 503. DEFINITION.**

"In this title, the term 'State advisory group' means the advisory group appointed by the chief executive officer of a State under a plan described in section 223(a).

**"SEC. 504. DUTIES AND FUNCTIONS OF THE ADMINISTRATOR.**

"The Administrator shall—

"(1) issue such rules as are necessary or appropriate to carry out this title;

"(2) make such arrangements as are necessary and appropriate to facilitate coordination and policy development among all activities funded through the Department of Justice relating to delinquency prevention (including the preparation of an annual comprehensive plan for facilitating such coordination and policy development);

"(3) provide adequate staff and resources necessary to properly carry out this title; and

"(4) not later than 180 days after the end of each fiscal year, submit a report to the Chairman of the Committee on Education and Labor of the House of Representatives and the Chairman of the Committee on the Judiciary of the Senate—

"(A) describing activities and accomplishments of grant activities funded under this title;

"(B) describing procedures followed to disseminate grant activity products and research findings;

"(C) describing activities conducted to develop policy and to coordinate Federal agency and interagency efforts related to delinquency prevention; and

"(D) identifying successful approaches and making recommendations for future activities to be conducted under this title.

**"SEC. 505. GRANTS FOR PREVENTION PROGRAMS.**

"(a) PURPOSES.—The Administrator may make grants to a State, to be transmitted through the State advisory group to units of general local government that meet the requirements of subsection (b), for delinquency prevention programs and activities for youth who have had contact with the juvenile justice system or who are likely to have contact with the juvenile justice system, including the provision to children, youth, and families of—

"(1) recreation services;

"(2) tutoring and remedial education;

"(3) assistance in the development of work awareness skills;

"(4) child and adolescent health and mental health services;

"(5) alcohol and substance abuse prevention services;

"(6) leadership development activities; and

"(7) the teaching that people are and should be held accountable for their actions.

"(b) ELIGIBILITY.—The requirements of this subsection are met with respect to a unit of general local government if—

"(1) the unit is in compliance with the requirements of part B of title II;

"(2) the unit has submitted to the State advisory group a 3-year plan outlining the unit's local front end plans for investment for delinquency prevention and early intervention activities;

"(3) the unit has included in its application to the Administrator for formula grant funds a summary of the 3-year plan described in paragraph (2);

"(4) pursuant to its 3-year plan, the unit has appointed a local policy board of no fewer than 15 and no more than 21 members with balanced representation of public agencies and private, nonprofit organizations

serving children, youth, and families and business and industry;

"(5) the unit has, in order to aid in the prevention of delinquency, included in its application a plan for the coordination of services to at-risk youth and their families, including such programs as nutrition, energy assistance, and housing;

"(6) the local policy board is empowered to make all recommendations for distribution of funds and evaluation of activities funded under this title; and

"(7) the unit or State has agreed to provide a 50 percent match of the amount of the grant, including the value of in-kind contributions, to fund the activity.

"(c) PRIORITY.—In considering grant applications under this section, the Administrator shall give priority to applicants that demonstrate ability in—

"(1) plans for service and agency coordination and collaboration including the colocation of services;

"(2) innovative ways to involve the private nonprofit and business sector in delinquency prevention activities; and

"(3) developing or enhancing a statewide subsidy program to local governments that is dedicated to early intervention and delinquency prevention.

**"SEC. 506. AUTHORIZATION OF APPROPRIATIONS.**

"To carry out this title, there are authorized to be appropriated $30,000,000 for fiscal year 1993 and such sums as are necessary for fiscal years 1994, 1995, and 1996.".

(b) STUDY.—After the program established by subsection (a) has been funded for two years, the General Accounting Office shall prepare and submit to Congress a study of the effects of the program in encouraging States and units of general local government to comply with the requirements of part B of title II.

**SEC. 6. CHILDREN'S ADVOCACY PROGRAM.**

(a) FINDINGS.—Section 211 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13001) is amended—

(1) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (6), and (7), respectively;

(2) by inserting after paragraph (2) the following new paragraph:

"(3) traditionally, community agencies and professionals have different roles in the prevention, investigation, and intervention process;" and

(3) by inserting after paragraph (4), as redesignated by paragraph (1), the following new paragraph:

"(5) there is a national need to enhance coordination among community agencies and professionals involved in the intervention system;".

(b) REGIONAL CHILDREN'S ADVOCACY PROGRAM.—Subtitle A of the Victims of Child Abuse Act (42 U.S.C. 13001 et seq.) is amended—

(1) by redesignating sections 212, 213, and 214 as sections 214, 214A, and 214B, respectively; and

(2) by inserting after section 211 the following new sections:

**"SEC. 212. DEFINITIONS.**

"For purposes of this subtitle—

"(1) the term 'Administrator' means the agency head designated under section 201(b) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611(b));

"(2) the term 'applicant' means a child protective service, law enforcement, legal, medical and mental health agency or other agency that responds to child abuse cases;

"(3) the term 'board' means the Children's Advocacy Advisory Board established under section 213(e);

"(4) the term 'census region' means 1 of the 4 census regions (northeast, south, midwest, and west) that are designated as census regions by the Bureau of the Census as of the date of enactment of this section;

"(5) the term 'child abuse' means physical or sexual abuse or neglect of a child;

"(6) the term 'Director' means the Director of the National Center on Child Abuse and Neglect;

"(7) the term 'multidisciplinary response to child abuse' means a response to child abuse that is based on mutually agreed upon procedures among the community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that best meets the needs of child victims and their nonoffending family members;

"(8) the term 'nonoffending family member' means a member of the family of a victim of child abuse other than a member who has been convicted or accused of committing an act of child abuse; and

"(9) the term 'regional children's advocacy program' means the children's advocacy program established under section 213(a).

**"SEC. 213. REGIONAL CHILDREN'S ADVOCACY CENTERS.**

"(a) ESTABLISHMENT OF REGIONAL CHILDREN'S ADVOCACY PROGRAM.—The Administrator, in coordination with the Director and with the Director of the Office of Victims of Crime, shall establish a children's advocacy program to—

"(1) focus attention on child victims by assisting communities in developing child-focused, community-oriented, facility-based programs designed to improve the resources available to children and families;

"(2) provide support for nonoffending family members;

"(3) enhance coordination among community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that respond to child abuse cases; and

"(4) train physicians and other health care and mental health care professionals in the multidisciplinary approach to child abuse so that trained medical personnel will be available to provide medical support to community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that respond to child abuse cases.

"(b) ACTIVITIES OF THE REGIONAL CHILDREN'S ADVOCACY PROGRAM.—

"(1) ADMINISTRATOR.—The Administrator, in coordination with the Director, shall—

"(A) establish regional children's advocacy program centers;

"(B) fund existing regional centers with expertise in the prevention, judicial handling, and treatment of child abuse and neglect; and

"(C) fund the establishment of freestanding facilities in multidisciplinary programs within communities that have yet to establish such facilities,

for the purpose of enabling grant recipients to provide information, services, and technical assistance to aid communities in establishing multidisciplinary programs that respond to child abuse.

"(2) GRANT RECIPIENTS.—A grant recipient under this section shall—

"(A) assist communities—

"(i) in developing a comprehensive, multidisciplinary response to child abuse that is designed to meet the needs of child victims and their families;

"(ii) in establishing a freestanding facility where interviews of and services for abused children can be provided;

"(iii) in preventing or reducing trauma to children caused by multiple contacts with community professionals;

"(iv) in providing families with needed services and assisting them in regaining maximum functioning;

"(v) in maintaining open communication and case coordination among community professionals and agencies involved in child protection efforts;

"(vi) in coordinating and tracking investigative, preventive, prosecutorial, and treatment efforts;

"(vii) in obtaining information useful for criminal and civil proceedings;

"(viii) in holding offenders accountable through improved prosecution of child abuse cases;

"(ix) in enhancing professional skills necessary to effectively respond to cases of child abuse thorough training; and

"(x) in enhancing community understanding of child abuse; and

"(B) provide training and technical assistance to local children's advocacy centers in its census region that are grant recipients under section 214.

"(c) OPERATION OF THE REGIONAL CHILDREN'S ADVOCACY PROGRAM.—

"(1) SOLICITATION OF PROPOSALS.—Not later than 1 year after the date of enactment of this section, the Administrator shall solicit proposals for assistance under this section.

"(2) MINIMUM QUALIFICATIONS.—In order for a proposal to be selected, the Administrator may require an applicant to have in existence, at the time the proposal is submitted, 1 or more of the following:

"(A) A proven record in conducting activities of the kinds described in subsection (c).

"(B) A facility where children who are victims of sexual or physical abuse and their nonoffending family members can go for the purpose of evaluation, intervention, evidence gathering, and counseling.

"(C) Multidisciplinary staff experienced in providing remedial counseling to children and families.

"(D) Experience in serving as a center for training and education and as a resource facility.

"(E) National expertise in providing technical assistance to communities with respect to the judicial handling of child abuse and neglect.

"(3) PROPOSAL REQUIREMENTS.—

"(A) IN GENERAL.—A proposal submitted in response to the solicitation under paragraph (1) shall—

"(i) include a single or multiyear management plan that outlines how the applicant will provide information, services, and technical assistance to communities so that communities can establish multidisciplinary programs that respond to child abuse;

"(ii) demonstrate the ability of the applicant to operate successfully a multidisciplinary child abuse program or provide training to allow others to do so; and

"(iii) state the annual cost of the proposal and a breakdown of those costs.

"(B) CONTENT OF MANAGEMENT PLAN.—A management plan described in paragraph (3)(A) shall—

"(i) outline the basic activities expected to be performed;

"(ii) describe the entities that will conduct the basic activities;

"(iii) establish the period of time over which the basic activities will take place; and

"(iv) define the overall program management and direction by—

"(I) identifying managerial, organizational, and administrative procedures and responsibilities;

"(II) demonstrating how implementation and monitoring of the progress of the children's advocacy program after receipt of funding will be achieved; and

"(III) providing sufficient rationale to support the costs of the plan.

"(4) SELECTION OF PROPOSALS.—

"(A) COMPETITIVE BASIS.—Proposals shall be selected under this section on a competitive basis.

"(B) CRITERIA.—The Administrator, in coordination with the Director, shall select proposals for funding that—

"(i) best result in developing and establishing multidisciplinary programs that respond to child abuse by assisting, training, and teaching community agencies and professionals called upon to respond to child abuse cases;

"(ii) assist in resolving problems that may occur during the development, operation, and implementation of a multidisciplinary program that responds to child abuse; and

"(iii) carry out the objectives developed by the Board under subsection (e)(2)(A);

"(C) to the greatest extent possible and subject to available appropriations, ensure that at least 1 applicant is selected from each of the 4 census regions of the country; and

"(D) otherwise best carry out the purposes of this section.

"(5) FUNDING OF PROGRAM.—From amounts made available in separate appropriation Acts, the Administrator shall provide to each grant recipient the financial and technical assistance and other incentives that are necessary and appropriate to carry out this section.

"(6) COORDINATION OF EFFORT.—In order to carry out activities that are in the best interests of abused and neglected children, a grant recipient shall consult with other grant recipients on a regular basis to exchange ideas, share information, and review children's advocacy program activities.

"(d) REVIEW.—

"(1) EVALUATION OF REGIONAL CHILDREN'S ADVOCACY PROGRAM ACTIVITIES.—The Administrator, in coordination with the Director, shall regularly monitor and evaluate the activities of grant recipients and shall determine whether each grant recipient has complied with the original proposal and any modifications.

"(2) ANNUAL REPORT.—A grant recipient shall provide an annual report to the Administrator and the Director that—

"(A) describes the progress made in satisfying the purpose of the children's advocacy program; and

"(B) states whether changes are needed and are being made to carry out the purpose of the children's advocacy program.

"(3) DISCONTINUATION OF FUNDING.—

"(A) FAILURE TO IMPLEMENT PROGRAM ACTIVITIES.—If a grant recipient under this section substantially fails in the implementation of the program activities, the Administrator shall not discontinue funding until reasonable notice and an opportunity for reconsideration is given.

"(B) SOLICITATION OF NEW PROPOSALS.—Upon discontinuation of funding of a grant recipient under this section, the Administrator shall solicit new proposals in accordance with subsection (c).

"(e) CHILDREN'S ADVOCACY ADVISORY BOARD.—

"(1) ESTABLISHMENT OF BOARD.—

"(A) IN GENERAL.—Not later than 120 days after the date of enactment of this section, the Administrator and the Director, after consulting with representatives of community agencies that respond to child abuse cases, shall establish a children's advocacy advisory board to provide guidance and oversight in implementing the selection criteria and operation of the regional children's advocacy program.

"(B) MEMBERSHIP.—(i) The board—

"(I) shall be composed of 12 members who are selected by the Administrator, in coordination with the Director, a majority of whom shall be individuals experienced in the child abuse investigation, prosecution, prevention, and intervention systems;

"(II) shall include at least 1 member from each of the 4 census regions; and

"(III) shall have members appointed for a term not to exceed 3 years.

"(ii) Members of the Board may be reappointed for successive terms.

"(2) REVIEW AND RECOMMENDATIONS.—

"(A) OBJECTIVES.—Not later than 180 days after the date of enactment of this section and annually thereafter, the Board shall develop and submit to the Administrator and the Director objectives for the implementation of the children's advocacy program activities described in subsection (b).

"(B) REVIEW.—The board shall annually—

"(i) review the solicitation and selection of children's advocacy program proposals and make recommendations concerning how each such activity can be altered so as to better achieve the purposes of this section; and

"(ii) review the program activities and management plan of each grant recipient and report its findings and recommendations to the Administrator and the Director.

"(3) RULES AND REGULATIONS.—The Board shall promulgate such rules and regulations as it deems necessary to carry out its duties under this section.

"(f) REPORTING.—The Attorney General and the Secretary of Health and Human Services shall submit to Congress, by March 1 of each year, a detailed review of the progress of the regional children's advocacy program activities.".

(c) LOCAL CHILDREN'S ADVOCACY PROGRAM.—Section 214 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13002), as redesignated by subsection (b)(1), is amended—

(1) by amending the heading to read as follows:

**"SEC. 214. LOCAL CHILDREN'S ADVOCACY CENTERS.";**

(2) in subsection (a) by striking "The Director of the Office of Victims of Crime (hereinafter in this subtitle referred to as the 'Director'), in consultation with officials of the Department of Health and Human Services," and inserting "The Administrator, in coordination with the Director and with the Director of the Office of Victims of Crime,";

(3) in subsection (b)(2)(B) by inserting "and nonoffending family members" after "neglect"; and

(4) by adding at the end the following new subsection:

"(d) CONSULTATION WITH REGIONAL CHILDREN'S ADVOCACY CENTERS.—A grant recipient under this section shall consult from time to time with regional children's advocacy centers in its census region that are grant recipients under section 213.".

(d) SPECIALIZED TECHNICAL ASSISTANCE AND TRAINING PROGRAMS.—Section 214A of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13003), as redesignated by subsection (b)(1), is amended in subsections (a) and (c)(1) by striking "Director" and inserting "Administrator".

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 214B of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13004), as redesignated by subsection (b)(1), is amended to read as follows:

**"SEC. 214B. AUTHORIZATION OF APPROPRIATIONS.**

"(a) SECTIONS 213 AND 214.—There are authorized to be appropriated to carry out sections 213 and 214—

"(1) $15,000,000 for fiscal year 1993; and

"(2) such sums as are necessary for fiscal years 1994, 1995, and 1996.

"(b) SECTION 214A.—There are authorized to be appropriated to carry out section 214A—

"(1) $5,000,000 for fiscal year 1993; and

"(2) such sums as are necessary for fiscal years 1994, 1995, and 1996.".

**SEC. 7. HEAD START TRAINING IMPROVEMENT.**

(a) PURPOSE.—It is the purpose of this section—

(1) to promote continued access for Head Start and other early childhood staff to the Child Development Associate credential;

(2) to increase the ability of Head Start staff to address the problems facing Head Start families;

(3) to create a systematic approach to training, thereby improving the quality of Head Start instruction and using training funds more efficiently and effectively; and

(4) to allow the use of training funds for creative approaches to learning for children.

(b) TECHNICAL ASSISTANCE, TRAINING, AND STAFF QUALIFICATIONS.—Section 648 of the Head Start Act (42 U.S.C. 9843) is amended—

(1) in subsection (a) by striking "(2) training" and all that follows through the end of the subsection and inserting "(2) training for specialized or other personnel needed in connection with Head Start programs, including funds from programs authorized under this subchapter to support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood development and child care programs, training for personnel providing services to non-English language background children, training for personnel in helping children cope with community violence, and resource access projects for personnel working with disabled children."; and

(2) by adding at the end the following new subsections:

"(c) The Secretary shall—

"(1) develop a systematic approach to training Head Start personnel, including—

"(A) specific goals and objectives for program improvement and continuing professional development;

"(B) a process for continuing input from the Head Start community; and

"(C) a strategy for delivering training and technical assistance; and

"(2) report on the approach developed under paragraph (1) to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives.

"(d) The Secretary may provide, either directly or through grants to public or private nonprofit entities, training for Head Start personnel in the use of the performing and visual arts and interactive programs using electronic media to enhance the learning experience of Head Start children.".

**SEC. 8. AMENDMENTS TO CHILD CARE AND DEVELOPMENT BLOCK GRANT ACT.**

(a) SPENDING OF FUNDS BY STATES.—Section 658J(c) of the Child Care and Development Block Grant Act Amendments of 1992 (42 U.S.C. 9858h(c)) is amended—

(1) by striking "obligated" and inserting "expended"; and

(2) by striking "succeeding fiscal year" and inserting "succeeding 3 fiscal years".

(b) PAYMENTS EXCLUDED FROM INCOME.—The Child Care and Development Block Grant Act Amendments of 1992 (42 U.S.C. 9858a et seq.) is amended by adding at the end the following new section:

**"SEC. 658S. MISCELLANEOUS PROVISIONS.**

"Notwithstanding any other law, the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under this subchapter shall not be treated as income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need.".

(c) TECHNICAL AMENDMENTS.—

(1) CORRECTION IN CITATION.—Section 5082 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) is amended by striking "title IV" and inserting "title VI".

(2) DEFINITIONS.—Section 658P of the Child Care and Development Block Grant Act Amendments of 1992 (42 U.S.C. 9858n) is amended—

(A) in paragraph (7), by striking "4(b)" and inserting "4(e)"; and

(B) in paragraph (14), by striking "4(c)" and inserting "4(l)".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of enactment of this Act.

(2) APPLICATION.—The amendments made by this section shall not apply with respect to fiscal years beginning before October 1, 1992.

**SEC. 9. AMENDMENT TO THE CHILD ABUSE PREVENTION AND TREATMENT ACT.**

(a) FINDINGS.—The Congress finds that—

(1) circumstances surrounding the death of a young boy named Adam Mann in New York City prompted a shocking documentary focusing on the inability of child protection services to protect suffering children;

(2) the documentary described in paragraph (1) showed the serious need for systemic changes in our child welfare protection system;

(3) thorough, coordinated, and comprehensive investigation will, it is hoped, lead to the prevention of abuse, neglect, or death in the future;

(4) an undue burden is placed on investigation due to strict Federal and State laws and regulations regarding confidentiality;

(5) while the Congress recognizes the importance of maintaining the confidentiality of records pertaining to child abuse, neglect, and death, often the purpose of confidentiality laws and regulations are defeated when they have the effect of protecting those responsible;

(6) comprehensive and coordinated interagency communication needs to be established, with adequate provisions to protect against the public disclosure of any detrimental information need to be established;

(7) Certain States, including Georgia, North Carolina, California, Missouri, Arizona, Minnesota, Oklahoma, and Oregon, have taken steps to establish by statute interagency, multidisciplinary fatality review teams to fully investigate incidents of death believed to be caused by child abuse or neglect;

(8) teams such as those described in paragraph (7) should be established in every State, and their scope of review should be expanded to include egregious incidents of child abuse and neglect before the child in question dies; and

(9) teams such as those described in paragraph (7) will increase the accountability of child protection services.

(b) MODIFICATION OF CONFIDENTIALITY PROVISION REGARDING STATE GRANTS UNDER CHILD ABUSE PREVENTION AND TREATMENT ACT.—Section 107(b)(4) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106A(b)(4)) is amended to read as follows:

"(4) provide for—

"(A) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including methods to ensure that disclosure (and redisclosure) of information concerning child abuse or neglect involving specific individuals is made only to persons or entities that the State determines have a need for such information directly related to purposes of this Act; and

"(B) requirements for the prompt disclosure of all relevant information to any Federal, State, or local governmental entity, or any agent of such entity, with a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect;".

(c) SENSE OF THE CONGRESS.—It is the sense of the Congress that each State should review and reform of the system in the State for protecting against child abuse and neglect, including implementing formal interagency, multidisciplinary teams—

(1) to review—

(A) all cases of child death in which the child was previously known by the State to have been abused or neglected; and

(B) incidents of child abuse before a child dies when there is evidence of negligent handling by the State,

in order to hold the State accountable; and

(2) to make recommendations regarding the outcomes of individual cases and systemic changes in the State's procedures for protecting against child abuse and neglect.

Mr. KOHL. Mr. President, when they write the epitaph for the 102d Congress, they will say that too many good proposals were killed by partisan politics and gridlock. That is why I am so gratified that today the Senate will pass—and soon President Bush will sign—the reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974. The compromise bill—a merger of S. 2792 and H.R. 4194—is a truly bipartisan measure.

Mr. President, the American juvenile justice system is in crisis. Even by conservative estimates, some 700,000 juveniles enter the justice system a year. It costs close to $2 billion annually to confine many of these young people in facilities that fail them, their families, and communities. Given dramatic increases in arrests of adolescents for murder, assault, and weapon use nationwide, this legislation comes none too soon.

Our bill reauthorizes and strengthens the Juvenile Justice Act by focusing on six key areas. First, the bill expands the existing State Formula Grant Program, providing much needed funding to deter delinquency and violence. Second, the bill sets up a new State challenge program composed of 10 goals. To encourage States to pursue these goals, the bill authorizes a 10-percent increase in formula grant funds for every goal that a State achieves. Such challenge goals include setting up alternatives to incarceration for nonviolent teens, providing appropriate services for girls in the system, and establishing small, secure confinement programs for violent teens.

Third, the bill sets up a new title on delinquency prevention, which will help communities keep youth from getting into trouble in the first place. According to the National Association of Counties, fewer than half the States direct any formula grant funds toward community-based delinquency prevention programs. For example, Milwaukee County in my State of Wisconsin is unable to spend more than 2 percent of its entire juvenile justice budget on prevention. Under this new provision, counties like Milwaukee will be better able to focus on front-end investment strategies.

Fourth, the bill strengthens the juvenile gang prevention and intervention provisions, providing incentives for local schools and community coalitions to get involved. For this language, we are indebted to several colleagues, including Senator SIMON and Representatives MARTINEZ and KILDEE. Elementary schools are to be a primary target for these gang prevention efforts, as specified in Senator SIMON's original proposal.

Fifth, the bill expands existing programs to help provide justice for abused and neglected children—a critical component of delinquency prevention. Within this area, a provision authored by Senator NICKLES, Representative CRAMER, and Chairman BIDEN provided funding for child advocacy centers. Representative MOLINARI added a proposal to ensure that child abuse investigations will not be impeded by overly prescriptive confidentiality regulations. And I added language to establish treatment grants for juveniles in the justice system who have suffered previous physical or sexual abuse.

The sixth priority area strengthens title III of JJDPA, the Runaway and Homeless Youth Act. At least one-half million young people run away from home every year—to escape family violence, sexual abuse, or parental alcohol and drug problems. Our bill expands existing basic grants for runaway centers to include street-based crisis intervention and home-based services. Given the risks of sexual exploitation and sexually transmitted diseases facing the majority of runaways, street-based services are essential. And home-based services will help reunite more runaways with their families. For young people who cannot return home yet need help to achieve full independence, the legislation reauthorizes the transitional living program.

Mr. President, our bill is strengthened by a number of additional provi-

sions. Senator GRAHAM has added a provision calling for a White House conference on juvenile justice. Senator KASSEBAUM has proposed a new juvenile boot camp program. And Senator LAUTENBERG's provision authorizes mentoring programs as a further means of preventing delinquency and youth gangs. This provision was enhanced by language offered by Representative GOODLING, who has had a longstanding interest in mentoring and education. And Senator INOUYE added a provision authorizing the consortium on children, families, and the law.

Senator DODD added two technical amendments to the Child Care and Development Block Grant Act and one technical amendment to the Head Start Program. Experts like David Hamburg at Carnegie and Ed Zigler at Yale University tell us children who participate in such quality, early childhood programs are much less likely to engage in delinquent behavior later on. So such amendments are a welcome addition to this juvenile justice bill.

Mr. President, as I said before, the legislation before us, H.R. 5194, is the result of bipartisan negotiations between the Senate and the House of Representatives. Several Members deserve special praise. So in closing, I wish to commend the distinguished ranking minority member of the Juvenile Justice Subcommittee, Senator BROWN, for working so closely with me to hold hearings, craft the bill, and get it enacted. I also wish to thank the distinguished chair and ranking minority member of the Judiciary Committee, Senators BIDEN and THURMOND, for their help and encouragement. And I want to congratulate Chairman MARTINEZ of the House Human Resources Subcommittee and its ranking minority member, Congressman FAWELL—as well as Chairman FORD and ranking minority member, Mr. GOODLING of the full Education and Labor Committee—for their important contributions.

All the staff who worked so long and so hard with mine on this reauthorization also deserve a great deal of thanks. They include Tracey Carnes, Manus Cooney, Kevin Howard, Mike Bertman, Kimberly Barnes O'Connor, Bruce King, Adam Eisgrau, and Stacey Williams in the Senate. And they include Roger McClellan, Terry Deschler, Lynn Selmser, Lee Cowan, Rebecca Franck, Jeff McFarland, and Wendel Chambliss in the House of Representatives. I commend them for their diligence and commitment.

This Nation's problems with youth crime and violence did not develop overnight. Although no legislation can provide a magic bullet for these problems, H.R. 5194 provides the necessary Federal, State, and local incentives for some significant steps forward. I thank my colleagues for enacting this legislation and the President in advance for signing it.

• Mr. LAUTENBERG. Mr. President, I want to bring to my colleagues' attention a provision in this conference report that is based on legislation I introduced, the Juvenile Mentoring Program Act [JUMP], that will encourage the development of mentoring programs that link children in high crime areas with law enforcement officers and other responsible adults. I am very pleased that my proposal has been incorporated in this legislation, and I want to express my sincere thanks to Senator KOHL and his staff, for their support and assistance in this effort.

Mr. President, JUMP is a competitive grant program under which local educational agencies and nonprofit groups may apply for funding to implement juvenile mentoring programs. Funds may be used to hire mentoring coordinators and support staff; to recruit, screen, and train adult mentors; and to reimburse mentors for reasonable incidental expenditures directly associated with mentoring.

JUMP will be administered by the Office of Juvenile Justice and Delinquency Prevention, which will select grantees based on the quality of their proposed mentoring plans and their ability to implement them.

Mr. President, too many young people today are growing up in environments bereft of hope. They live surrounded by violence and drug dealers. They attend second-rate schools that do not prepare them to function in our economy. And they have few responsible adults to take care of them, to lead them in the right direction.

Clearly, Mr. President, there is no magic answer to the problems of these youth. We need systemic improvements in our schools, more jobs, and better job training. But, Mr. President, we also have to work on a smaller scale—one by one, child by child. That is where mentoring can make an enormous difference.

Mr. President, I am personally involved in a program known as I Have a Dream. The program puts responsible adults together with economically disadvantaged children, to give them the guidance and assistance they need, but so often lack. I also have personally been involved with the Drug Abuse Resistance Education Program [DARE], which brings police officers into schools to talk with children about drug abuse. That program has helped children see the police in a new and more positive light, while bringing the police themselves in closer touch with the community's young people.

Unfortunately, Mr. President, too many children see the police as the enemy, and the resulting tensions can have horrible consequences, as we have seen recently. By involving mentors from the law enforcement community, JUMP will begin to bridge the gap between many children in high crime areas and the police. The resulting improvement in police-community relations will be an important benefit of the program.

Mr. President, my own experience, and the experience of many existing programs, clearly demonstrates the promise of mentoring. When children and adults establish solid, caring relationships, young people often are set on a different and better path. Yet, for all the good work that's already being done, too few children benefit from mentoring. We can and ought to do more. That's what JUMP is all about.

The program will provide children with trained mentors who know and care about them as individuals, who accept them, and who are there to help them when needed. Mentors who can point them away from crime, away from drugs, and toward a future worth working for.

Again, Mr. President, I want to thank Senator KOHL and his staff for their help with this bill. Also, I want to express my appreciation to the many child advocates and others who have helped in the development of this legislation. In particular, I would like to thank the Children's Defense Fund, Big Brothers/Big Sisters of America, the National Collaboration for Youth, the One-to-One Partnership, and the National Association of Police Athletic Leagues, for their advice and their endorsement of the bill. The Boys and Girls Clubs of America and the Amelior Foundation also provided valuable comments. I look forward to working with all these organizations to ensure that the program is funded next year.•

Mr. SIMON. Mr. President, I would like to extend my appreciation to my esteemed colleague and friend from Wisconsin for his efforts as chairman of the Juvenile Justice Subcommittee to focus attention on our youth at risk, and to reauthorize the Juvenile Justice Act of 1974.

The Senator from Wisconsin has done a terrific job with the reauthorization of this legislation. With his assistance, we have been able to include hate crimes provisions which would authorize funding for research projects, training assistance and hate crime prevention programs, and which would also call for a study on juvenile hate crimes. I am particularly grateful for his help in including legislation that I originally introduced to establish an Early Gang Prevention Center which would specifically target children at the elementary level who are seriously thinking of gang membership.

Mr. KOHL. I thank the Senator from Illinois for his kind words and I am glad that we could work together to include these provisions.

Mr. SIMON. I understand, however, that in the conference committee, my original gang prevention provision was expanded to address a much wider array of issues, which I fear may take away the emphasis from targeting at-

risk elementary school children. While I certainly recognize the extent of gang violence in America and the need for programs to address all aspects of this problem, I do still hope that the initial intent of my gang prevention bill will be remembered.

Mr. KOHL. The conference agreement does include additional language from the House gang prevention provisions, but I want to assure the Senator from Illinois that all of the original components of his bill are included in the conference agreement. It is obvious that there are many ways that we can address the gang problem, but I agree that an important step in solving this problem is to concentrate on prevention and targeting those young people who are at risk of becoming a gang member.

I am hopeful that the administrator will focus on prevention programs for elementary school children.

• Mr. LAUTENBERG. Mr. President, I would like to engage in a brief colloquy with the distinguished chairman of the Juvenile Justice Subcommittee, Senator KOHL.

Mr. President, this legislation would establish a new competitive grant program to promote the implementation of mentoring programs for at-risk youth. This new program, included in title II, part G, is based on legislation I introduced, the Juvenile Mentoring Program Act [JUMP].

I would like to clarify with the chairman of the subcommittee the entities that are eligible to apply for and receive such grants under that part.

Would the Senator confirm that nonprofit groups are eligible to directly apply for and receive these grants?•

• Mr. KOHL. Mr. President, I want to confirm that it was the intention of the conferees to allow local educational agencies, nonprofit groups, and any of the entities listed in section 288B of part G, to directly apply for and receive grants under this part. Local educational agencies, however, must be in partnership with at least one other eligible entity. Similarly, any eligible entity other than a local educational agency must be in partnership with a local educational agency.

So, for example, if a local nonprofit organization, such as Big Brother/Big Sister, sought funds, it would be eligible to apply for and receive a grant. However, the organization would have to work with a local educational agency in developing the proposal.•

• Mr. LAUTENBERG. I thank the Senator.

Mr. President, let me again thank Senator KOHL and his excellent staff for their extraordinary cooperation and assistance with this legislation. I want to specially recognize Marsha Renwanz of Senator KOHL's staff, who really has gone the extra mile to make this program a reality. I appreciate it, and know that this legislation would not have progressed to this point without her help.•

Mr. THURMOND. Mr. President, I wish to examine the Coordinating Council provisions contained in this juvenile justice bill. At present, the Attorney General, the Secretary of Health and Human Services, the Secretaries of Labor, Education, and Housing and Urban Development, and the directors of a wide array of other Federal agencies and offices all serve on this Coordinating Council. First authorized by the Juvenile Justice and Delinquency Prevention Act of 1974, the Council is directed to coordinate all Federal programs and efforts. The administration is concerned about an amendment added by the House, which would change the composition of this council to include nine private citizens—three of whom are to be nominated by the Senate, three by the House of Representatives, and three by the President. Such congressional involvement in the nominating process has led the Justice Department to express concern that this component may be unconstitutional.

Mr. KOHL. Because the Coordinating Council has neither rulemaking nor enforcement powers, it is my understanding that the House proposal is likely to pass constitutional muster. Existing law does state that the function of the Council is to coordinate all Federal juvenile justice programs. The act further states, however, that this coordination is to be accomplished by means of policy and program recommendations and review. For example, the Council is charged with making annual recommendations to the President and Congress on ways to improve Federal practices and facilities for holding juveniles in custody and the coordination of all Federal juvenile justice programs and policies. The Council is further entrusted with reviewing the degree to which all such programs and policies are consistent with the mandates of the act. And last but not least, the council is authorized to review joint funding proposals. In other words, the Council is directed to serve solely in an advisory capacity.

Nevertheless, I assure my distinguished colleague from South Carolina that in the unlikely event this provision is declared unconstitutional, I will work closely with him to change the provisions accordingly.

Mr. THURMOND. I thank my colleague for this clarification.

Mr. BIDEN. Mr. President, today the Senate has passed H.R. 5194 the juvenile justice reauthorization bill. I am pleased that Senate has acted to reauthorize this vital legislation before the close of the 102d Congress. The Juvenile Justice Office is the most important Federal office addressing the challenge of children in our juvenile justice system. Its reauthorization is imperative.

Also, I would like to take this opportunity to commend Senator KOHL for his outstanding efforts not only to reauthorize the Juvenile Justice Act, but improve it, as well.

Today, more and more children are dropping out of school, becoming involved with gangs, committing crimes, and entering the criminal justice system—amounting to an urgent threat to the future of the Nation.

Prevention is the most effective tool at our disposal to fight the pressing problem of juvenile delinquency—a problem made so much more severe by the epidemic of drug abuse by our children. However, for years the administration has been unwilling to utilize prevention tools to combat juvenile crime and delinquency. In fact, the President's fiscal year 1993 budget request for State and local law enforcement cuts juvenile justice programs from $68 million to $7.5 million—a 90-percent cut.

Despite this demonstrated ambivalence toward at-risk youth, H.R. 5194 is a bipartisan package that takes an innovative approach toward delinquency prevention. At the same time, this legislation continues to achieve the original jail removal mandates of the act—mandates that all must concede have not been achieved.

Through new and creative programs like the State challenge grants and incentive grants that will enable local governments to invest in prevention programs, this legislation attacks juvenile delinquency head on. These programs focus on the appropriate Federal interest in juvenile justice—providing the necessary resources, leadership, and coordination in developing and implementing effective means of preventing and reducing juvenile crime and delinquency.

Mr. President, the Juvenile Justice and Delinquency Prevention Act forms the vital link between the Federal Government and the State and local officials on the front lines of the national effort to fight juvenile crime and prevent juvenile delinquency. I am glad that the Senate has recognized the urgent need to strengthen and improve these programs.

Mr. FORD. Mr. President, on behalf of Senator KOHL, I move that the Senate concur in the amendment of the House.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

ASIAN PACIFIC AMERICAN HERITAGE MONTH

EXTENDING FOR 2 YEARS AUTHORIZATIONS FOR CERTAIN PROGRAMS UNDER TITLE I OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT

AMENDING TITLE I OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration, en bloc, of the following bills that have been received from the House: H.R. 5572, H.R. 5716 and H.R. 5862; that the bills be deemed read for the third time, passed, the motion to reconsider be laid upon the table; that any statements with respect to the passage of these bills appear at the appropriate place in the RECORD.

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

So the bills (H.R. 5572, H.R. 5716 and H.R. 5862) were deemed read the third time and passed.

STATE JUSTICE INSTITUTE

AMENDING STATE JUSTICE INSTITUTE ACT OF 1984

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration, en bloc, of the following bills that have been received from the House: H.R. 1252 and H.R. 1253; that the bills be deemed read the third time, passed, and the motion to reconsider be laid upon the table; that any statements with respect to passage of these bills appear at the appropriate place in the RECORD.

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

So the bills (H.R. 1252 and H.R. 1253) were deemed read the third time and passed.

Mr. HATCH. Mr. President, I am pleased to rise in strong support of H.R. 1252, and H.R. 1253, two bills introduced in the House by Representative CONNIE MORELLA and recently moved through the Subcommittee on Intellectual Property and the Administration of Justice through the efforts of Representative BILL HUGHES, the chairman of that House subcommittee. These are excellent pieces of legislation that answer important needs of women involved in the criminal justice system, the subject of H.R. 1252, and of women involved in child custody litigation, the subject of H.R. 1253. Specifically, these bills address fundamental issues that battered women face every day as they go to court to fight for custody of their children or to fight for equal justice in criminal cases.

As Congresswoman MORELLA vividly stated on the House floor last Saturday, "For many American women, real terror is not walking alone down a city street late at night. Real terror is being 'home alone' with their loved ones." I join Congresswoman MORELLA in underscoring the need for our judicial system to recognize this unpleasant, but nonetheless true, fact.

While there are a number of significant pieces of legislation now pending in the Senate dealing generically with the many problems related to violence against women—I specifically note legislation that has been championed by Chairman BIDEN and by Senator DOLE—these two bills, limited though they are, are nonetheless quite significant, and I am very glad that we are passing them today rather than waiting until such time as a more comprehensive package on violence against women could be enacted.

The bills we consider today ensure that battered women involved in the judicial process are treated properly, particularly with respect to preserving their full right to offer proof of their history of abuse. H.R. 1252, is the Battered Women's Testimony Act. It authorizes the State Justice Institute to study this issue and to disseminate information regarding the admissibility and proper uses of expert testimony relating to battered women. H.R. 1253 is the Judicial Training Act. It provides funds to the State Justice Institute to develop programs for judges and other court personnel about domestic violence, especially its impact on children, and to review child custody decisions where evidence of spousal abuse has been presented.

In setting the ground rules for the admission of expert testimony, the Federal rules of evidence, as well as most State codes, properly balance the many conflicting factors that a court must consider. However, this balancing of factors is necessarily subjective and the discretion properly placed in the court's hands can, and is, sometimes abused. H.R. 1252 will more specifically focus the court's attention on the potential value to be derived from the use of expert testimony in criminal trials and will make sure that no judge doubts the necessity, in a proper case, for the use of such evidence.

Although H.R. 1252 strongly endorses the use of expert testimony in appropriate situations, I should add that I am not unmindful of the ways in which expert testimony can be misused. Nor am I unmindful of the more limited scope for the use of experts in criminal trials. We are all familiar with the so-called battle of the experts that too often characterizes civil trials, particularly in the product liability area. It is unfortunate that experts sometimes get in the way of finding the truth rather than assist in that search. But I am confident that the State Justice Institute will be mindful of these problems and will seek to find ways in which expert testimony can be effectively used to help and not to hinder juries in seeking the truth.

I strongly support the bills we pass today, Mr. President. I should, however, note that similar legislation recently introduced by myself on the Senate side, S. 3317 and S. 3318, dealt with these issues in slightly different language. I view those differences as points of clarification, not divergences in approach. For example, my bill, S. 3318, parallels H.R. 1252, except that it specifically recognizes that the use of expert testimony to be studied by the State Justice Institute should include the use of experts on behalf of the prosecution as well as on behalf of the defense.

While the language of H.R. 1252 might be read to mean that it is concerned only with the problems that battered women face when charged with crimes of violence, I believe that it also covers the problems of battered women, such as rape victims, who may also need assistance in the form of expert testimony in a criminal trial. The problems are equally great for battered women who have difficulty testifying as the prosecuting witness in rape and abuse cases, and there may be an equally important role for experts to play in informing juries about the unique difficulties those women sometimes have in explaining why their pattern of conduct may not have conformed to what juries would perhaps be conditioned to expect.

Also, it is important when expert witnesses are produced by the defense, that the prosecution have an equal opportunity to produce experts that may counter or further explain the testimony of the defense expert. This result is implicit in the bill language and would be the natural inference that the State Justice Institute would draw. It is only fair that when one side is permitted to rely on an expert the other side must be allowed to counter that evidence with expert testimony of its own.

I referred earlier to the major pieces of legislation dealing with violence against women that have been studied by the Senate in this Congress. Before leaving this subject today, I would like to publicly salute Senator BIDEN for his recent press conference drawing attention to this problem and for his announcement that passage of the Violence Against Women Act will be a cornerstone of the work of the Judiciary Committee in the next Congress. I very much look forward to working with him to see that the needs of millions of battered women affected by this legislation will become reality early in the next Congress.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

## THE WORK OF CONGRESS

Mr. BYRD. Mr. President, I overheard the distinguished Senator from Wyoming, Mr. SIMPSON, and the distinguished Senator from Kentucky, Mr. FORD, talking about the process here whereby many people, Members, staff persons, and otherwise, spend numerous hours on the work of the people, perhaps a year, maybe work going back to the very first session, and then it all comes finally to a close in the last minutes of a session.

As Senator SIMPSON pointed out, the work of the legislative branch that is done efficiently and well appears to be, and is in many ways, a rather dry process. It does not make the headlines, the process itself does not, and the media do not dwell upon the hours or days or, in some instances, the years of labor that go into bringing a piece of legislation to its final fruition.

The media and a good many people even in this body pay little attention to the process. Their eyes glaze over when there is talk of the process.

Mr. President, it is very fashionable these days, and as a matter of fact it has been fashionable over the years, to lampoon a Congress, criticize the House and Senate for their work or for the delays, and fault is easily found with the people's branch, the House and the Senate. Some of it is justified. There is no question but that we are entitled to some criticism—constructive, as it should be.

But in the main, Mr. President, I believe that the people, as a whole, are really not aware of the importance of the Congress to representative democracy, and they are easily misled by the critics, the critics on the inside and the critics on the outside.

John Heywood said that, "It is a foule bird that fouleth his owne nest," and we are treated often to the fouling of the nest by Members of this body. Criticism, of course, comes easy for those who want to play to the galleries, appeal to the masses, and bring into critical light the work of the Congress and the elected Members of the House and the Senate.

Most Members of the House and Senate are hardworking, they are honest, and they contribute a great deal to the progress of the country.

Congress has always been the butt of cartoonists, the editorial critics, the columnists who lampoon the people's branch. Congress is a moving target. It is a kind of faceless entity, and it is easy to criticize.

It reminds me of Plutarch's reference to the plebeians of Rome, who seceded from the city. Plutarch speaks about this, particularly in his "Life of Coriolanus." Plutarch does not dwell on it at length, but he refers to the time when the plebeians seceded from the city and went to the Holy Mount and separated themselves from the Senate and the patricians.

Other historians refer to this event. I particularly like the reference to it by Cassius Dio Cocceianus, the Bithynian historian, writing about the history of Rome. Cocceianus lived, circa, 155 to 240 A.D. He writes about this situation in which the plebeians separated themselves from the city.

The Roman Senate was apprehensive as to what might be the outcome. So, the Senate chose Menenius Agrippa, one of the more moderate and popular members of the Senate, to reason with the secessionists. Therefore, he entreated them to reconsider their secession.

Menenius Agrippa told the fable in which the members of the body were critical of the belly. The eyes said: We provide light for the hands to work, and the feet to walk. The tongue and the lips said: Through us the counsels of the heart are made known. And the ears said: Through us the words of others are conveyed to the mind. The hands said: We do the work that stores up the wealth. And the feet said: We carry the entire body everywhere it goes, walking, standing, and working, and we grow tired. And they all complained in a chorus about the belly, saying that while the food and sustenance go to the belly, the belly does not labor. The belly receives all the benefit that flows from the work of the other members of the body, the other members labor and grow tired while the belly languishes.

They, therefore, voted to stop supplying the belly with food. They voted that the hands no longer convey food to the mouth, and the mouth no longer convey food to the belly.

But after a little while, the various components of the body began to grow tired and to atrophy until the body almost collapsed. Whereupon, Plutarch tells us, and so does Cassius Dio Cocceianus, that the members of the body began to realize that it was, after all, the work of the belly in its digestion of the food that made it possible then for energy to flow therefrom and to be conveyed to the hands, and to the feet, and to the eyes, and to the ears, and to the lips, and to the tongue, and so on. The other members of the body came to their senses when they understood that the much-criticized belly was that organ from which all of their blessings flowed.

And Plutarch tells us that those people from the city who had seceded and gone to the Holy Mount came to the conclusion, after hearing Menenius Agrippa's fable of the belly, that, after all, the much-criticized Senate, was, in the final analysis, their salvation, and that their blessings, indeed, flowed from the counsels, the debates, and the actions of the Senate.

In my judgment, Agrippa's fable could well be applied to the American House and Senate. It is easy to criticize, as I have indicated, and these two bodies are the butts of criticism, always have been, and people should take with a grain of salt many of the criticisms that are directed against the Congress.

Mr. President, Franklin D. Roosevelt said, "If we were to eliminate the Congress, we would automatically cease to be a Republic." That was a sound statement. I also believe that people should stop and think when the critics of the Congress are attempting to light the fires of opprobrium, calumny, and criticism under the Congress.

People should remember that it is the Congress that makes this a Republic. I would say to the veterans, when they hear the critics, they would do well to remember that all of the veterans programs from which they benefit are enacted by the Congress. The senior citizens of the country would do well to pause and reflect that all of the programs which benefit the senior citizens are enacted by the Congress.

Those who are interested in the parks and the forests, the lakes and the rivers, the harbors of the Nation, would do well amidst the clouds of criticism that sweep over the land, especially in a campaign year, to pause and reflect upon the fact that the authorizing measures, the appropriations for these are made by the Congress. The vilified Congress passes the legislation that benefits every person in the land—man, woman, boy, and girl.

Those who are interested in education, those who are interested in the environment, those who are interested in law enforcement, those who are interested in the war on crime, the war on drugs, they should stop and think that, whatever programs are applicable, have been enacted by the Congress. The highly criticized, the greatly vilified, the overly castigated House and Senate, they make all of these programs possible.

The President has made it his campaign to bash the Congress. I regret that the President has done that.

I regret it when I hear Members of this body wrongly criticize the Congress of which they are a part. I say as the Master did: "Lord, forgive them, they know not what they do."

## THE APPROPRIATIONS COMMITTEE

Mr. BYRD. Mr. President, with reference to the Appropriations Committee, Congress has now completed action

and the President has signed into law all 13 fiscal year 1993 appropriations bills.

This has been a very difficult year for the Appropriations Committee. The committee's fiscal year 1993 allocation for domestic discretionary spending was not sufficient to cover fiscal year 1992 spending levels plus inflation. Therefore, real cuts had to be made to critical domestic programs in nearly every subcommittee.

I have here a table which sets forth, by subcommittee, total fiscal year 1993 appropriations as contained in the conference agreements on all 13 fiscal year 1993 appropriations bills.

This table also provides a breakout between mandatory and discretionary appropriations for each of the 13 bills, as well as a comparison of the 1993 appropriations versus 1992 enacted levels, and versus the President's 1993 budget requests.

In total, including both mandatory and discretionary amounts, fiscal year 1993 appropriations for all 13 appropriation bills equal $761.5 billion. This is $23.7 billion above the fiscal year 1992 enacted levels, and it is $13.2 billion below the President's requests. However, as Senators are aware, the Appropriations Committee has no control over mandatory appropriations. The committee is simply required by the authorizing statutes to appropriate these mandatory amounts to cover the costs of entitlement programs.

Discretionary appropriations, on the other hand, are under the control of the Appropriations Committee, and they cover defense, domestic discretionary, and foreign aid programs. For these programs, the total of all 13 appropriations acts for fiscal year 1993 will equal $502.1 billion, as viewers will see on the chart to my left. This total is $10.1 billion below fiscal year 1992 discretionary appropriations and $8.7 billion below the President's fiscal year 1993 requests.

We have heard all year long about the so-called profligacy of the Appropriations Committee. I have heard it time and time again, ad nauseam, from Members on this floor, about the profligacy of the Appropriations Committee. We have heard it from the unthinking media, the President, from certain Senators who attempt to place the blame for the recordbreaking budget deficits of the past 4 years—the past 12 years, for that matter—on the Congress, and from those who support the line-item veto and enhanced rescissions. This year's total discretionary appropriations should answer these critics. Let me repeat—total discretionary appropriations for fiscal year 1993 equal $502.1 billion.

As shown on this chart, fiscal year 1992 discretionary appropriations totaled $512.2 billion; therefore, fiscal year 1993 appropriations are $10.1 billion less than last year, less than fiscal year 1992. The second bar on the chart shows that the President's fiscal year 1993 requests for discretionary appropriations total $510.8 billion. That is what the President asked.

The third bar, as I have indicated previously, shows the $502.1 billion enacted by Congress for the 13 fiscal year 1993 appropriations bills, which is $8.7 billion less than the President's requests.

Of these fiscal year 1993 discretionary appropriations, national defense—function 050—will total $275.8 billion in budget authority. That amount is $2.2 billion below the budget resolution. Foreign aid—function 150—appropriations total $21.3 billion, or $635 million below the budget resolution. Domestic discretionary appropriations for fiscal year 1993 total $204.9 billion, $1.2 billion less than the budget resolution allowed.

As these numbers make clear, the Appropriations Committee and the Congress, again this year, have acted responsibly in enacting appropriations which, in total, are $13.2 billion below the President's requests. This would not have been possible without the cooperation and support of Senators on both sides of the aisle. I particularly appreciate the assistance of the leadership throughout the consideration of not only the regular appropriations bills this year, but also the rescission bill, which cut fiscal year 1992 spending by $8.2 billion, and the fiscal year 1992 supplemental bill, which contained vital assistance for the victims of Hurricanes Andrew and Iniki, and Typhoon Omar. And it is with great pride that I reflect on the speed with which the Senate enacted the emergency appropriations measure.

The majority and minority leaders, without exception, did everything possible to encourage Senators to work with our subcommittee chairmen and ranking members on all of these appropriations bills, and to hold off extraneous amendments. For the support and guidance, I am deeply grateful.

I particularly am grateful to the minority leader in this respect. Most of the amendments would have come from the Republican side of the aisle. We knew about the amendments that were being written, and we knew that many of these amendments would have resulted in delay in action on appropriations bills, especially in these final days of the session.

It was the Republican leader who counseled with his colleagues on the other side of the aisle, and who used his arts of persuasion and his talents to convince his colleagues that the amendments should not be offered. His actions expedited the work of the Senate on the appropriations bills.

In several instances, there were desires on the part of Senators, particularly again on the part of Senators on the other side of the aisle, may I say, to amend the conference reports that come over from the House.

But, in most instances, those conference reports were all wrapped into one package and there were not any amendments in disagreement between the two Houses.

I congratulate the other body on this procedure, and I congratulate members of my own subcommittees for their work in the conferences which helped to make it possible for the conference reports to be taken up without amendments in disagreement between both Houses.

But there were threats to filibuster and to delay, and I think it is rather remarkable the work the minority leader did in smoothing waters and calming nerves and quieting the threats of those who might otherwise have slowed down the legislation.

Mr. President, to the members of the Appropriations Committee, I say thank you for a job well done. Election year politics complicated the process, and funds were in shorter supply than in past years. It was more difficult this year than last, more difficult last year than the previous year.

I regret the election year politics injected by the President with his veto threats. But the committee did its work and we only needed a 5-day continuing resolution, 2 of which days were weekend days—all bills passed, all appropriations bills passed and are on the President's desk.

I should say, Mr. President, being an appropriator is a thankless job in many ways. The Appropriations Committee rarely receives praise for the work that it does. Rarely do the media praise the Appropriations Committees of the Congress for a job well done.

We only hear about the alleged pork in the bills. We do not hear that this so-called pork is, in great measure, infrastructure. It is an investment in our own country and in our own people; an investment in the rivers and harbors of the country, the highways and the bridges, the airports, the water and sewer facilities in countless communities throughout the land; it is also funding for education, health services, the war on crime, the FBI, law enforcement—all these and more.

This is infrastructure, and yet the media would have people believe that this is pork. Having been in this city now for 40 years, I fully understand that the viewpoint, in the media and otherwise, is that anything that is spent beyond the beltway is pork. Nothing is said about the millions that are spent on the museums, the bridges, the highways, the Metro system, and other important infrastructure here in the city all of which is necessary, of course.

We should have these things in the Nation's Capital. But the people outside the beltway are likewise entitled to infrastructure. It is their taxes as

well, their tax dollars that are spent for infrastructure inside the beltway and outside the beltway. So, we should live and let live.

To those who continue the old chant about the budget-busting ways of Congress, let me refer again to the fact that the appropriators have spent $8.7 billion less than the President requested. The President challenged us with his veto threat on appropriations bills.

Mr. President, the Appropriations Committees of the Congress have not broken the pledges that were made in the budget summit in 1990. We have kept our pledges. We have kept our part of the agreement. We have never gone over the caps, and we have consistently lived within our allocations provided by that agreement and by the budget resolutions enacted annually here.

And when the President chose to threaten to veto appropriations bills that were over this budget request, that was not a part of the agreement in my judgment. That was in violation of the agreement. The elected representatives of the people have a right to readjust the priorities as long as we stay within the caps and within our allocations. The total of the various appropriations bills when added up would have been below the President's total budget requests even before he issued his veto threat. One or two or a few of the appropriations bills might have been above the President's budget request while others were below.

The totality of all of the appropriations bills would have come under the total request of the President included in his budget. We were well within the President's total budget request before he threatened to veto. That is the important thing to remember.

But the President threatened to veto any one of the appropriations bills that came to his desk in which the total amount exceeded his budget request for that particular department. That was unfair. That was not right.

But when the President challenged us with his veto threat, I concluded that rather than subject the Nation to a prolonged political ping-pong match with the President—who was only trying to prove that he had some sort of domestic agenda—I would do everything that I could to carry out the responsibilities of the Appropriations Committee to the people of the country. As I have stated, we were already below the President's total budget request when he made that threat. Yet, I suppose he needed an issue. But the American people needed someone to take care of their business.

So, in talking with my various subcommittee chairmen on the Appropriations Committee, it was our unanimous viewpoints that we ought not to engage in a charade of sending down to the President bills that were a little over his budget request, even though the total of all those bills would be under the President's total request. He would merely veto the bills, and then bash Congress.

Rather than engage in such a demagogical game of political football, we would act like adults and bring each bill's total under the President's request for that particular Department, with the exception of the Agriculture appropriations bill, which was already sent to the President's desk and signed before he issued his veto threat.

Hence, the committee worked and cut a little more in order to avoid gridlock and to move the people's business along.

I thank the subcommittee chairmen, Mr. President. I thank the members of the Appropriations Committee in the other body. We have a very, very good working relationship with the Appropriations Committee in the other body. They are entitled to commendations, likewise.

I thank the members of the staff on the Appropriations Committee, Jim English, the staff director on the majority side, and Keith Kennedy, the staff director on the minority side. We have excellent working relationships between these two staff directors and among the various staff members on both sides of the aisle.

Once again, I call attention to the fact that the appropriations staff on the Senate side, composed of staff people representing both the majority and minority, are only 82 in number. They do the work for the entire Government insofar as Senate appropriations are concerned—for all of the Departments and agencies. All of this is done by 82 appropriations staff members. They do the work for the entire Government.

And if one looks at many of the Departments downtown, they have hundreds of people who are engaged in the budget process; and, of course, the White House is the foremost lobbyist, hands down, of any lobby in town.

We have 82 members on the staff here of the Appropriations Committee that do the entire work, all of the appropriations work, year in and year out, for the Senate.

Yet, we are treated to excoriation on the part of inside critics about bloated staffs of Congress. Well, the Appropriations Committee staff is not bloated. We turn back money every year. I am proud of the hard-working staff members on the Appropriations Committee.

I have heard reports of the President's criticism in this regard, talking about the staffs of Congress being so bloated. Little is said about the growth of the staffs in the executive branch or growth of personnel in the judiciary; nothing is ever said about that. I never hear anything said about the growth of administrative costs in the judiciary. The criticism is always directed at the Congress.

I just want to take this moment to commend the appropriators.

There are those who criticize the appropriators for including authorizing legislation on appropriations bills. The truth of that matter is that, in many instances, if the appropriations bills did not include certain authorizations, the Government would come to a stop.

I recall that, for example, last year there was no authorization for the Federal Communications Commission, the Federal Trade Commission, the FBI, the Immigration and Naturalization Service, the Office of Management and Budget, the Securities and Exchange Commission and others. The appropriators had to move ahead, fund the Departments and the agencies, and do virtually the authorizing and the appropriations.

Earlier, I mentioned Keith Kennedy and Jim English. I also should mention Jack Conway. He does the numbers for Republicans and the Democrats on our Appropriations Committee.

Finally, let me thank my colleague, Senator HATFIELD, a former chairman of the Appropriations Committee in the Senate. He is the ranking member. I want to thank him for his valuable contributions to the work of the committee and to the work of the Nation.

On our committee, there is no partisanship. We do not play political games on the Appropriations Committee. We work together. I think we demonstrate a fine team, bipartisan, working for the good of the country.

I could not ask for better cooperation than I receive from Senator HATFIELD. He is always very supportive of our work, and I receive a great deal of encouragement from him. It is a fine team—the Democrats working with the Republicans on that committee. Thank God for the Congress of the United States and for the appropriators.

Mr. HATFIELD. Will the Senator yield? Is this an appropriate time?

Mr. BYRD. It is, if I may momentarily withhold.

I ask unanimous consent that the table to which I have referred be printed in the RECORD.

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

| (As of) 06-Oct-92 | New BA FY 1992 Enacted | New BA FY 1993 Estimates | New BA FY 1993 Conference | Conference vs FY 1992 Enacted | Conference vs Estimates |
|---|---|---|---|---|---|
| SUBCOMMITTEE | | | | | |
| Agriculture, Rural Dev. & Rel. Agencies: (a) | | | | | |
| Mandatory | 39,352,155,000 | 47,659,307,000 | 46,878,819,000 | 7,526,664,000 | -780,488,000 |
| Discretionary | 12,284,502,000 | 12,902,575,000 | 13,872,636,000 | 1,588,134,000 | 970,061,000 |
| Total, Agriculture, Rural Dev. & Rel. Agen. | 51,636,657,000 | 60,561,882,000 | 60,751,455,000 | 9,114,798,000 | 189,573,000 |
| Commerce-Justice-State-Judiciary: | | | | | |
| Mandatory | 900,912,000 | 661,524,000 | 661,524,000 | -239,388,000 | ---- |
| Discretionary | 20,814,424,000 | 22,942,458,000 | 22,478,653,000 | 1,664,229,000 | -463,805,000 |
| Total, Commerce-Justice-State-Judiciary | 21,715,336,000 | 23,603,982,000 | 23,140,177,000 | 1,424,841,000 | -463,805,000 |
| Defense: | | | | | |
| Mandatory | 164,100,000 | 168,900,000 | 168,900,000 | 4,800,000 | ---- |
| Discretionary | 269,935,240,000 | 260,964,606,000 | 253,617,763,000 | -16,317,477,000 | -7,346,843,000 |
| Total, Defense | 270,099,340,000 | 261,133,506,000 | 253,786,663,000 | -16,312,677,000 | -7,346,843,000 |
| District of Columbia: | | | | | |
| Mandatory | ---- | ---- | ---- | ---- | ---- |
| Discretionary | 699,850,000 | 688,084,000 | 688,000,000 | -11,850,000 | -84,000 |
| Total, District of Columbia | 699,850,000 | 688,084,000 | 688,000,000 | -11,850,000 | -84,000 |
| Energy and Water Development: | | | | | |
| Mandatory | ---- | ---- | ---- | ---- | ---- |
| Discretionary | 21,870,150,000 | 22,465,938,000 | 22,079,547,000 | 209,397,000 | -386,391,000 |
| Total, Energy and Water Development | 21,870,150,000 | 22,465,938,000 | 22,079,547,000 | 209,397,000 | -386,391,000 |
| Foreign Assistance: | | | | | |
| Mandatory | 41,351,000 | 42,677,000 | 42,677,000 | 1,326,000 | ---- |
| Discretionary | 14,358,675,946 | 15,070,121,602 | 14,070,843,903 | -287,832,043 | -999,277,699 |
| Total, Foreign Assistance | 14,400,026,946 | 15,112,798,602 | 14,113,520,903 | -286,506,043 | -999,277,699 |
| Interior and Related Agencies: | | | | | |
| Mandatory | 78,305,000 | 50,975,000 | 78,695,000 | 390,000 | 27,720,000 |
| Discretionary | 12,862,451,000 | 12,595,592,000 | 12,504,605,000 | -357,846,000 | -90,987,000 |
| Total, Interior and Related Agencies | 12,940,756,000 | 12,646,567,000 | 12,583,300,000 | -357,456,000 | -63,267,000 |
| Labor, Health & Human Services & Education: (b) | | | | | |
| Mandatory | 158,606,130,000 | 178,821,191,000 | 179,146,978,000 | 20,540,848,000 | 325,787,000 |
| Discretionary | 60,657,311,000 | 62,151,282,000 | 62,145,195,000 | 1,487,884,000 | -6,087,000 |
| Total, Labor, H.H.S., & Education | 219,263,441,000 | 240,972,473,000 | 241,292,173,000 | 22,028,732,000 | 319,700,000 |
| Legislative: (c) | | | | | |
| Mandatory | 81,660,400 | 87,900,000 | 87,900,000 | 6,239,600 | ---- |
| Discretionary | 2,306,353,700 | 2,670,364,500 | 2,275,148,057 | -31,205,643 | -395,216,443 |
| Total, Legislative | 2,388,014,100 | 2,758,264,500 | 2,363,048,057 | -24,966,043 | -395,216,443 |

NOTE: These numbers include CBO scorekeeping adjustments.

| (As of) 06-Oct-92 | New BA FY 1992 Enacted | New BA FY 1993 Estimates | New BA FY 1993 Conference | Conference vs FY 1992 Enacted | Conference vs Estimates |
|---|---|---|---|---|---|
| **Military Construction:** | | | | | |
| Mandatory | ---- | ---- | ---- | ---- | ---- |
| Discretionary | 8,426,526,000 | 8,389,833,000 | 8,389,000,000 | -37,526,000 | -833,000 |
| Total, Military Construction | 8,426,526,000 | 8,389,833,000 | 8,389,000,000 | -37,526,000 | -833,000 |
| **Transportation:** | | | | | |
| Mandatory | 539,436,569 | 571,513,569 | 571,513,569 | 32,077,000 | ---- |
| Discretionary | 13,897,534,000 | 12,377,876,000 | 12,625,760,778 | -1,271,773,222 | 247,884,778 |
| Total, Transportation | 14,436,970,569 | 12,949,389,569 | 13,197,274,347 | -1,239,696,222 | 247,884,778 |
| **Treasury-Postal Service:** | | | | | |
| Mandatory | 8,735,431,000 | 11,203,202,000 | 11,203,318,000 | 2,467,887,000 | 116,000 |
| Discretionary | 10,844,327,000 | 11,400,439,000 | 11,282,900,000 | 438,573,000 | -117,539,000 |
| Total, Treasury-Postal Service | 19,579,758,000 | 22,603,641,000 | 22,486,218,000 | 2,906,460,000 | -117,423,000 |
| **VA HUD-Independent Agencies:** | | | | | |
| Mandatory | 17,145,669,000 | 24,665,947,000 | 20,600,957,000 | 3,455,288,000 | -4,064,990,000 |
| Discretionary | 63,239,596,000 | 66,128,029,810 | 66,043,316,000 | 2,803,720,000 | -84,713,810 |
| Total, HUD-Independent Agencies | 80,385,265,000 | 90,793,976,810 | 86,644,273,000 | 6,259,008,000 | -4,149,703,810 |
| **Unassigned:** | | | | | |
| Mandatory | ---- | ---- | ---- | ---- | ---- |
| Discretionary | ---- | ---- | ---- | ---- | ---- |
| Total, Unassigned | ---- | ---- | ---- | ---- | ---- |
| **GRAND TOTAL** | 737,842,090,615 | 774,680,335,481 | 761,514,649,307 | 23,672,558,692 | -13,165,686,174 |
| Mandatory | 225,645,149,969 | 263,933,136,569 | 259,441,281,569 | 33,796,131,600 | -4,491,855,000 |
| Discretionary | 512,196,940,646 | 510,747,198,912 | 502,073,367,738 | -10,123,572,908 | -8,673,831,174 |

(a) Includes Sec. 32 funds.

(b) Includes advance appropriations.

(c) Includes compensation of Members.

Mandatory using Bipartisan Budget Agreement definitions.

NOTE: These numbers include CBO scorekeeping adjustments.

Mr. BYRD. Mr. President, I yield the floor.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I am terribly sorry I was not on the floor when the chairman of the Appropriations Committee, Senator BYRD, first began his recitation of these statistics and the role of the Appropriations Committee. He may well have used a statistic when I think is also very illustrative of the often misunderstood relationship between Presidential request levels of spending and the congressional responses to those requests.

If the chairman has not already referred to that, I think it is still worth the repetition. I remember when I was in education, one of those golden rules was repetition is the first law of learning. I think that there has to be a lot of relearning on the part of many people as to the facts of the case that often create the imagery of conflict between the executive branch and the congressional branch, legislative branch of Government on levels of spending. And that is I ask the chairman on that span of time of some 38, years, 40 years now perhaps, has the, and this includes Democratic and Republican Presidents alike—I am not playing partisan politics in this instance either—over that span of, say, the last 38, 40 years, looking at the President's budget requests year in and year out, and the legislative responses to those year by year, have they been higher or lower as to the final conference statistics and figures, from the request level and the congressional level of spending?

Mr. BYRD. For the years 1947, I believe, through 1991, the total of the congressional appropriations, including the general appropriations bills, the supplementals, deficiencies—we used to have deficiencies, deficiency bills; we used to have an appropriations committee on deficiencies and supplementals, which I chaired for a while—the total was, not including this year, $188 billion over those years under the total of the requests by all of the Presidents in that period, Republican and Democrat, $188 billion under.

Mr. HATFIELD. Under the Presidents' request?

Mr. BYRD. Yes.

Mr. HATFIELD. Mr. President, I will further comment on that statistic to the effect that this did not happen in 1 or 2 years, which made a great differential to give us that cumulative figure, but I believe with perhaps the exception of 2 or 3, not more, than that was true each year in that period of time. We did not have an aberration or a great differential one year that gave us that final end figure that the Senator quoted of $188 billion; is that correct?

Mr. BYRD. It was true in a great majority of the years.

I ask unanimous consent, Mr. President, that I may print in the RECORD a chart for that period of years which will indicate the annual requests by the Presidents and the annual appropriations and annually the difference between the final appropriations and the Presidents' request in each instance.

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

REGULAR ANNUAL, SUPPLEMENTAL, AND DEFICIENCY APPROPRIATION ACTS COMPARISON OF BUDGET REQUESTS AND ENACTED APPROPRIATIONS

| | Administration requested | Enacted appropriations | Difference under (−)/over (+) |
|---|---|---|---|
| Calendar year: | | | |
| 1945 | $62,453,310,868 | $61,042,345,331 | −$1,410,965,537 |
| 1946 | 30,051,109,870 | 28,459,502,172 | −1,591,607,698 |
| 1947 | 33,367,507,923 | 30,130,762,141 | −3,236,745,782 |
| 1948 | 35,409,550,523 | 32,699,846,731 | −2,709,703,792 |
| 1949 | 39,545,529,108 | 37,825,026,214 | −1,720,502,894 |
| 1950 | 54,316,658,423 | 52,427,926,629 | −1,888,731,794 |
| 1951 | 96,340,781,110 | 91,059,713,307 | −5,281,067,803 |
| 1952 | 83,964,877,176 | 75,355,434,201 | −8,609,442,975 |
| 1953 | 66,568,694,353 | 54,539,342,491 | −12,029,351,862 |
| 1954 | 50,257,490,985 | 47,642,131,205 | −2,615,359,780 |
| 1955 | 55,044,333,729 | 53,124,821,215 | −1,919,512,514 |
| 1956 | 60,892,420,237 | 60,647,917,590 | −244,502,647 |
| 1957 | 64,638,110,610 | 59,589,731,631 | −5,048,378,979 |
| 1958 | 73,272,859,573 | 72,653,476,248 | −619,383,325 |
| 1959 | 74,859,472,045 | 72,977,957,952 | −1,881,514,093 |
| 1960 | 73,845,974,490 | 73,634,335,992 | −211,638,498 |
| 1961 | 91,597,448,053 | 86,606,487,273 | −4,990,960,780 |
| 1962 | 96,803,292,115 | 92,260,154,659 | −4,543,137,456 |
| 1963 | 98,904,155,136 | 92,432,923,132 | −6,471,232,004 |
| 1964 | 98,297,358,556 | 94,162,918,996 | −4,134,439,560 |
| 1965 | 109,448,074,896 | 107,037,566,896 | −2,410,508,000 |
| 1966 | 131,164,926,586 | 130,281,568,480 | −883,358,106 |
| 1967 | 147,804,557,929 | 141,872,346,664 | −5,932,211,265 |
| 1968 | 147,908,612,996 | 133,339,868,734 | −14,568,744,262 |
| 1969 | 142,701,346,215 | 134,431,463,135 | −8,269,883,080 |
| 1970 | 147,765,358,434 | 144,273,528,504 | −3,491,829,930 |
| 1971 | 167,874,624,937 | 165,225,661,865 | −2,648,963,072 |
| 1972 | 185,431,804,552 | 178,960,106,864 | −6,471,697,688 |
| 1973 | 177,959,504,255 | 174,901,434,304 | −3,058,069,951 |
| 1974 | 213,667,190,007 | 204,012,311,514 | −9,654,878,493 |
| 1975 | 267,224,774,434 | 259,852,322,212 | −7,372,452,222 |
| 1976 | 282,142,432,093 | 282,536,694,665 | +394,262,572 |
| 1977 | 364,867,240,174 | 354,025,780,783 | −10,841,459,391 |
| 1978 | 348,506,124,701 | 337,859,466,730 | −10,646,657,971 |
| 1979 | 388,311,676,432 | 379,244,865,439 | −9,066,810,993 |
| 1980 | 446,690,302,845 | 441,290,587,343 | −5,399,715,502 |
| 1981 | 541,827,827,909 | 544,457,423,541 | +2,629,595,632 |
| 1982 | 507,740,133,484 | 514,832,375,371 | +7,092,241,887 |
| 1983 | 542,956,052,209 | 551,620,505,328 | +8,664,453,119 |
| 1984 | 576,343,258,980 | 559,151,835,986 | −17,191,422,994 |
| 1985 | 588,698,503,939 | 583,446,885,087 | −5,251,618,852 |
| 1986 | 590,345,199,494 | 577,279,102,494 | −13,066,097,000 |
| 1987 | 618,268,048,956 | 614,526,518,150 | −3,741,530,806 |
| 1988 | 621,250,663,756 | 625,967,372,769 | +4,716,709,013 |
| 1989 | 652,138,432,359 | 666,211,680,769 | +14,073,248,410 |
| 1990 | 704,510,961,506 | 697,257,739,756 | −7,253,221,750 |
| 1991 | 756,223,264,591 | 748,262,835,695 | −7,960,428,896 |
| Totals | 11,710,201,833,552 | 11,521,432,604,188 | −188,769,229,364 |

Source: House Committee on Appropriations.

Mr. HATFIELD. Mr. President, I appreciate the chairman's review of this record because, again, it is counter to the popular imagery that somehow the Congress is always the big spender in this constitutional process of requests and appropriations, and so forth, and that the President or the White House has always been the fiscal constraint or the fiscal restraint in this process. The opposite is true.

I can recall during the 6 years that I was chairman of the Appropriations Committee, and that was 6 of the 8 years of the Reagan administration, Republican White House, Republican Senate. And I can remember what the

chairman has already referred to of Presidents', of both parties, favorite target in trying to explain fiscal policies of this Nation to lambaste the Congress. It was always the fault of the Congress, the fault of the Congress not appropriating, or overappropriating, or pork barreling that has led to a lot of these quick-fix conundrums that float around in the political arena: Line-item veto, enhanced rescissions, balanced budget amendments, that somehow are going to fix the deficit problem and bring the Congress under control and into accountability.

Those 6 years out of the 8, and I do not want to just restrict my time of chairmanship, but let us take the full 2 terms of the Reagan administration, one of the favorite targets of the rhetoric of that administration was the Congress as the big spenders. If you take those 8 years and add up each of those 8, your fiscal years, as to what President Reagan requested of the Congress and take that 8 years as to what the Congress appropriated, we were under the Reagan years of request levels, budget request levels.

That certainly was one of the highlights or one of the high points of this Congress bashing and the so-called tension between the executive and legislative branches of Government.

The chairman says, well, this has been a popular subject for many Presidents—which it has. Has it always been so? Well, that also reminded me of the fact that we have together been very much involved in the bicentennial of the Constitution and its efforts and its programs under former Chief Justice Warren Burger. Of course, as the Chief Justice, we had a number of publications which had become the legacy and the heritage of the bicentennial celebration. On one of them particularly, one of these publications concentrating on the history of the judicial branch of Government, and there was a brief respite from the early days when Congress was getting all the bashing, even under the beginning of the first Republican President, Washington. When President Jefferson came into power, that interlude was the tension between the executive and the judiciary. I am not so sure that Thomas Jefferson in his heart of hearts really believed in a three-branch Government. He really was a supporter of two branches. Fortunately, we had a Chief Justice at the time to confront the Jefferson antagonism by the name of John Marshall.

When you go through that early history, and by the way, let me recommend an interesting highlight history of the Supreme Court by Chief Justice Rehnquist. He has now written two books, one of the highlights of the history of the Supreme Court, and the other now on the impeachment trails, major impeachment trials, not only of Andrew Johnson but Justice Chase and a few of the others.

You can get very quickly the flavor of that tension which existed between President Jefferson and what the role of the judiciary was to play in this Republic.

So I guess for that exception and maybe a few others that I do not recall immediately, it has been pretty much the hee and the haw between the executive and the legislative.

That is the nature, I guess, of our system, I would say to the chairman. I do not think we are being overly sensitive to respond from time to time to set the record straight. I wish I sometimes could sit down and draft the whole budget. I am sure the chairman has thought of that, and the distinguished chairman of the Subcommittee on Energy and Water of the Appropriations Committee, Mr. JOHNSTON. We each probably could draft up a better budget than the whole committee put together, or any President. But that is not our system. Our system is consensus. We are a pluralistic society. We are a pluralistic structure of Government—three branches.

I often have to remind my constituents that the Constitution gave to the Congress the purse strings. I believe that is still one of the most fundamental demonstrations of checks and balances and of the sustaining of the democratic system within a Republic, the control of the purse strings—he who controls the purse strings, the elected representatives of the people.

It is like I used to argue about the draft. If a President is given the power of unlimited manpower and womanpower to engage in unilateral warfare, he has power so great that, in my humble opinion, we would never have been in Vietnam if we had not had the draft.

I think there is an analogy here. The President, by nature of the focus of one man—someday one woman—by Executive powers of Government has to be checked by not only an elected body of Representatives but an independent judiciary. One is as dependent on the other, and the total makes the democratic system really work.

As these emerging countries of Europe coming out of communism begin to perceive the role that we have established here as a model for the world, with all of its warts, all of its mistakes, I think they will see it as the best system of government ever conceived by human mind, as did Mr. Churchill.

So I really feel, in spite of the fact that this is inherent in the system, it behooves us as Members of the Congress, and particularly appropriators, to set the record straight, as the chairman has done once again on this matter of spending.

Now, if we want to fix blame for the deficit, there is enough blame to go around everywhere. But I do think on the matter of the spending, this particular issue today is very, very timely.

I hope we can reproduce the charts.

This is the visual understanding of the 1992 level of spending, the 1993 request level, and the 1993 conference report level of the Congress. Each is lower. And the most important thing is that of those discretionary programs, the President's request was $8 billion, whatever the figure was, almost $8 billion higher than what we appropriated.

Mr. BYRD. Eight point seven.

Mr. HATFIELD. Eight point seven, almost $9 billion lower than President Bush's budget request. And that is not an erratic.

As the record shows now, from what has been placed in the RECORD by the chairman, starting in 1945, this is in keeping with that long tradition over those many years.

I thank the Senator for making this available.

Mr. BYRD. Mr. President, I thank the Senator.

I ask unanimous consent to proceed for 30 seconds.

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

Mr. BYRD. Mr. President, I thank the Senator from Oregon, my colleague, the ranking member.

As to his reference to the years from 1945 through 1991, in which he indicated that in a great majority of those years Congress appropriated less than the President requested, in each of those—for most of them certainly—I call his attention to the fact that out of those 46 years, 1945 through 1991— 1945 through 1991, inclusive—only in 6 years, in 6 of the 46 years did the appropriations by the Congress exceed the request by the President. In 6 years, only in 6 years out of the 46 years did Congress exceed the Presidents' requests.

In all the other years, Congress appropriated less money than the Presidents requested. And the total again, the total difference for the years 1945 through 1991 is $188,769,229,364.00. The total of the congressional appropriations under the totality of the Presidents' requests for those years was $188,769,229,364,00.

I thank the Chair for its courtesy.

Mr. BRADELY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey, Mr. BRADLEY.

Mr. BRADELY. I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

CENTRAL VALLEY PROJECT FISH AND WILDLIFE ACT OF 1992

Mr. SEYMOUR. Mr. President, I call up the Central Valley Project Fish and Wildlife Act of 1992.

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

There will now be 6 hours of debate on the bill, S. 3365, which the clerk will now report.

The assistant legislative clerk read as follows:

A bill (S. 3365) entitled the "Central Valley Project Fish and Wildlife Act of 1992."

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Chair informs the Senate that under the previous order, 4 hours of debate are under the control of the junior Senator from California [Mr. SEYMOUR], and 2 hours are under the control of the senior Senator from New Jersey [Mr. BRADLEY].

Mr. SEYMOUR. Thank you, Mr. President.

Mr. President, the reason we are here and the reason we are taking this bill up now is the result of years and years of debate as to how do we ensure, with limited water resources in the State of California, that we adequately supply the water needs of human beings and their jobs, whether they are farmers or urban dwellers; and how do we adequately meet the needs and requirements to protect our fish and wildlife resources in California, which all of us in California and those outside of California respect greatly and want to do everything we can to enhance them.

Senator BRADLEY, who will be speaking later, has labored many years with his ideas as to what form this reform of the Central Valley water project will take. I commend him for his efforts. He has worked hard.

I, on the other hand, am new to the scene. I came here to Washington in January 1991. But since that time, every month of the 21 months that I have been here, I have been involved and committed to try to seek a compromise to meet those needs which, again, are people and their jobs, and fish and wildlife resources, animals, and plants.

I have been unsuccessful. I have tried the best I know how to reach accommodations for those whose priorities might be different from mine, but to try to find a balance, so that the bottom line is we allocate this very precious and limited resource of water to meet the needs of all Californians.

Over the last 21 months, I do not know how many days and weeks and hours have been invested in trying to find this compromise, but I know that a very substantial amount of time, whether it be through public hearings or private negotiations or meetings of the committee, meeting separately with Senator BRADLEY and Senator JOHNSTON, has been dedicated to trying to find a way to balance the diverse needs of my State.

I said I failed in that effort because we have pending on this floor a bill that came from a conference committee entitled H.R. 429. Why have I fought so hard, not only to find an acceptable compromise within the priorities I have laid out, but failing that, why have I fought so hard on the floor to oppose that bill? And the fight concluded over the last 48 hours or so when I joined with Senator D'AMATO on an unsuccessful filibuster that started at 8 p.m. on Monday evening and did not conclude until 1 p.m. the following day. And then beyond that filibuster, since I was prevented from having an opportunity to have my own filibuster, to have my own right to speak on this floor at that time, parliamentarily I asked for the reading of H.R. 429, the conference committee report, a bill that is some 375 pages long. Here it is, a bill that I contend will be an economic disaster to my State of California. That economic disaster has been defined by the California Department of Food and Agriculture as causing an economic loss annually of $4.5 billion and putting tens of thousands of farmworkers and farmers out of business.

Again, let me restate, Mr. President, that my priorities have been people and jobs first and then do whatever we can in every way possible to enhance fish and wildlife resources in our State. Clearly, I do not deny, I do not apologize, I do not take a half a step backward for those priorities.

So in this debate, I am sure we are going to hear that my priorities, although perhaps well meaning, really are not appropriately balanced; that, in fact, they do not address the needs of fish and wildlife to the degree they need to be addressed. Of course, I would argue, on the other hand, I have done the best I can. This bill before us right now outlines it and I will be talking about that. But, on the other hand, I do not deny that my number one priority has been and will continue to be.

So, after we completed the filibuster and I asked that this bill be read into the RECORD, that consumed approximately 26 hours I spent on this floor yesterday and the day before. I believe, as a result, we were able to hammer out a unanimous-consent agreement under which this bill is now being heard, wherein I have one more opportunity to send a bill to the House of Representatives that I think offers a balanced approach, keeping those priorities in mind. We did that once.

I introduced, on November 21, 1991, after long and hard negotiating sessions between farmers and urban water users, people, and industrial water users, jobs—after 9 months of hard negotiations, a bill which included a historic compromise. For the first time in the history of California, there was a compromise between farmers, urban water users, and industrial jobs needs.

That bill, Senate bill 2016, was passed by this body and sent to the House of Representatives. I cannot say, because I know it is not true, that the bill was embraced by 100 U.S. Senators. To the contrary; that is not true. In fact, if the distinguished Senator from New Jersey, Senator BRADLEY, and chairman of the committee, Senator BENNETT JOHNSTON, from Louisiana, had their way, that bill would not have gone to the House of Representatives. So I do not contend in any way that that bill represented all of the views of the Members of the U.S. Senate. But, nevertheless, it went, to be met in conference with the alternative bill, the one that is now in the water conference committee report, H.R. 429, that lies before this body and will be taken up tomorrow.

So late last night, we reached an agreement that I would have this opportunity. Provided I did not filibuster any more or delay the taking up of this bill, I would have the opportunity to send the bill that is now before us, which, quite frankly, is Senate bill 2016 with further modifications—and we will talk abut that—I would have the opportunity to send this bill to the House of Representatives over there. And on Thursday, tomorrow, this body will take up the water conference committee report to H.R. 429.

Let me say, Mr. President, for my part, that was a much less than satisfactory agreement, but I had no alternative. The time clock had begun to run on me, and it was a choice, relative to H.R. 429, the conference committee report, my attempts to amend, change, and finally my attempts to stop it, it was a choice of either dying on Thursday—"dying" meaning passage of that bill which I opposed—or dying on Saturday.

So faced with those choices, I agree that I would withdraw my attempts at a filibuster or delaying of action of other very important measures on this floor if I was provided this opportunity to introduce a further compromise, I think a balanced approach, debate it on this floor, and send it to the House of Representatives.

I can only hope—I can only hope—that the Members of the House of Representatives, and more specifically Congressman MILLER, will recognize in these closing hours of the session that if, in fact, we truly want to have a more balanced delivery of water in meeting the needs of thirsty Californians, that they would come back into session, consider this bill that we are about to send over there that deals with the Central Valley project and then vote it up or down. I feel fairly confident, if they were to do that, they would vote it up and they would send it to the President, because tomorrow, the Senate will approve—I do not have the votes, it will roll over me—they will approve the alternative H.R. 429,

and that will go to the President's desk.

Why have I not been able to convince, with logic, why have I not been able to convince other Members of this body, other Members of the House, as to the need to find a balanced approach? The reason I have not been able to do that is there is more in this water conference committee bill, H.R. 429, than what I have been talking about. A sound political strategy was used by Congressman MILLER, Senator BRADLEY, and Senator JOHNSTON in pushing this bill that reforms the CVP in California. Very simply, as so many times happens here, they put provisions in the bill which enough Senators cannot say no to and let them hold their nose and vote for the other provision. So that is what we have in this conference committee report.

What is in there that has caused Members of the House to pass it and what will cause tomorrow the Senate to pass it are water projects, important water projects. I am sure, for example, some time tomorrow on this floor Senator JAKE GARN, from the great State of Utah, a Senator whom I admire, a Senator whom I respect, and a Senator who has fought long and hard, will tell us tomorrow that for 25 years he has fought to get this water project for his own State of Utah. And it is true, he has, and it is tied up in this bill.

So what he will say to me, as he has said before is: "John, I hear you, I'm with you. I know that H.R. 429 as it impacts your State of California is something that you don't want and the people of California don't want. But I need this water project that I have fought for for 25 years."

(Mr. BYRD assumed the chair.)

Mr. SEYMOUR. That is an example of one Senator's—there are others with other water projects in the bill, and that is why, quite frankly, I have been less than successful in getting my point of view across. Some have said that this strategy was holding hostage those water projects, so that this CVP, Central Valley project, reform bill that is unpalatable to so many and will be such an economic disaster to my State of California can go through.

So this bill will go, the one we are discussing now, to the House of Representatives. If they choose to come back into session and consider it as a separate bill with no water projects in it, I think there is a chance it would pass, and it could go to the President's desk. And if it gets to the President's desk, I guarantee you he will sign it.

But I have to say, with all candor, that probably will not happen because probably the House of Representatives will not come back into session. And if they do, I know that Congressman GEORGE MILLER, who has been so committed to his idea of what the Central Valley project should be and how reallocation of water should take place, is a very strong and influential Member of the House of Representatives, and I respect that. He feels very strongly and passionately about his position. I respect that. But with that power, even if they were to come back, it would be a close battle. But standing alone and separate from the water projects that have been held hostage, I think it has a chance.

If that does not occur, then tomorrow, as I said, this House will vote out the water conference committee report. It will go to the President's desk. The Secretary of Agriculture, a member of his Cabinet, has advised him to veto it, should that happen. The Secretary of the Department of the Interior, a member of his Cabinet, has advised him to veto it, should that happen. The Secretary of the Department of Interior, a member of his Cabinet, has also advised that he should veto it. And the read I can get is he may veto it. I hope so. It is sad, but I hope so.

Somebody has to send a message to Congress that we are not going to play games of holding things hostage so that you can pour the caster oil down somebody else's throat, whether they want it or not. And so if that should be the ultimate conclusion, then it is my intention to continue to work as hard as I can to ensure a Presidential veto of that bill.

Let me proceed, Mr. President, if I can, to talk about why this project is important, the Central Valley project, to the great State of California. What are the dynamics of what we are trying to do, whether it is my measure that is before us now or this water conference committee report, H.R. 429, that will be up tomorrow.

Let me say that there were and are many areas of agreement between those two bills, many areas of agreement. There is no disagreement whatsoever, certainly not on my part, that what we need to do is take this precious resource—and let me describe it because I am going to talk about it a lot more, but let me describe this precious resource called water in its most simple terms.

We measure water by acre feet. More specifically, what that means is one foot of water covering an acre. One foot of water a foot deep on an acre of land.

There is no disagreement, none whatsoever, on my part—as a matter of fact, I know we must transfer water from the Central Valley project to meet the needs of people and jobs, whether that is in northern California or whether it is in southern California where two-thirds of the population resides and works. I know we have to transfer that water. I know and the farmers know, as a matter of fact, that they have to conserve water. Now in the sixth year of a drought in California, they have not had much choice but to conserve water because there has not been much going around.

As a matter of fact, this year, Mr. President, the Central Valley project will deliver 4.5 million acre feet of water. Imagine the cup as a bucket.

Now, the question becomes, of this bucket that is limited in its resource—and right now it is under the control of the farmers in the Central Valley of California in this project—how much will be taken out and provided for people and their jobs in urban areas in the State of California and provided for fish and wildlife and the protection of animals and plants.

That is where the great debate is: How much do we take out of that bucket so that we can spread this limited resource around?

It is also important to add that it is not only the scooping out of the bucket that is important as to how much remains but also important is who gets to drink first. Who gets the first scoop? What happens in dry years such as we are in right now with only 4.5 million acre feet in the bucket?

And so there is no argument whatsoever that some of the bucket has to be spread around. Water has to be moved from farming to urban areas, to people and jobs, and, yes, we must deliver more water for fish and wildlife purposes, for animals and plants.

So therein lies one of the cornerstones of this debate: How much water do you take out of the bucket and move it elsewhere?

The other argument of reform of this Central Valley project—and I really only see two basic arguments. There are a lot ancillary arguments. I have made the first argument.

The second question is: How do we change or reform the relationship that was created in the days of FDR between the Federal Government, which built the Central Valley project, and the people who use the Central Valley project—not only the farmers in the Central Valley but the people who live and work in cities like Sacramento, people who live and work in Contra Costa County, up near the bay area? And so primarily it is farming interests in the Central Valley with some cities. How do we reform and change their relationship with the Federal Government, which built this project?

That has to do with the very critical issue, economically, if you are concerned about people and jobs, of contracts, contracts between the users of the water from the CVP and the Federal Government and taxpayers who built the Central Valley project. The question becomes: Shall you let the farmers continue to have 40-year contracts on water at a given price or should you change that?

I think we should change it. I know that Senator BRADLEY and Congressman MILLER and others want it changed, too. So the debate becomes how do you change it.

And so, Mr. President, what we have to remember in this is, No. 1, there is

no doubt whatsoever that water needs to be reallocated. Everybody agrees to that. It is how you do it, and who gets what out of the bucket. And then, No. 2, how do you change and reform this contractual relationship that started historically back in the days of FDR?

Let me talk for a moment about the project itself because I think it is important to put it in perspective, get a little feel for this project. And I will tell you, Mr. President, in the last 21 months I have gotten more than a feel for the Central Valley project.

I am sure Senator BRADLEY when he has the opportunity to speak is going to tell you that he has had a similar experience, going out there looking at the project and the dams and reservoirs that were built, a very creative and imaginative canal system that transports their water. Truly, a historic accomplishment was the Central Valley project. Quite frankly, without FDR, and the creation of this project back in the early part of this century, the Central Valley of California would be a desert. There would be no water. So it was ingenious when it was created.

The Central Valley of California is almost completely enclosed by mountains with the only outlet through the Central Valley, through San Francisco Bay. That is a very important area. In fact, it is that area of San Francisco Bay and the delta that caused the rightful concern that we need to move more water out of the bucket for fish and wildlife purposes, and for water quality purposes for the people of San Francisco.

The valley itself is nearly 500 miles long. That is longer than most States, Mr. President. It averages about 120 miles in width, 500 miles long, 120 miles wide. The northern half of the Central Valley is drained by the Sacramento River, the southern portion of the valley by the San Joaquin River, the Tulare Basin tributary streams. That is how that water moves through the Central Valley of California. Those are its two outlets. It is almost like a pipe with a faucet at each end.

The climate of this valley is characterized by hot, dry summers and cool, moist winters, but severe floods and devastating droughts often occur.

If you live and work in this Central Valley, let me tell you, you are a gambler. You may even do better in Las Vegas. You may have better odds there. Because if you have to make a decision today as to what crop you are going to plant, you do not know what the water is going to be. You do not know how much is going to be in that bucket. We know this.

California currently is suffering from the sixth year of a drought. This Central Valley project has the capacity of filling a much bigger pail if it would rain—as I recall, 8½ million acre feet. That is a big bucket.

If it would rain, I would not be here talking about this. If it would rain, Senator BRADLEY would not have fought so hard over the last, he will tell us, 4 years. But it has not rained. Lord, we know that California is in the 6th year of a drought.

We take a look at people and their jobs and their water needs. We see California over the last 4 years, citizens having to cut back on their water supply, severely in some cases—take a shower, but put the bucket in the shower so you can catch the water from the shower, so you can take the bucket out to water your plants—severe.

When you turn that water on for the shower, do not let it run while you lather up. Turn it off.

Companies wanting to expand, hire people, and put people to work are faced with the dilemma that they cannot get the permit to create jobs from the government. Why? Not enough water.

So truly California faces a crisis. Again, there is no dispute as to the need to take this precious resource and spread it around, try to maximize and have utility of every drop of this precious resource.

Some might say why do you not just get a bigger bucket of water? Why do you not build some resources for water? Why do you let this water when it does rain and the snow melts in the Sierra Mountains and water runs off from these mountaintops, why do you let it run into the ocean? Why do you not stop that? Catch it in a reservoir. Save it for when you need it later in the year. That makes sense.

I do not know, however, Mr. President, when the last time it was that California was able to develop any new water resource. We, Senator BRADLEY and I, Senator JOHNSTON and I, talked about the development of a new resource. Let us get a bigger bucket instead of fighting over the limited amount of water in the bucket. We talked about the need to build new reservoirs like Los Banos Grande, like Las Vacaros, like expanding the Shasta Trinity Dam. If you did projects like that, you could have a bigger bucket of water.

In fact, I promised before, and let me promise here on the floor of the U.S. Senate. If the people who support this water conference committee report will join with me in committing new resource development, a bigger budget, they can have it for fish and wildlife purposes, for animals and plants, and let the Central Valley and the farmers, and let the people who live in our cities, work in our cities, let them share in this smaller bucket that we are fighting over. But, no, we do not have any commitment whatsoever to build any new resources.

You might say why is that? Because there are legitimate concerns that, if you build a new reservoir, if you expand Shasta Trinity Dam, you are invading the environment.

You may displace some animals or plants by digging a hole so you can catch some of that water coming off of the mountains, rushing into the sea. So we do not want to do that. Therefore, we must go back and fight over the smaller bucket of water, and make these very important, sometimes emotional but critical decisions as to what we do with the limited amount of water we have.

So therein lies the argument, Mr. President. The Central Valley project was really a creation of genius. In fact, as I said, it started back in the days of FDR. I think it is important to note that back then, what kind of deal did the Federal Government drive with the farmers in the Central Valley; what did they give up so that taxpayers' money could be used to construct this truly remarkable project?

Well, what they gave up is certain water rights. When you buy a piece of property, along with that property, you get water rights, the right to the water that is underneath that land. You may pump it. You may use it. It is as important as the title to the property itself.

I do not know too many people who are willing to invest dollars to buy land where you do not have water. And if you do not have water, or if your water is being cut off, the value of your property that you own obviously drops. So back when the Central Valley project was created, there was a deal struck, a bargain.

The deal was: The Federal Government will put up the money to build this fantastic project. But you people who are going to be getting water from this project have to give up certain rights—primarily farmers.

And so they did; they gave up their water rights. But they said: Look, I do not trust you, Federal Government; I do not trust you. If I give my water rights up now, they are gone. I do not get them back. Yes, you tell me you are going to build this project. But then, how do I know that you are not going to take that water away from me that you are telling me I am going to get for this project, in exchange for giving up my water rights?

The Government says: Do not worry; do not fret. We will give you a water contract, guaranteed as long as it rains. And the water comes through the Central Valley. You have a bona fide contract that you can count on your share of that water.

Well, the farmers went one step further and said: OK; now that is starting to sound better. But tell me, how long will this contract be?

So what they negotiated when this project was built is that farmers would have a 40-year contract. And those who have been involved in the reform of these contracts—as you recall, I said that is one of the very contentious points of this bill. See, they do not need 40-year contracts. I cannot even

get a 40-year mortgage on my house. I can get 30; I can get 20 or 25. Some people will go for 15. But you do not need 40. They are right: We do not need 40 years.

What does a farmer use his contract for, anyhow? Why does he have to have a contract at all? Well, how would you like, if you were a farmer, to go down to your local bank and say: Mr. Banker, I want to buy some new equipment for my farm. In fact, what I really want to do is buy another 50 acres. I want to expand the farming operation. So I want you to make me a loan to either buy equipment or expand my farming operation.

And the banker wisely says: OK; you have run a pretty solid operation, very productive. I have looked at your books and your financial statements, and it sounds like a pretty good deal to me. But wait a minute, before I give you the loan. Without water, you do not have an operation; you are dry; you are fallow. So what kind of guarantee do I have as a banker that you are going to have the water to grow your crops, so you can sell the crops and pay me back?

Can you imagine the farmer having to say: Well, the best contract I have is 2 or 3 years.

The banker would say: Well, wait a minute. You want me to make you this loan to expand your operation, and you want this loan to be a 10-year loan, or 7-year loan, and you can only tell me that you have water for 2 or 3 years? Sorry; I cannot do it.

On the other hand, in all fairness, the banker does not need a 40-year water contract, and the farmer does not need one, either. So we should reduce the length of those contracts.

In fact, this bill that is before the House right now cuts the length of those water contracts from 40 years to 25 years. Senator BRADLEY and Congressman MILLER have come a long way in trying to find a compromise—a long way. I think they started out with no contract—no, no, no; it was not that. They started out with legislation that said you get a 1-year contract, and for every additional year you want, up to 10 years, you have to give up 1 percent of your water for fish and wildlife purposes.

And so you can get a maximum contract of 10 years. But, in exchange, you must provide 10 percent of the water off the top of your little bucket for fish and wildlife purposes.

Well, that has been changed. On water, as Senator BRADLEY will tell you, they have become flexible on that point. They now provide for 25-year water contracts. But there is a little catch, and I will talk about that.

Getting back to my analogy of length of contract, if you have too short a contract, or if the contract is uncertain that you will get water, even though it may be a dry year, the banker is willing to say: OK; you are going to get less water, and I will live with whether it rains or not. But I have to be guaranteed you will get some water. Otherwise, you may not pay my loan.

I have compared this crucial position of the farmer in water contracts to somebody who might be interested in buying a home. Let us say you find the home of your dreams. I mean, it is something you have just wanted. And you go through it and say: This is it. The family and kids say: What a place. I love it; I want to buy it.

Well, I do not have the cash to buy it, so I have to get a mortgage. Everybody does.

How would you like to be in the position of going to the banker and saying: I want to buy this home, and I want a mortgage.

The banker says: OK; you have it. I will give you a 2-year mortgage. If things are OK 2 years from now, come back and I will refinance it for another 2 years, or I will give you a 3-year mortgage. If things are OK 3 years from now, come back and I will give you another mortgage.

Boy, if you go for that deal, I have a bridge I want to sell you. It is a bad deal. Just like the contract provisions in the bill we will take up tomorrow is a bad deal.

That is one of the reasons why the California Department of Food and Agriculture has said, if the bill we take up tomorrow becomes law, then tens of thousands of farm workers and farmers are going to join the unemployment lines, and the economy of the State of California, which is already on its back suffering from the worst recession since the Great Depression, will lose $4.5 billion a year out of their economy. Those are not my numbers; those are the numbers from the California Department of Food and Agriculture.

Let us talk a minute about these farmers because they have been much maligned. They have been described as greedy. They have been described as wasteful people. They flood their fields, they grow rice, they flood the fields. What a waste of water. Many of these farmers, small as they might be, have not put in drip irrigation systems yet. They are bad folks. And we who live in urban areas, work in urban areas, and we who are concerned about the very valuable resource of fish and wildlife and the need to enhance that resource and protect it, why should it not be right, since these farmers have the water, let us just take 18 percent of the water from them. They can get by with much much less.

I want to talk for a moment, Mr. President, about these farmers who have been so maligned, who have been described as being so greedy, so unreasonable, so let us just take their water.

It is hard for me or anyone else who was raised in the city, who never farmed for a living to really appreciate what it is like to live the life of a farmer. Earlier I said farmers are the greatest gamblers in the world. They should go to Las Vegas. I think maybe they would have better odds there, because they gamble every year, a huge gamble. They decide what crop they are going to grow, not knowing tomorrow what the rain is going to do, what the pests are going to do. Right now in California in Imperial County—that is down near the southern border of California—there has been severe crop loss as a result of the white fly. And how many around this country have laughed at California's plight over the medfly, helicopters coming over residential areas spraying to kill the medfly?

So they fight pestilence, they fight water, these farmers, and they do not even know, when they have to make these decisions, what the market is going to be like for the crop. This year, for an example, has been a horrible year for lettuce. There is a glut of lettuce on the market. Too many of these farmers sat down separately and individually and said, "I am growing lettuce this year; it is going to be a good market." So here comes this glut of lettuce on the market and, instead of being able to sell that lettuce here, they have to sell it there.

Tell me, Mr. President, these farmers are not gambling. Most of these farmers are little people. I have met them, I have talked to them, I have seen their families. They are small farmers. They are family farmers. They grew up in that Central Valley. "Grandma and Grandpa farmed here, Mom and Dad farmed here, and I am going to farm here." That is their way of life. They could give it up, I guess, and go to the city, but this is a way of life for these people.

During this last 21 months, Mr. President, I have been privileged to be a United States Senator representing these people and all Californians, I have grown to respect them, to love them, and, thank goodness, I have had the opportunity to begin to understand them and their plight.

But forget that. Forget that. Let us talk about dollars and cents. Forget the family side of what these greedy water users are, these people who waste this water forget that. Let us forget about the trials and tribulations they face in their daily life in taking the risk they take.

Let us talk about the dollars and cents. Why should we care whether or not we take this bucket, this limited bucket, and scoop off the top 17 percent of the water and redistribute it, leaving them with 82 percent of what they had? What does that mean to the economy? And what will happen to these tens of thousand of farm workers and small farmers who either will be out of work or out of the farming business? What about the importance of $4.5 bil-

lion a year out of the economy of the State of California?

Let me tell you a little I have learned about the farmers and how important agriculture is to the State of California. That is a laugher, is it not—agriculture? Important to the State of California? I mean, California is not agriculture. California is Hollywood. In my case, it is Disneyland where millions of people come every year not only to enjoy themselves but to spend their money. California is aerospace. We build more and bigger and better airplanes than anyone else in the world. California is high technology. California is biotechnology. It is the venture capital of the world. And California is the defense industry. It receives 20 cents out of every defense contract dollar spent in this country. California is the center of financial institutions on the west coast. California really is a nation-state. It is the sixth largest economy in the entire world. That is big.

But how about agriculture? How about it?

Mr. President, a little unknown fact about agriculture in this hustling, bustling metropolis of 30 million people: Agriculture is California's No. 1 industry. It is the single largest industry in the entire State of 30 million people. It is the Nation's bread basket.

So let me tell you a little bit about these little people we call farmers and what they do in this No. 1 industry in the State of California.

Each California farmer produces enough food and fiber for 128 people. One farmer produces enough food and fiber for 128 people. If my math is somewhere correct, Mr. President, three and a half farmers produce enough food and fiber for the Members of the House of Representatives. Some have said maybe they are too well fed.

Fresno County. Fresno. Boy, I have gotten to know Fresno. This Central Valley, interestingly enough, talk about problems, when I took office in January 1991, the Central Valley was suffering from a disaster of a freeze. It was not pestilence, it was not drought. It was a freeze that destroyed millions of dollars worth of crops.

Fresno got particularly hard hit. They recovered from that. I would like to believe I gave them a little help in restoring some jobs and their life and their livelihood.

They recovered from that only to be faced at that time with a 5-year drought. Tell me that farming is not a high-risk and a gambling kind of business.

But Fresno County, that one county, is the leading farm county in the State of California. It produces $2.9 billion, that one county, $2.9 billion in total production. Now there are 39 other counties in that valley, in addition to Fresno, and each one of these produce at least $100 million or more in value of produce and product.

In fact, if we want to talk about California's farmers collectively, there are 85,000 farms, Mr. President, 85,000 farms—that produce $18.3 billion in farm commodities.

Do you want to compare that to something? Let us compare it to the great State of Texas. Everything is bigger and better in Texas, at least that is what my colleagues here from Texas tell me.

Well, you can compare California's agriculture to Texas agriculture. Texas leads the Nation in the number of farms. It has 186,000 compared to California's 85,000. But it comes in second to California in its production of $11.8 billion in Texas, compared to $18.3 billion in California.

Now you think they are big farmers in California, megabuck agri-operations to those who do not have particular empathy for these. Well, I would like to share with them that more than 60 percent of California's farms are less than 50 acres in size. Mr. President, 50 acres is not much to farm. I would call that a small farm.

Yes, California leads the Nation in the production of crops. If we want to talk about the land—I was talking about earlier land and water, and water making land valuable.

As thousands and tens of thousands of acres go fallow, they dry up. As a result of the bill that we will be taking up tomorrow and, sad to say, will pass the U.S. Senate, think about what that fallow land, dry land, is going to be worth. Because land of any kind, whether it is farm, or agriculture, or residential, is important.

More important are the people that own that, the people that own their own homes, the small farmer who owns 50 acres or less and farms it as a family business. How about the land, their investment? What is going to happen to that?

Well, let me share with you, relative to that land, the market value of farm land in this Central Valley. For range land—that is grazing land for cattle primarily—that is worth $600 an acre.

Now, other farmland goes up. If you want to get over into another very important industry within the agriculture industry, it is the production of wine. I believe it is the highest quality wine in the world. And I know there are those from France who would argue that.

But I have some economic numbers to show them how important the California wine industry is. That land in the wine industry could be worth $22,000 per acre. So what we are talking about bottom line is some land for grazing that is, at the low end of the scale, $600 an acre to the upper end of the scale where we have a vineyard, probably $22,000 an acre value in that.

Now how long has California agriculture been so important? Well, Mr. President, California has been the No. 1 ranking agriculture State in the United States for 43 years. California's 30 million acres of farmland accounts for only 4 percent of the United States farmland.

But talk about efficiency—30 million acres, it accounts for 4 percent of the countries entire farmland. But, do you know what? With just 4 percent of the country's farmland, California produces 50 percent, one-half, of the Nation's fruit, nuts, and vegetables.

Well, let me get back to water.

Let me talk about water and food. Water and food. Before I got this job, I would go into a market, I guess, like most, go to the fresh vegetables, and, oh, there is a good-looking orange. Maybe an orange from California, maybe from Florida. Gee, there is a watermelon. My kids love watermelon. Put that in the cart. I like apples. Give me some apples. I want some of those apples. Need some lettuce. Let us have some lettuce.

Then you go to the meat department. Let us have chicken tonight. Let us have steak. And you put these things in your basket and you go and check them out and you go home and you enjoy them.

But have you ever stopped to think what it takes to get it there in the market in the first place? Has anybody ever stopped to think how much water it takes to put that food in the market and on our tables. I do not think so.

And if I seem a little angry about the fact that we do not understand that, I am. I am sick and tired of hearing: The farmers have the water. Let us just scoop it out and take it without intellectualizing what that means to the food that every one of the Members of this body eat, and their families eat, and every American family eats.

Let me just take a few examples. Apples. I love apples. For one apple, one apple, it takes 16 gallons of water to produce one apple.

You like beef? Want to put some beef in your cart, your grocery shopping cart, next time you go to the market? As you put that beef into the cart think: One steak, one serving of steak, takes 2,607 gallons of water.

How about chicken? For one serving, chicken on your plate takes 408 gallons of water.

Milk, a glass of milk. A glass of milk. How much to get one glass of milk? Sixty-six gallons of water. And how about that watermelon that I threw in my cart because my kids love watermelon? That watermelon, as I take it off the counter, put it in the cart, because the family loves watermelon, 100 gallons of water to grow that one watermelon.

Let me put it all in perspective on the water and what it takes to eat. On the average, it takes 4,533 gallons of water to produce the food consumed by one human being in 1 day; 4,533 gallons of water per day to feed me, to feed

you, to feed every Member in this Senate, to feed their families and to feed every human being in the United States. That is a lot of water.

And so as we think and we proceed to take the water out of that bucket—and we should take the water out of that bucket; the question is how much—but as we take the water out of that bucket, we should think very carefully about us and what impact it is going to have on our ability today—and I think it is wonderful, I never want to see it change—to push cart down the aisle in the store and grab that watermelon, grab that steak, grab that chicken, and get those apples. We should think about that.

Let me share, Mr. President, a little bit about my involvement in this most emotional and contentious debate over water in the Central Valley of California and what we should do about reallocating. And again, there is no question that we need to reallocate. We need to reallocate it, as I said earlier, to people and jobs, to put people back to work, and we need to do everything we can secondarily to enhance the environment and protect fish and wildlife.

Back in March 1991, Mr. President, we had a hearing, and I want to thank, by the way, Senator BRADLEY. Senator BRADLEY has been working on this issue for, as I said earlier, 4 or 5 years. When I came to the Senate, I said, "Senator BRADLEY, let's have some hearings in California. Let's go out and see what the people think about your legislation because they are the ones who are going to be impacted." And he very graciously—very graciously—agreed to a number of hearings.

I think he would agree with me that we heard all sides of this debate in question. So anybody who says, "Senator BRADLEY, really didn't hold any hearings; you didn't care about what the people of California really thought, "I will stand up there and tell them they are wrong; he did. He was very gracious about providing hearings in California. I might dispute whether he heard it all or not, but he held the hearings, and I thank him for that. He did not have to do that.

That hearing of March 1991 was a hearing held in Los Angeles. It was the first opportunity we had to review what became known as Senator BRADLEY's proposal, Senate bill 484.

Without going into a long dissertation of the whys and the wherefores of that hearing, let me merely say, Mr. President, that I expressed my concerns at that time with Senator BRADLEY's bill. That was the bill we were discussing at that time. So I made comments as follows in talking about what the needs of California are:

Mr. Chairman, what California needs is flexibility from the Federal Government. What we need in California is a Federal Government willing to work with us to assist us but not preempt us.

I talked about the fact that we were in the fifth year of a drought and that we had a need to reallocate the State's water at the Federal Government's request and the need to do that within California.

I had thanked him for his willingness not only to hold that hearing but to hold further hearings in California.

I also said that what California does not need is legislation from the banks of the Potomac and the wisdom of the Potomac imposing on Californians how they should use their water, how they should allocate this resource, but rather the people of California and those who represent them in California ought to make that decision.

I said in that statement:

My basic concern with Senator Bradley's legislation is that it would have substituted the wisdom of the Potomac and control of the Federal Government for the political will of the citizens of the State of California. California does not need the Federal Government to dictate how it should use its scarce water resources.

I said, however, as much as I may agree with the objectives—which is a redistribution of water—but if we let the Federal Government do that for us, do it to us rather than have it done by ourselves in California, that is fact we would have sold our birthright or we would have had it stolen from us. I, quite frankly, think it is about to be stolen tomorrow as we proceed to the conference report.

Senator BRADLEY held another hearing. This one in Washington, DC, on May 8, 1991. Again, I raised concerns about many of the components of his bill. I raised concerns that his bill would place limitations on contracting for the unallocated yield to the project and it would specifically prohibit the Secretary of Interior from entering into any contract—water contracts—or other agreements to sell or deliver water on any basis for any purpose other than fish and wildlife until a list of conditions had been met.

Then another hearing Senator BRADLEY held was on May 30, 1991. That one was held in Sacramento, CA. I said then, as I said again today, that I applauded his willingness to hold such a meeting. But again I raised my concerns about the provisions of his bill, many of which are in this bill which we will vote on tomorrow. I said that the fact that that bill made many promises for fish and wildlife refuges, those promises would actually run counter to one another and that the promise that was extended, in my opinion, promised unreal things, things that would not happen.

In that hearing and other hearings, we had experts testify that the bill preempted States' rights, California's right to determine their own water policy.

I said at that particular time that in addition to the human and economic cost, or as I have described it earlier, people and jobs cost, a $4.5 billion hit on the economy and tens of thousands of jobs, I said that I was also concerned about environmental costs because the bill ended water diversions from the Trinity River, for example. I said that would have a significant impact on the fisheries of Sacramento Bay and the delta areas.

And then as we proceeded through these hearings, Mr. President, and after 9 months of negotiations, hard negotiations with Californians, not with people from the banks of the Potomac, there was concluded in California, and I think it was September or October of 1991, a historic compromise on what we should do relative to dipping out of the limited pail of water, who is going to get it and how it should be spread among people and jobs and animals and plants.

That historic compromise was not mine, although it became the bill I introduced, Senate bill 2016, a lot of which is in the bill that is pending today and at the conclusion of our debate will go over to the House of Representatives. That bill was a historic compromise. Quite frankly, in the 9 months that it was negotiated, I never thought it would happen. There were times when I gave up and just walked away shaking my head.

I did not think it would be possible. I did not think it would be possible that the farmers, these so-called greedy water users, could ever possibly reach an agreement with the water needs of urban interests—people and jobs, particularly—in southern California. But I was wrong. They found a way, without me and without any Senator from the banks of the Potomac saying: Here is how you should do it; I know better.

They found a way to do it themselves, in this historic compromise between the farmers of the Central Valley, and specifically the Metropolitan water district, that represents over 16 million water consumers in California. That is over half the population.

So the Met, as we call it, the metropolitan water district and the farmers of the Central Valley reached an agreement: Here is how we will use the limited resources in this pail, and here is how much water we will dip out of it, right off the top, and provide for fish and wildlife purposes.

That compromise became a bill that I introduced on November 21, 1991, almost 1 year ago.

It was for the first time in California's history that one interest, representing over half of the people of the State of California, the metropolitan water district, sat down and hammered out an agreement with the farmers.

(Mr. CONRAD assumed the chair.)

Mr. SEYMOUR. Mr. President, when I stood on the floor on November 21, 1991, I said:

Mr. President, I rise today to introduce the Central Valley Project Fish and Wildlife Act

of 1991. Mr. President, this bill is but a beginning. It is the product of California groups—urban, agricultural, and conservation organizations working together to develop legislation to address the fish and wildlife needs in the Central Valley.

This is a first step in an attempt to resolve the water dilemma, which has torn at the State of California for decades. Specifically, the bill provides a mechanism for water transfers—

Get it out of the bucket, redistribute it.

from agricultural to urban use, and it also includes actions for the restoration of fish and wildlife and mandates firm water supplies—

Firm means you get it. Nobody else may get any water but you have a firm water supply, so you can count on it—

for wildlife refuges and fishery habitat.

And I said:

This bill preserves the agricultural economy which is so vital to our State.

What we have before us today is that bill, Senate bill 2016, yet compromised again and again and again. I guess what the bill before us now represents is the best, the very best I could do through the entire process in trying to find a balance. All I ever wanted was a balanced approach, something where we could have a transfer of water to people in jobs in urban areas, somewhere where we could have a reasonable transfer of water to protect fish and wildlife resources and wildlife refuges; but a balanced approach, one that had its priorities based in people and jobs first, and then do whatever we can to enhance our environment and fish and wildlife that is so important to all of us.

I said in that statement that that bill was the beginning of a responsible and equitable solution. And I also said that I was willing to consider any ideas on how to improve it, and we sure have. As that bill rests before us today, to be passed out of here later today, let me say that from my view it embodies plenty of compromise relative to the needs of fish and wildlife. One of the most contentious areas of disagreement between the proponents of H.R. 429 and myself is in this area of fish and wildlife.

When I introduced the bill back in November 1991, I said that it was important that:

We restore the north coast and river fisheries, and that the bill include several provisions to try to address that, such as the rehabilitation of the Coleman National Fish Hatchery, the installation of a temperature control device at Shasta Dam, and a program for replenishing of river gravels for spawning.

I said:

While these projects will help restore the fisheries, I realize that any restoration bill will not be complete without increased water supplies.

So I am not saying, as we take the first scoop of water out of that small bucket, that some of it should not go directly to fish and wildlife. In fact, let me go to the bottom line on that one. We will talk more about it later.

The question is, Mr. President, how much is in that first scoop, and who gets it? Well, for fish and wildlife, that first scoop, some might say—in fact, I know they will say—"Not enough, Seymour, not enough," but the first scoop is 246,000 acre feet of water. And then the bill provided that that would grow to 525,000 acre feet of water in 10 years, water that they could count on, water that they knew they could depend on. But that was not enough, not nearly enough.

So we introduced Senate bill 2016.

That bill went before the committee, and was passed out of the committee. As I said earlier, it was not a bill that was embraced, by any stretch of the imagination, by all. But the statement I made before the committee when that bill was passed out—and, as I said, it was not a bill that everybody was happy with.

As a matter of fact, Senator BRADLEY—again I commend him for his willingness to try to negotiate a fair compromise between the bill I have been talking about and his bill, Senate bill S. 484. When that bill passed, it was not embraced by all. It was sent over to the House of Representatives where it met up with H.R. 429.

Let me now turn, Mr. President, to what others think and have to say about this alternative to the bill that is before us now. I am speaking of the water conference bill that will pass tomorrow and go to the President.

Let me read, Mr. President, a letter signed by the Secretary of the Interior, Secretary Lujan, a long letter. I am not going to read it all, but I will read some important components, I think.

The letter was sent to every member of the committee. It had to do with the water conference committee bill that dealt with S. 2106 and H.R. 429. The letter is dated October 5 of this year, just a little more than 2 days ago.

It was sent to the chairman, directed to Senator BENNETT JOHNSTON, chairman of the Energy and Natural Resources Committee.

It says:

DEAR MR. CHAIRMAN: On September 15, I sent you a letter expressing the administration's position on provisions in H.R. 429 which were then being considered by a House-Senate conference committee with the exception of the National Historic Preservation Act Amendments, title XI of the Senate-passed version.

On September 25, 1992 Assistant Secretary Hayden communicated the administration's concern. In these letters, we expressed the administration's strong and fundamental opposition to both the House and Senate-passed versions of H.R. 429 because of objectionable provisions which should be deleted, or amended, in order that a modified bill at much less Federal expense could be sent to the President.

Unfortunately, the conference report of H.R. 429 still includes many of the objectionable provisions of the earlier House and Senate passed versions.

Then he goes on to cite his concerns relative to various portions of the bill. But relating to the Central Valley project, he includes the following objections.

The portion relating to the Central Valley project includes many objectionable provisions, including the following:

It provides for a number of expensive measures many of which have not been subjected to feasibility analysis and would be largely financed at Federal expense.

It affects the State of California's authority in matters of water allocation, distribution, and use. And,

It conflicts with the equitable distribution of responsibilities embodied in the coordinated operations agreement, the management of the CVP.

Contrary to one of its stated purposes, the title of the bill reduces the operational flexibility needed to achieve increased multiple uses of water including the ability to provide water for wildlife refuges.

I believe what he is referring to there is Project Purpose. We will talk about Project Purpose. It is an important portion of this bill, a portion of the bill that I say gets the priorities distorted. If your priorities are people and jobs first, and protection of fish and wildlife for animals and plants second, then that is what you ought to state in the bill. The bill does not state that.

Frankly, what the bill states is it is all equal. People and their jobs have no more rights than fish and wildlife, animals and plants—no more rights. They are all equal.

So what is left in that bucket we divvy up? Everybody gets an equal share. Some would say "I am an antienvironmentalist. Why don't you care more for plants and animals?" I do. In fact, the bill we have before us today has 22 different, separate provisions to improve fish, the resource, wildlife, wildlife refuges. So I do.

But let me make one thing clear. I do not take a step back for anybody on this. I think people and jobs are the most important thing. Suppose we double the fish resource. That is what I want to see done. I think that is what Senator BRADLEY wants to see done. How we get there are two different ways. But suppose we achieve our goal and double it. Great. I want it. But suppose you do not have a job. That is little solace for somebody who cannot feed their family.

So I do not apologize to anybody. But I put people and jobs first.

In addition to the letter of opposition from the Secretary of the Interior, I would like to share, Mr. President, with the Members, a letter from the Governor of the State of California. The Governor of the State of California has been opposed to this water conference committee report from day 1.

Quite honestly, although when he read my version, he said "yes, I think California can live with that, John." He did not even want that. The Gov-

ernor of California said "John, it is not the answer. It is a good bill. But it is not the answer. The answer to California's water problems are found in California."

So what the Governor wanted from day 1—and I support him on this—he wants the State of California to either buy the Central Valley project from the Federal Government, except I am afraid, quite honestly, the price tag would be so high and the more California offered for the project, the higher the price would go, I am afraid, that Californians could not pay it.

So as an alternative to that, what the Governor wants and what I support him on is that California be permitted to manage, to run the Central Valley project. The bottom line of that is let California decide how to allocate their water between people and jobs, animals, and plants. Let them decide.

So the Governor on October 4 wrote every Member of Congress. He said about this bill that will come up tomorrow:

DEAR MEMBER OF CONGRESS: This letter is to state in no uncertain terms that the Western water package, H.R. 429, is completely unacceptable to the State of California.

Our objections are exclusively directed to the provisions affecting California and in no way relate to the projects proposed in other States.

Mr. President, you will recall that I said earlier that this bill has water projects for Western States that I believe have been held hostage, to pour the castor oil down the throat of Californians to reform the CVP. The Governor, like myself, says, "Let those hostages go, let those Western water projects stand on their own, and let the CVP stand on its own. Change it, amend it, but let us not tie the two together."

He says:

Our objections are exclusively directed to the provisions affecting California and in no way relate to the projects proposed in other States.

Indeed, the California provisions are unrelated to the other projects in the bill and should not be linked to them. The California provisions should be served from H.R. 429.

The bill before us today, that will pass at the conclusion of my allotted time and Senator BRADLEY's allotted time, is a stand-alone bill that deals only with the Central Valley project. It does not have any Western State projects in it. That is what I said earlier. We should have that bill over in the House. If they are going to act responsibly, they should vote it up or down. I think it would have a good change of passage. They should have the opportunity to vote it up or down.

The Governor says:

This 30-title measure includes a provision that would dramatically reallocate 20 percent of our State's water.

There is the bucket. We are going to take 20 percent right out of the bucket. It would strike a vicious economic blow to California, and create a second century of California water wars, whose only winners—

When you get into a legal war, who wins? The attorneys? You got it. The Governor of California says:

a second century of California water wars, whose only winners will be the litigators—

And he goes on. Governor Wilson says:

Senator Seymour and other members of California's congressional delegation were excluded from the negotiations over the Central Valley reform proposal that was pushed upon the conferees. A back room deal, hastily negotiated in the final days of session, with no analysis to explain its impacts, is no substitute for the care and fairness needed to make the policy that will allocate California's critically important water supply.

Such political maneuvering is unconscionable given the grave harm this measure threatens to California. Anyone who has been even casually involved with this issue knows that lasting and beneficial reform of the Central Valley Project can be achieved only through solutions that take into consideration and effectively balance the needs of all the California water user groups, metropolitan, industrial, or, as I have called it, people in jobs, agricultural and environmental.

Sadly, the measure currently before you is so skewed that, far from solving the problem of water allocation, it instead will drive a wedge between environmental, agricultural, and urban water interests, making the needed and possible consensus for solution all the more difficult to achieve, despite all of our hard work in the State to do so.

The Governor goes on by saying:

As California struggles to deal with almost 10 percent unemployment and the loss of over 700,000 jobs during the current recession, it is simply inexcusable to cripple our agricultural sector, and threaten the loss of the hundred of thousands of jobs in the processing, packaging, distribution, and marketing of California product—

Remember, it is an $18 billion annual industry we are talking about.

by the cavalier passage of this measure.

The Governor goes on:

Water is California's life blood. There can be no justification for Members of Congress to exclude California's elected representatives and arrogate this decisionmaking process that will determine California's water future to those from other States. Doing so will set a dangerous and indefensible precedent. Decisions that should be taken up in the Statehouses will be made in the closed hearing room of the Congress, closed even to the representatives of the State whose future is being decided, closed even to that State's conferees.

That is what happened. He says:

There can be no justification for this result. Those who know better and who would object strenuously were they and their states subjected to this treatment should not succumb to extortion.

That is a strong word. I talked about hostages. He talks about extortion. He says:

They should instead insist upon the decoupling of the authorizations for needed water projects in other States from the provisions of H.R. 429 that threaten to inflict on California such grave harm and such great inequity. I cannot urge too strongly either to decouple and sever the California provisions, or do whatever is required to refuse passage to H.R. 429 as presently drafted.

Sincerely, Peter Wilson, Governor of the State of California.

As I said earlier, this conference report I have been talking about and that has in it the water projects and reform of the CVP will be voted on in this house tomorrow. It will go the President's desk, and although we have had some indications that he will veto it, there is no certainty in that. I say we have had indications he will veto it because, as I have shared with you the letter from the Secretary of the Interior, I am about to share with you a letter from the Secretary of Agriculture, Ed Madigan. He is recommending a veto as well. This is a short letter, sent to Congressman GEORGE MILLER, chairman of the Committee on Interior and Insular Affairs.

DEAR GEORGE: On May 20, 1992, I sent a letter outlining briefly my objections to provisions of legislation on the Central Valley Project. Then, on September 15, 1992, Secretary of the Interior Lujan expressed my continuing concerns in a letter concerning H.R. 429. Secretary Lujan has also sent a letter today stressing that the full conference report continues to warrant a veto by the President.

The conference report on H.R. 429 contains language that remains unnecessarily detrimental to agriculture. Title XXXIV severely reduces water availability for agriculture, causes substantial increases in water prices for agricultural users, restricts the renewal of contracts—

Remember, I talked about contracts, comparing them to the home mortgage, the mortgage on your home.

restricts the renewal of contracts to 2 or 3 years for the foreseeable future—until a new and extremely broad environmental impact statement is finally completed, assesses a $50 million surcharge on water and power users, taxes renewal of water contracts in a way that may well be prohibitive for agricultural contractors, and places unwarranted restrictions on water transfers.

I want to repeat that.

and places unwarranted restrictions on water transfers.

What we talked about at the outset and what we all want is to transfer water from the Central Valley to urban and industrial uses, people and jobs, and also transfer water to fish and wildlife, animals and plants.

Why do we want to restrict that? Why do we want to tie it up? That is why I have said if that conference committee report becomes law, the one we will pass out of here tomorrow, if that becomes law all it will ensure is that the scoop coming out for environmental purposes that will go on that will take place, but as far as transferring water to people and jobs that is going to be tied up in a decade of litigation. The only people who are going to get rich off that one are the attorneys on both sides.

Some might say, well, John Seymour, you are standing there all alone on the floor of the U.S. Senate. Obviously, there are not a great number of your colleagues that feel as strongly as you do.

And I can understand that. By the way, they do not represent California. I represent California in the U.S. Senate, and Senator ALAN CRANSTON who is on the other side of this issue is our other Senator.

But how about over in the House of Representatives? How does California's congressional delegation feel about this water conference committee report?

Let me share with you a letter signed by 18 Members of the California congressional delegation, and it was sent to their colleagues in the House of Representatives, to all 435. It says:

DEAR COLLEAGUE: We urge you to support a motion to recommit the conference report for H.R. 429—

Recommit, and in referencing that as we all know is a way of saying we do not like it, send it back and do it over.

They said we want you to support this motion to recommit.

If the recommittal fails, we urge you to vote No on the conference report.

We are not opposed to reforming the CVP to make it more responsive to the needs of the environment, agriculture and California's growing cities, but the conference report doesn't do that. It seeks to solve environmental problems by severely and arbitrarily reducing CVP water deliveries to Central Valley farms and urban areas.

The Department of the Interior states that if H.R. 429 were law, farms and cities in the southern part of the Central Valley would have received no water at all from the CVP during 1990, 1991, and 1992.

No water at all. That's not "sharing." That's not compromise. That's not acceptable.

H.R 429 also would drastically increase the price of water for both farmers and urban areas while removing the certainty of future supplies.

In a letter to all members of Congress, California Governor Pete Wilson has said that the CVP provisions of H.R. 429 are "Completely unacceptable to the State of California" because they will "strike a vicious economic blow to California, and create a second century of California water wars whose only winners will be the litigators."

The Secretaries of Interior and Agriculture have said that they will recommend a veto of H.R. 429 because of the CVP title.

We don't oppose the other worthy projects in H.R. 429, and we regret that they have been held hostage to this misguided effort to "reform" the Central Valley Project. But we cannot sit back and allow the livelihoods of our constituents to be destroyed.

If you support the other projects in H.R. 429 and want to bring about an equitable solution to California's water problems, vote yes on the recommittal motion to remove the CVP title from the conference report.

If the CVP title isn't removed, vote No on the conference report.

You might add, well, that was the letter asking the Members to vote in a certain fashion. How did they vote? And particularly important, how did Californians vote? This project is not about New Jersey. Although I know the Senator from New Jersey has a very deep sincere and abiding interest relative to the reform of California's Central Valley project. This is not about the State of Louisiana, although I know the chairman of our committee, Senator BENNETT JOHNSTON has a very sincere and deep abiding interest in the Central Valley project. This is about California.

And the fact that this Senator who is a member not only of the committee not only participated in the process, not only was a member of the conference committee itself, this Senator from California when it came to California's interest, the Central Valley project, was totally excluded from the conference process.

We did have one meeting. We did have one meeting, and I was there. The chairman of the meeting we decided at that meeting would be Congressman GEORGE MILLER. That was action we took. Nobody opposed that. I did not oppose that.

And then in that meeting, that one meeting that I was permitted in, and the public was permitted in that one meeting, Congressman MILLER laid out his proposal. He said: "Here it is. I have talked to a lot of folks, talked to Senator JOHNSTON from Louisiana and Senator BRADLEY from New Jersey. I also talked with one or two Members from California of the House." I do not know who they were. They were not named. I suspect one of them was Congressman VIC FAZIO who has also tried very diligently to find a compromise. But they did not talk to any other Californians on the conference committee.

He never talked to me. I only had one conversation with Congressman MILLER in the 21 months I have been working on this. That occurred on an airplane flight from Washington, DC back to California. We were both going home and it occurred, as I best recall, it was either spring or summer of 1991.

Congressman MILLER said: "We really should work this out."

I said: "You are right. I want to work it out, GEORGE."

He said: "Well, you know agriculture has just got to give up some water."

I said: "You are right, they do. I want to work that out. But," I said, "you know your demands for water for fish and wildlife purposes, animals and plants, are too severe. You are going to hurt people. You are going to hurt jobs. We need to have a better balance."

He said: "Well, John, you just do not understand."

I said: "Maybe I do not." I said: "I will tell you what, let us have a bigger bucket of water. Let us develop some water resources in California. If we can develop some water resource in California, some new real water, so they have millions of acre feet runoff into the ocean and do not catch it, I will be happy to go along with the 2 million acre-feet of water you want scooped off the top for animals and plant, fish and wildlife. I will be happy to do that."

The fact is, as I said earlier today, I said to Senator BRADLEY who at that time he wanted 2 million acre-feet, I said you can have it all. You can have every drop of water, new water that we can put into the bucket.

That conversation I had with Congressman MILLER back on that flight to California was the only time that I was ever permitted an opportunity to be in the process.

I was plenty in the process with Senator BRADLEY and Senator JOHNSTON. I will just share with you that they had one public meeting that I was invited to and I attended. We selected Congressman MILLER as the chairman. Congressman MILLER then laid out this proposal and it was like a take it or leave it. I had not even seen it much less been a part of the process of developing it. I also know that members of the conference committee who represent the human beings and jobs in the Central Valley were excluded from this process.

They did not get to go to the meetings either. So why, then, wouldn't the members of the California delegation of the House of Representatives, or at least 18 of the Members, sign this letter that says send that conference committee report back and let them sever the other water projects away from the California Central Valley project?

Well, how did they vote? I mean that is what is important. We all do a lot of talking around here, but what really counts is how you vote. You can talk all day, but how do you vote?

I have done business here in the U.S. Senate with my colleagues, did it for 8 years in the California State Legislature as a State senator, and so many times I have had members say, "John, I'm with you," until the rollcall. Then they are not with you.

And so the important thing is how do you vote? Well, here is how the California delegation voted. Against the bill were 25 California Members of the House of Representatives. For the bill were 19 Members.

Well, I have been going on for some time now. My distinguished colleague, Senator BRADLEY, who represents the other side of this debate and argument, has asked that he might debate for an hour, and then I would be recognized to pick up on the remainder of my time according to the unanimous-consent agreement which afforded me a total of 4 hours.

And so at this particular time, Mr. President, I yield the floor to Senator BRADLEY, reserving my right to the remainder of my time.

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

Mr. BRADLEY. Mr. President, let me begin by expressing to my colleague from California that I was very pleased with his agreement to the procedure that we would follow. I think this is an important debate for us to have. I think the issue is a very important one. I do think there is a difference of opinion. I think we have worked well together and I respect the way the junior Senator from California works.

I hope this issue will be resolved in such a way that, over time, he will agree with its resolution.

Let me begin by making an obvious point. California is a desert State, a fact that is often forgotten in the rush for development and for growth.

California is home to nearly 28 million people, with as many as 800,000 people arriving there each year. In other words, the State of California grows each year by a size the equivalent of the city of San Francisco. A new San Francisco arrives in California each year.

Water has shaped the growth and the culture of California in ways that are obvious to all. Water comes from two main sources: one is ground water, which is obtained by sticking a pipe or a well into the ground and pumping the water out.

The second source is surface water, mainly obtained from rivers that are frequently dammed to create reservoirs. These supplies allow for the availability of water to people who live in a desert. Without the dams and reservoirs, people would not be able to live in a desert.

In California, about one-third of the State's water supply comes from surface water: the reservoirs, lakes and dams. Twenty percent of all California water comes from the Central Valley project.

The Central Valley project is a massive public works project. Until you have flown over the Central Valley project, as I have, and had the opportunity to see it in its entirety, there is no ability to comprehend the size of this project.

As the distinguished Senator from California said, the valley is 500 miles long and 120 miles wide. This project spans the length of the valley from the Shasta Dam in the north, continuing all the way down to the southern end of the valley. It is a remarkable, remarkable public works project.

The Central Valley project is really a collection of numerous individual project units that Congress has authorized over a period of 50 years .

Generally, what the Central Valley project does is collect and distribute waters from north of the San Francisco Bay Sacramento-San Joaquin Delta, and transmit that water south through the tracey pumping station, into the valley. It supplies about 7 million acre-feet a year, about 20 percent of California's water. In dry years, the project supplies a little less.

Initial elements of the Bureau of Reclamation's Central Valley project were authorized in 1935. Shasta Dam on the Sacramento River and Friant Dam on the San Joaquin River are diverted to the Madera and Friant-Kern Canals; the Delta-Mendota Canal; the Contra Costa Canal. All of these features flowed from that initial decision.

In 1949, Congress authorized the American River Division of the CVP, and in 1950, the Sacramento Canal Unit; in 1960, the San Luis Unit; 1962, the New Melones Unit; 1965 the Auburn-Folsom South Unit; and 1967, the San Felipe Unit.

Mr. President, this is a public works project that was built with U.S. taxpayer dollars. The present value of the Central Valley project is about $3.7 billion in terms of construction costs alone. By the year 2030, a little over $200 million of that debt will have been repaid. This translates into a Federal subsidy in this project of 95 percent—A 95-percent Federal subsidy. As you can see it is clear why we have an interest in this project.

In California as a whole, the way water is used is also very important for us to understand—80 to 85 percent of the water is used in agriculture. If agriculture simply saved 10 percent of its water, you would double the amount of water available for the residential and commercial sectors of California. Water prices vary greatly in the State of California even for agriculture. If you are a farmer in San Diego County, you will pay as much as $400 an acre-foot. An acre-foot contains approximately 325,000 gallons. If you are a farmer in the area serviced by this project, however you pay in the neighborhood of $16 to $20 an acre-foot. The breakdown is from $400 an acre-foot if you are in San Diego to $16 to $20 an acre-foot if you are in the Central Valley.

There are, in fact, four crops—rice, cotton, irrigated pasture and hay—that represent 11 percent of the crop value in California but consume 50 percent of the water. In the Central Valley, it is the low value crop that is produced primarily in large part because the water is so cheap, $16 to $18 an acre-foot, versus $400 an acre-foot in San Diego. In San Diego, the farmers produce a higher value product. The farmers in the Central Valley, a low value product. Again, this disparity is best illustrated by the fact that rice, cotton, hay, and irrigated pasture, the major commodities in the Central Valley, use 50 percent of the water and produce 11 percent of the crop value.

What is also important to remember is that California is not simply an agricultural State. California has a gross State economic product of over $760 billion. Of that State product, agriculture respresents, as the distinguished Senator from California has stated on the floor today, about $18.5 billion. Therefore, out of a State economic product of $760 billion, agriculture accounts for $18.5 billion of that $760 billion while using 80 to 85 percent of all the water in California.

The price for water in the State, varies more dramatically from the $10 an acre-foot you pay as a preproject user of the CVP, that is someone who had a water right prior to the project being built and a price as high as $1,700 to $1,800 an acre-foot for those residents of Santa Barbara, for example, who have to contemplate desalination for their water supply.

California is now in the sixth year of a drought. There are first graders in California who have never seen a green lawn, and yet every year 800,000 more people move into the State; another San Francisco every year. If the drought continues and the people keep coming, the message is going to be clear; bring your own water because there will not be enough water in California. That implies water has to be used differently and more efficiently.

In addition to questions of what is the nature of the agricultural economy and what is the composition of the total economy, the question of what is the role of the environment is relevant when one thinks about water in California. The environment in California is diverse and rich and is directly related to water. It is in peril because of the shortage of water.

There were once 4 million acres of wetlands in the Central Valley—4 million. That now seems like a long time ago. There are now about 300,000 acres of wetland in the Central Valley; 100,000 acres have disappeared since 1950 due to the operations of the CVP alone. There were once 6,000 miles of spawning streams for salmon in California. Now there are 300 miles. Eighty million juvenile striped bass every year are sucked through the delta pumps. Salmon are headed toward the endangered species list in many places. Only 200 Chinook moved up the Sacramento River just a short time ago.

In addition to fish being a potentially endangered species, there is the Pacific flyway where waterfowl populations are affected by the loss of wetlands, where birds fly from South of Mexico to Alaska and rest and feed in the wetlands. Because of the operation of the CVP, the Pacific flyway now wasteland with selenium contamination of increasing toxicity.

The point to be made in this brief opening is that when you talk about water in California, you are talking about the lifeblood of the State.

(Mr. BINGAMAN assumed the chair.)

Mr. BRADLEY. It affects every citizen whose home is in California. It affects agriculture, an $18.5 billion industry. It affects consumers, industry, business, the environment—the economic well-being of the whole State. It affects the future in a very real way.

The key concept for California's future when it comes to water is balance—balance among the competing interests, balance in use, balance in efficiency. Balance is also important in the transfer and allocation of water among the competing needs of the State of California.

As the distinguished Senator from California has mentioned, this is an issue which the Water and Power Subcommittee, of which I am chairman, has studied carefully over the last 4 years. I held my first hearing in California in August of 1989, in Sacramento, sitting through 7 or 8 hours of hearing. Subsequently, we have had hearings in Los Angeles and San Francisco, back in Sacramento, and here in Washington.

I have visited farms in the valley and farms in San Diego County. I have talked with fishermen whose livelihoods have been endangered by the drought and the way water is allocated. I have talked to businesses that need the water desperately for their own industrial processes and now have difficulty getting it because 80 to 85 percent of the water is used for agriculture. I have talked to farmers concerned about their livelihood, worried about any change and how it might affect that livelihood. I have talked to community leaders in cities in the valley, who have concerns that need to be addressed. I have talked to environmentalists, friends of the environment, people who care about California's natural resources. I have talked to politicians, to local politicians, to State politicians, to Federal politicians. I have tried to listen.

In our hearings, we have had testimony from over 75 witnesses, but that total does not count the hundreds who have moved through my office in this meeting and that meeting, in California and in Washington, to talk about California water. It is after these many years of listening that I came forward with the bill that was modified by the chairman further modified by the bill we sent out of the Senate, and then still later modified by an initial conference agreement, and then finally brought together in the CVP title that we have in this omnibus water bill, H.R. 429.

There are really three elements in dealing with the problem of water in California. One is you are not going to solve the problems without using water more efficiently. You cannot have two farmers growing the same crops in the same water district 3 miles from each other with the same soils and yet one farmer is using two, three, four times more water than the other farmer. You have to use water more efficiently.

You need to solve the problems that come from the fact that California is a desert State and water is a scarce quantity. There are competing needs, and every competing need grows with another passing year, with another 800,000 people coming into the State, with a giant economy of which agriculture is only $18.5 billion although it continues to get 80 to 85 percent of all of California's water. What you need is water. You cannot solve endangered species problems with air. You need water. You cannot solve the problems of electronics firms that need water to create new jobs without water. You cannot solve the problem of fishermen who have lost their livelihood because the streams have been depleted without water. The first thing you need is water.

The second thing you need is money. There has been an incredible deterioration of the resources of the valley which needs to be mitigated. That takes money.

Finally you need flexibility, flexibility for the State of California to begin to address the competing demands of water in the State.

The Central Valley project represents 20 percent of all California water, 20 percent of all California water which is totally off limits for California. When Governor Wilson established the water bank a few years ago, he could only draw from the State water project, a little over 3 million acre-feet he could tell the farmers that use it, "Sell your water to the water bank and then we will reallocate it the way California would like to see it used." He could not touch 7 million, 8 million acre-feet of water that is the Central Valley project. It was not a flexible system. Flexibility is the third principle.

As you think about the principles, it is also important to think what happens if we do nothing, if business continues as usual. If this bill is not signed, what happens? You can probably count on the extinction of several species, not the least of which might be California fishermen. The demise of the fishing industry will be followed by the collapse of many northern California coastal towns. During the next drought, people, just average people, will end up paying hundreds of dollars for every acre-foot of water they use, and they will watch their lawns and their gardens die while just over the hill in the Central Valley hundreds of thousands of acres of subsidized cotton and rice will flourish in the desert.

They will see Federal courts and State courts which will soon be running the Central Valley project, and every other water project which takes its water from the rivers of the Central Valley. The courts will be running not just the Central Valley but also the State water project and maybe even the San Francisco system. The Delta smelt could become to California what the spotted owl has become to Oregon and Washington. Silicon Valley electronics firms and other businesses will begin to flee California, more jobs being lost in search of clean, reliable water supplies in other areas. The ports of San Francisco and Oakland will lose a significant part of their shipping business as thousands of jobs go to other ports without dredging restrictions, dredging restrictions due in large part to the absence of an adequate flow through the San Francisco Bay/Sacramento-San Joaquin Valley Delta.

The Bureau of Reclamation and Central Valley agribusiness will, however, under a world where nothing happens, still be sitting on 20 percent of the State's water and running it as they choose. Parched communities throughout the State will be left with no choice but to beg for water from irrigation districts under a system in which the growers and others will not be able to provide that much needed water.

The farmers—not the small farmers, but the big farmers—will continue to force small family farms out of business, and continue to take subsidized water originally intended for those small farms.

This bill does not deal with the issue of reclamation reform. But make no mistake; the Central Valley is not all small farmers. Some farms are over 20,000 acres, through interlocking ownerships, and they will continue to get the benefit of subsidized water as well as subsidized crops.

The California cities unable to get ready access to new water through voluntary transfer will be left with no obvious choice but to spend billions of dollars on polluting and expensive desalination plants, or lobbying for the construction of the Peripheral Canal or the Auburn Dam, or diversion of wild north coast rivers.

If nothing happens, Canada and Mexico and the Confederation of Independent States will confront the World Court, arguing that the Central Valley farmers and the Bureau of Reclamation have engaged in a calculated effort to exterminate the waterfowl on the Pacific flyway.

The Central Valley itself, if no action is taken, will be dotted with thousands of acres of agricultural drainage ponds, each one of which will be a mini-Kesterson, laden with toxic runoff and the carcasses of dead waterfowl.

Mr. President, what we are faced with is nothing less than the decision whether the next generation of Californians will see this State's water shared fairly, or whether the State's economy and environment will be sacrificed to the demands of a very few. It is a question of whether the water of the Central Valley should be for the many, or for the few. It is a very basic question.

So I would argue, as I have throughout, that to do nothing is to bring about the possibility, if not the reality, of all the things that I just talked about. That is unacceptable. It should

be unacceptable to everyone. Yet, if this bill is not passed, or if it is vetoed, that is the prospect that is on the horizon.

So it is important to note, Mr. President, that the Central Valley project's importance is not just to California; it has an importance to the entire West. What do I mean by that? It seems, from an environmental perspective, the project has caused significant injury to the migratory fish and waterfowl California shares with Oregon, Washington, Idaho, Montana, Nevada, Alaska, and Canada.

Proper management of the CVP is essential if we are going to protect and expand the Pacific flyway and the west coast salmon and steelhead trout.

The proper management of the CVP is also vital to the protection of the other States' own water resources. What do I mean by that? To the extent California is unable to use its own water to meet its growing urban needs—800,000 people coming into the State every year—the State will be obliged to try to find water somwhere else.

I think—as Senators from Arizona, Colorado, Wyoming, Utah, New Mexico, and elsewhere are acutely aware—perhaps the single greatest threat to the stability of the water allocation agreements on the Colorado River is the prospect that Central Valley water will not be available for use by Californians outside the Central Valley.

You have already begun to see this. For a number of years, California benefited from Arizona's allocation under the Colorado River compact: 300,000 or 400,000 acre feet of water. Arizona now says that it needs that water. California faced the prospect of losing that water for its own consumers. What did it do? It went to the Colorado Basin States and petitioned to get more water. Of course, the answer was no.

Clearly, unless water is used more efficiently, unless it is allowed to be transferred flexibly out of the valley to the growing and diverse needs of a growing and diverse State, the pressure will increase on other Colorado Basin States.

Mr. President, my fundamental objective in sponsoring CVP reform legislation has been to eliminate or modify Federal policies and practices which have left the Central Valley project strikingly out of step with the California water law and policy. The result of these Federal policies and practices is that the Central Valley project functions as a State within a State. It has become like some sort of Federal preserve, insulated against State law and environmental accountability

It has been a long process to bring the bill this far. As I said, we started in 1989. There have been some ironies along the way. one of them is that, although in four to five hearings that we had, we heard strong support from municipal and State officials and from environmentalists, and from others inside and outside the CVP, we also heard some interesting criticism from some Central Valley agricultural interests.

We were told that in the bill that we originally introduced and even this bill were examples of imperial Washington trying to tell the State of California what to do—States rights were at risk; proper notions of federalism were offended.

The truth of the matter is that the clearest case of Federal interference in California affairs can be seen in the Department of the Interior's ongoing effort to renew CVP water contracts for another 40 years. The Department of the Interior wants to lock all of the CVP's flaws into place for another 40 years, into the middle of the next century.

Those water contracts parcel out 20 percent of California's water supply to several thousand lucky landholders, who are largely out of the reach of State regulators or policymakers. If the Governor wanted to create a water bank, as he did 2 years ago, he could not get access to this water.

It is controlled by the Federal Government and the Central Valley project. The Governor of California, under current law, cannot get access to it. The State of California did not get to set the terms of the original contracts and, according to the Department of the Interior, they will get no opportunity to set the terms for these new contracts.

States rights? The 40-year contract in the Central Valley project is the exact opposite of States rights. It is a Federal preserve operating in the State without the control of the State's elected authorities.

The original 40-year Central Valley water contracts began expiring in 1989. And most such contracts will expire before the turn of the century.

The Department of the Interior plans to renew the expiring contracts on the same terms as the originals: The same lucky beneficiaries—the same generous quantity of water, the same 40-year length, the same permissive conditions—as if California has not changed in the last 40 years; as if 800,000 people are not moving into the State every year; as if the $760 billion economy had not $18.5 billion of it in agriculture, but much, much more.

The Secretary of Interior wants to renew the contracts—same terms, same conditions. Which means no water conservation required; no voluntary transfers outside the valley to thirsty Californians in Los Angeles County or elsewhere. No water for fish and wildlife. No solution to agricultural drainage problems, no sense of responsibility to anything but the fondly remembered past.

Mr. President, it is really an inexplicable situation. California, as I made the point over and over, is strikingly different than it was 40 years ago: Millions more people, a rapidly changing economy. Under the terms of the CVP contracts, what made sense in 1949 apparently is carved in stone forever.

It is not only inexplicable, but absurd. Under the legislation in the bill, State law would be enforced and determine allocation of water in 1999. A 7-year transition. In my original bill, I was prepared to say that the water under the CVP should be allocated immediately according to State law. Who did not want water allocated right away, which is the ultimate States' rights position, the position I was prepared to take? The farmers, the growers. They wanted a time of transition. Senator SEYMOUR's bill has I think 1996 or 1997. I have 1999. So it is a 3-year difference, at which time the State of California will determine it.

So the States' rights argument just does not stand up to the facts. The opposite of States' rights is to do nothing, which you would be doing if you voted against this bill. You would be allowing the Secretary of the Interior to execute, once again, 40-year contracts, outside of the control of the government of California.

What about the contracts themselves? The Department of the Interior's policy on the Central Valley contract renewals threatens to put a Federal straitjacket on California's water system. CVP contracts have shielded a select group of irrigators for the past 40 years from any change in the State's water needs. In the process, the needs of the environment, of urban areas, and other agricultural areas have been hurt or denied. If contracts are renewed, unchanged for another 40 years, the damage would only be compounded.

Mr. President, Washington set the rules for the CVP. Washington is going to have to fix the rules for the CVP. Federal law has to change. With the contracts now up for renewal, it is the Congress' responsibility to act swiftly to make sure that the CVP is at long last integrated into the contemporary law and policy of California. California cannot adequately plan for its future until that is done. Nor can other Western States be sure that their fish, waterfowl, and water resources are out of jeopardy, out of the grasp and the reach of a California that does not have the benefit of Federal legislation reforming the Central Valley project.

So it is with that in mind that we came to this bill. Title XXXIV. It would open the project to voluntary water transfers, improved water usage and efficiency, and require the project to pay its environmental costs. I think these changes are essential if we are going to meet California's basic needs for clean and ample water supplies and a healthy environment.

It is perfectly reasonable for Congress in California to ask the CVP to

take responsibility for its environmental problems. After all, the taxpayer has been unusually generous with all these vast dams, canals, and reservoirs. Central Valley farmland is an oasis; it is a miracle. It is some of the most productive in the world. Central Valley agribusiness is enormously profitable.

In 1989, alone, Central Valley project growers reaped over $3.5 billion in gross crop values. That is out of the $18.5 billion for the whole State of California. Why was it so low in relation to the total value of crops? Because they grow low value crops. Remember, 50 percent of the water goes to 11 percent of the crop values, embodied in four crops: cotton, rice, hay, and irrigated pasture.

Since the CVP began delivering water in the 1940's, the Central Valley project growers have produced crops worth over $47 billion. So business is pretty good. Yet, the Central Valley growers have yet to repay any of the taxpayers' money used to build the project, and routinely fail to pay even the annual cost of Central Valley operations and maintenance.

Mr. President, get this. The Federal taxpayer will spend about $3.8 billion, according to a conservative estimate, to build the Central Valley project, and in the year 2030, the growers may repay about $203 million—approximately 5 percent of the total Central Valley construction costs measured in 1989 dollars. In other words, about $3.6 billion of the construction costs will be a Federal subsidy, never repaid.

This expected repayment will return only about 13 percent of the cost normally repayable in other Bureau of Reclamation irrigation projects elsewhere in California or the West. What do I mean by that? Take another project, not the CVP, what a project in the State of New Mexico, has to repay, or Wyoming or Colorado, what those projects have to repay versus what the Central Valley will repay.

The Central Valley will repay only 13 to 16 percent of what the projects have to repay in the State of the distinguished Senator from New Mexico, and in most of the other Bureau of Reclamation States—all over the West.

We are talking about what it repays, but it is even worse than that. The story is even worse than that. In recent years, it has cost the Federal taxpayers somewhere between $30 and $40 million just to run the CVP every year. Forget about repaying what it cost to build. Just to run it.

Each year CVP growers pay the Federal taxpayers somewhere between $20 and $30 million for the water they received; what the farmers pay, that is how they get $16 water. And these revenues, what the farmers pay, rarely meet expenses. Indeed, between 1986 and 1990, payments from the Central Valley project growers fell $30 million short of covering the taxpayer's cost of the project over those 4 years. That is over 4 years, not 1 year, but over a 4-year period. In 1989, when the Central Valley growers enjoyed crop values of $3.5 billion, they paid the U.S. Government $29.3 million which is $2.2 million less than it cost to run the project that year.

So do we have a Federal interest? We are certainly paying the bill. I think we have a Federal interest. The public contributions to the CVP do not end with billions of dollars in construction and operation costs. Southern California and the Bay area cities draw their drinking water from the San Francisco Bay-Sacramento-San Joaquin Delta. That same waterway has been polluted by agricultural drainage. Irrigation water leaches toxic elements such as selenium, arsenic, and cadmium out of the Central Valley soils and into the rivers. Agrichemicals wash off fields and crops into the waters and flow into other communities.

This represents another cost, Mr. President, another cost.

Recent State investigations found toxic levels of diazinon, parathion, carbaryl, and carbofuran pesticides in runoff from the San Joaquin Valley orchard and row crops. Samples taken from a 35-mile stretch of the river exceeded EPA safety levels of diazinon and parathion by 141 and 177 times their permitted levels.

This is the brew that is then pumped south and west toward millions of California homes and faucets before it reaches the tap. Of course, the water has to be treated and rid of this agricultural waste.

The cost of treatment is reflected in Californians' water bills. If treatment fails, the cost of Central Valley agricultural drainage may be reflected in Californians' health.

This title, title 34, would require Central Valley project irrigation districts to take responsibility for meeting all applicable water quality standards, no longer allowing pesticides to wash off in the river, floating downstream as if it were the other guy's problem. No. Each district has to take responsibility for these water quality standards, which should help the environment in every downstream community.

Mr. President, once again just to make the point, it is not like we have the option of doing nothing here. The certainty of much of California's water supply is actually threatened by the way the CVP is operated today.

The Central Valley project is the largest source of salmon and bass. What is going to happen here is very clear. A court is going to take over and run the Central Valley project. There is going to be a lawsuit in court over the Delta smelt, the equivalent of the spotted owl in the Northwest. Who will benefit? Nobody will benefit.

Mr. President, I would argue now is the time to act on the substantive question.

I ask unanimous consent that a court document from a Bureau of Reclamation economist, Mr. David A. Kubichek, taken in a deposition in a court case in California, be printed in the RECORD at the appropriate point in my remarks in which I talked about subsidies.

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

DAVID F. LEVI,
*U.S. Attorney.*

David A. Kubichek, Attorney, United States Department of Justice, J.C. O'Mahoney Federal Building, 2120 Capital Mall, Room 2141, Cheyenne, WY 82001

Sandra K. Dunn, Attorney, U.S. Department of Justice, Land and Natural Resources Division, 3305 Federal Building, 650 Capitol Mall, Sacramento, California 95814, Telephone: (916) 551-2700

*Attorneys for Federal Defendants*

[IN THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, Civil No. F-79-106-EDP

BARCELLOS & WOLFSEN, INC., ET AL., PLAINTIFFS, *v.* WESTLANDS WATER DISTRICT, ET AL., DEFENDANTS

Related Cross- and Counter-actions

[Civil No. F-81-245-EDP Consolidated]

WESTLANDS WATER DISTRICT, ET AL., PLAINTIFFS-IN-CONSOLIDATION; *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS-IN-CONSOLIDATION

Related Cross-and Counter-Actions

DECLARATION OF DAVID F. SCHUY

I, David F. Schuy, declare as follows:

1. I am a Resource Economist currently employed as an Acreage Limitation Specialist by the U.S. Department of the Interior, Bureau of Reclamation. I have prepared an estimate of the federal subsidy to irrigation water users in the Central Valley Project (CVP) and the Westlands Water District (WWD) based upon data provided by the Mid-Pacific Regional Office in Sacramento. If called upon to testify, I will testify as set forth in this declaration. I hold the degree Doctor of Philosophy in Resource Economics from Washington State University and have over 25 years experience in water resources planning and research.

1. The irrigation subsidy is the difference between the cost of constructing, operating and maintaining an irrigation project including interest on investment and the share of these costs paid by the water user. The subsidy is calculated as a present value in 1987, which means that federal expenditures and water users' payment prior to the data are accumulated with interest, and subsequent payments are discounted.

The interest rates used in these computations are the long-term Federal borrowing rates in effect at the beginning of ten-year intervals over the period 1902 to 1978 as reported in the U.S. Department of Interior's Acreage Limitation Environmental Impact Statement. From 1979 to the present time the interest rates were calculated in an equivalent manner, but for shorter periods, by the Office of Program and Policy Analysis, U.S. Department of Interior. The current long term rate of 8.875 percent is used to discount future repayment revenues, and to amortize present values to average annual val-

ues. The data and procedures used in my calculations are attached as Tables 1 through 6.

CENTRAL VALLEY PROJECT

2. As of 1987, the Federal investment in the CVP including interest allocated to irrigation was $6,838 million (Table 1) Assuming the irrigation water users pay back the current net federal construction expenditures allocated to irrigation amounting to $1,667 million by 2030 in equal annual installments, the present value of future repayment is $428 million, leaving the present value of the subsidy in 1987 at $6,410 million. This amounts to $1684 per acre foot of water delivered in 1987. The present value of future repayment is actually less than shown in this estimate because payments will be lower than average in the near term future, and water users might not repay the project cost by 2030.

WESTLANDS WATER DISTRICT

3. The present value of the subsidy for the irrigation distribution and collector drainage system for the WWD in 1987 is $476 million or $373 acre foot of water delivered in 1987 (Table 2).

4. The total present value of the subsidy per acre foot of water delivered in 1987 is therefore $2057. The long term average annual CVP water delivery to WWD is 2.5 acre feet per acre, which results in a total present value of the subsidy in 1987 of $5,142 per acre. The annual value of this subsidy determined by amortizing it over 43 years to 2030 at 8.875 percent interest is $468 per acre. This is the subsidy in terms of cost to the United States for delivering water to each acre of land in the WWD in 1987.

BOSTON RANCH AND WESTHAVEN FARMING COMPANIES

5. Boston Ranch Company has 23,711 acres of excess land under recordable contract. Westhaven Farming Company has 5,044 acres of excess land under recordable contract. Based on the average subsidy per acre of $468 given in the preceding paragraph, the subsidy to Boston Ranch Company for the 1987 water year was $11.1 million. Similarly, the total subsidy to westhaven Farming Company was $2.4 million

6. Boston Ranch Company has had land under recordable contract since 1972. The annual subsidies per irrigated acre were calculated from 1972 through 1987 (Tables 3, 4, and 5). The total annual subsidy to land in the WWD from 1972 through 1987 is $3,189 per acre irrigated. Therefore, the total irrigation subsidy to Boston Ranch Company for its excess land under recordable contract since 1972 is estimated at $76 million (Table 6).

7. Part of the Westhaven Farming Company's excess lands were placed under recordable contract in 1973 and the balance in 1974. The total subsidy to the owners of these lands by 1987 estimated in the same way was $15 million (Table 6). The average value per acre is $3,025.

8. The estimated total irrigation subsidies to Boston Ranch and Westhaven Farming Companies are $91 million.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26 day of April, 1988.

DAVID F. SCHUY.

ESTIMATED IRRIGATION SUBSIDY, CENTRAL VALLEY PROJECT

[In thousands of dollars]

| | Interest rate | Irrigation investment | Capital repayment | Net investment | Interest | Cumulative investment |
|---|---|---|---|---|---|---|
| Year: | | | | | | |
| 1937 | 0.0342 | 16,178 | 0 | 16,178 | 277 | 16,455 |
| 1938 | .0259 | 16,178 | 0 | 16,178 | 636 | 33,288 |
| 1939 | .0259 | 16,178 | 0 | 16,178 | 1,071 | 50,517 |
| 1940 | .0259 | 16,178 | 0 | 16,178 | 1,518 | 68,213 |
| 1941 | .0259 | 16,178 | 0 | 16,178 | 1,976 | 86,368 |
| 1942 | .0259 | 16,178 | 0 | 16,178 | 2,446 | 104,992 |
| 1943 | .0259 | 16,178 | 0 | 16,178 | 2,929 | 124,099 |
| 1944 | .0259 | 16,178 | 0 | 16,178 | 3,424 | 143,701 |
| 1945 | .0259 | 16,179 | 0 | 16,179 | 3,931 | 163,811 |
| 1946 | .0259 | 16,179 | 0 | 16,179 | 4,452 | 184,442 |
| 1947 | .0259 | 16,179 | 278 | 15,901 | 4,983 | 205,326 |
| 1948 | .0230 | 16,179 | 279 | 15,900 | 4,905 | 226,131 |
| 1949 | .0230 | 16,179 | 279 | 15,900 | 5,384 | 247,415 |
| 1950 | .0230 | 16,179 | 279 | 15,900 | 5,873 | 269,189 |
| 1951 | .0230 | 16,179 | 279 | 15,900 | 6,374 | 291,463 |
| 1952 | .0230 | 16,179 | 279 | 15,900 | 6,886 | 314,249 |
| 1953 | .0230 | 16,179 | 279 | 15,900 | 7,411 | 337,560 |
| 1954 | .0230 | 16,179 | 279 | 15,900 | 7,947 | 361,407 |
| 1955 | .0230 | 16,179 | 279 | 15,900 | 8,495 | 385,802 |
| 1956 | .0230 | 16,179 | 279 | 15,900 | 9,056 | 410,758 |
| 1957 | .0233 | 16,179 | 279 | 15,900 | 9,756 | 436,414 |
| 1958 | .0377 | 1,107 | 678 | 429 | 16,461 | 453,304 |
| 1959 | .0377 | 9,645 | 2,095 | 7,550 | 17,232 | 478,086 |
| 1960 | .0377 | 871 | 490 | 381 | 18,031 | 496,498 |
| 1961 | .0377 | 4,895 | 846 | 4,049 | 18,794 | 519,341 |
| 1962 | .0377 | 2,608 | 1,558 | 1,050 | 19,599 | 539,990 |
| 1963 | .0377 | 137,743 | 2,855 | 134,888 | 22,900 | 697,778 |
| 1964 | .0377 | 31,529 | 4,954 | 26,575 | 26,807 | 751,161 |
| 1965 | .0377 | 7,179 | 1,301 | 5,878 | 28,430 | 785,468 |
| 1966 | .0377 | 2,246 | 186 | 2,060 | 29,651 | 817,179 |
| 1967 | .0377 | 1,626 | 2,429 | (803) | 30,793 | 847,169 |
| 1968 | .0580 | 229,701 | 8,490 | 221,211 | 66,551 | 1,123,931 |
| 1969 | .0580 | 9,068 | (436) | 9,504 | 65,464 | 1,198,898 |
| 1970 | .0580 | 25,334 | 3,962 | 21,372 | 70,156 | 1,290,426 |
| 1971 | .0580 | 25,335 | 3,962 | 21,373 | 75,465 | 1,387,264 |
| 1972 | .0580 | 25,334 | 3,962 | 21,372 | 81,081 | 1,489,717 |
| 1973 | .0580 | 25,335 | 3,962 | 21,373 | 87,023 | 1,598,113 |
| 1974 | .0580 | 25,334 | 3,962 | 21,372 | 93,310 | 1,712,795 |
| 1975 | .0580 | (6,916) | 7,031 | (13,947) | 98,938 | 1,797,786 |
| 1976 | .0580 | 13,213 | 5,337 | 7,876 | 104,500 | 1,910,162 |
| 1977 | .0580 | 26,285 | (568) | 26,853 | 111,568 | 2,048,583 |
| 1978 | .0842 | 85,660 | 2,001 | 83,659 | 176,013 | 2,308,255 |
| 1979 | .0842 | 5,594 | 11,771 | (6,177) | 194,095 | 2,496,173 |
| 1980 | .0842 | 210,988 | 6,949 | 204,040 | 218,768 | 2,918,981 |
| 1981 | .0842 | 52,867 | 9,247 | 43,620 | 247,615 | 3,210,215 |
| 1982 | .0842 | 95,038 | 2,676 | 92,362 | 274,189 | 3,576,766 |
| 1983 | .1218 | 95,504 | (341) | 95,845 | 441,487 | 4,114,098 |
| 1984 | .1218 | 25,741 | 8,916 | 16,825 | 502,122 | 4,633,045 |
| 1985 | .1218 | 28,660 | (1,371) | 30,031 | 566,134 | 5,229,209 |
| 1986 | .1218 | 24,130 | (2,182) | 26,312 | 638,520 | 5,894,041 |
| 1987 | .1218 | 227,114 | 13,919 | 213,193 | 730,878 | 6,838,114 |
| Total | | 1,788,520 | 111,709 | 1,676,811 | | |

Mr. BRADLEY. Mr. President, it is in this court document that a Bureau of Reclamation economist asserts the subsidy is not $3.5 or $3.6 billion but closer to $6 billion.

Mr. President, this is where we are. A rough recap: total water in California is about 35- to 40-million acre-feet, of which 5 million is urban, and 30 million is agriculture. Total use in Central Valley is 22 million acre-feet.

Central Valley project water, remember, is groundwater and surface water. Central Valley project water is approximately 7 million acre-feet. What this bill does is require a million acre-feet in normal years, only 750,000 acre-feet in drier years, be allocated for fish and wildlife. That requirement represents about 2.1 to 2.8 percent of California's water, about 4 percent of Central Valley water, about 11 percent of the CVP water in a normal year, and only about 16 percent in even the driest year, 1992.

Mr. President, in attempt to get a bill we though was responsive to everyone, I literally reached out to thousands of people through requests and

suggestions. We now have a bill that provides major contract reform, renews contracts automatically for 25 years and at the end of 25 years they may be renewed, provides water transfer language which will allow the transfer of water out of the Central Valley project to other places in California over which Central Valley users have right of first refusal, and says no more than 20 percent of the water can be removed out of that district without the district's approval. The bill says the transfer has to be consistent with State law. The bill speaks of water metering, and water conservation standards. The bill contains tiered pricing wherein the last bit of water is a little more expensive than the first part of the water, thereby encouraging conservation. The bill sets aside 800,000 acre-feet for fish which would be reduced along with other project purposes in dry years.

The bill takes no water from the Friant Unit on the eastern side of the valley. None. It asks only them to pay a small surcharge to help mitigate some of the environmental damage. The bill says we will reach Level II water, which is about 108,000 acre-feet more for wildlife refuges immediately, in 10 years 140,000 acre-feet, which is Level IV; and established a $50 million restoration fund. The money would come from water and power users, from Friant Unit and tiered pricing, from those who would pay instead of renewing their contracts under these terms, and from the difference in the repayment rate between agriculture and municipal and industrial.

The restoration fund is an attempt to get money to do many of the things the distinguished Senator from California had included in his original bill—fish ladders, fish screens, temperature control devices—all of which are meritorious and which will improve the environment but cost money. Without money, you cannot achieve it.

We made major efforts to accommodate the growers in this process.

Mr. President, I ask unanimous consent that I simply print in the RECORD all of the changes which were made in the legislation in response to the agricultural interests.

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

Subsection 3403(f), which defines the term "Central Valley Project water" has been amended to eliminate any uncertainty as to the application of this title to prior rights contractors:

Paragraph 3404(b)(1), which authorized auction of 100,000 acre-feet of CVP water, has been deleted, and the subsection has been amended to permit execution of certain water contracts with El Dorado County, the Tuolumne Regional Water District, the San Joaquine Valley Veterans Cemetery, as well as contracts for delivery of flood water and class II water in the Friant Unit:

Subsection 3404(c), which sets terms for renewal of CVP water contracts, has been amended to make it clear that the Secretary must, if asked, renew existing CVP water contracts for 25 years, and may issue subsequent renewals for up to 25 years each;

Paragraph 3404(c)(3) has been amended to clarify that water contracts renewed after January 1, 1988 and prior to enactment of this title are not subject to certain surcharges designed to encourage early renewal of existing contracts;

Subsection 3404(d), which required the Secretary to include terms in renewed contracts providing for involuntary reallocation of water, has been deleted;

Subsection 3405(a) has been amended to make it clear that water rights and exchange contractors, as well as project agricultural contractors, may engage in voluntary water transfers;

Subparagraph 3405(a)(1)(C), which provided for a surcharge on the net proceeds received by water contractors from water transfers outside the Central Valley Project service area has been deleted;

Subsection 3405(d) has been amended to eliminate a provision requiring inflation adjustment of tiered water prices, and the structure of the tiers has been changed from 60–20–20 to 80–10–10;

Paragraphs 3406(a)(1)–(3), which authorize the CVP to be operated for fish and wildlife purposes, match the project purpose language contained in the draft bill circulated by Congressman Dooley and Lehman last week, except that the language has been changed to place "enhancement" in a secondary priority among project purposes;

Paragraph 3406(b)(1) has been amended to provide that the Secretary will have met his responsibilities established by this bill to operate the project for fish and wildlife purposes when the restoration program and projects defined in section 3406 are completed;

Subparagraph 3406(b)(1)(B) has been amended to strike the reference to "resident" fish;

Subparagraph 3406(b)(1)(C) has been amended to strike language that defined how "credits" for CVP contributions to Bay/Delta standards would be assessed, while retaining in the bill the important concept of crediting;

Subparagraph 3406(b)(1)(C) has been amended to direct the Secretary to undertake the fish and wildlife restoration program and projects defined in the bill in a way that avoids imposition of inconsistent or duplicative requirements on project water and power contractors;

Paragraph 3406(b)(2) has been amended to cut the amount of project yield committed to fish and wildlife purposes under the bill from 1 million acre-feet to 800,000 acre-feet, a total that matches the level of upfront water identified in Congressman FAZIO's draft legislation and that, when combined with our changes to subsection 3404(b) and 3406(b)(24), reduces the amount of water reallocated under the bill by approximately 540,000 acre-feet per year. Additional language has been included to make it clear that water allocated to fish and wildlife purposes under this section may be used for other project purposes, including irrigation, if not needed for fish and wildlife;

Subparagraph 3406(b)(2)(C) and subsection 3406(d) have been amended to link dry year shortages for fish water and waterfowl refuge water to reductions imposed on agricultural service, not prior rights, contractors;

Paragraph 3406(b)(6) has been amended to clarify the Secretary's responsibility with respect to operation of the Shasta temperature control device for the upper Sacramento River;

Paragraph 3406(b)(24), which deals with the Trinity River, has been added as a replacement for title XXX of H.R. 429. This provision deletes language in title XXX that allocated more water to Trinity River flows than was dedicated under the Secretary of the Interior's 1991 decision on Trinity flows;

Paragraph 3406(c)(1) has been amended to include language barring the Secretary of the Interior from making releases from Friant Dam to implement this bill without specific subsequent congressional authorization. As now written, this section does not require restoration of upper San Joaquin flows, and would premise any fishery restoration activities in that area upon (1) a comprehensive study of the costs and benefits and, (2) congressional authorization;

Paragraph 3406(c)(1) has also been amended to reduce the "in-lieu" charge applied to Friant Unit contracts from the House's $4–$8–$12 formula to a more moderate $4–$5–$7 formula.

Section 3407 has been amended to reflect Congressman FAZIO's proposal for the Restoration Fund, and has been amended further to ensure that funds derived from water and power contractors will remain available to implement the bill, even if all funds are not expended in a given year. This section has been amended to add significant flexibility to the collection of funds from project contractors and to cap the amounts to be collected from current water contractors at reasonable levels;

Subsection 3408(j), which authorized citizen suits has been deleted;

A new subsection 3408(j) has been included. This subsection charges the Secretary of the Interior with development of a comprehensive plan to increase the yield of the CVP in order to restore to irrigators and other project users water supplies allocated to fish and wildlife purposes under this bill;

A new subsection 3408(k) has been included. This subsection is a broad savings clause applying to final judicial decrees involving CVP water rights;

Section 3409 has been amended to provide that the cost of preparing the programmatic environmental impact statement required by this title will be considered a capital expense; and

Section 3411 has been added to ensure that the Secretary of the Interior complies with California water law and the Coordinated Operating Agreement in implementing the bill.

Section 3412 has been added to provide for the extension of the Tehama-Colusa Canal service area.

Mr. BRADLEY. Mr. President, the question is who supports what we are doing?

It is true the distinguished Senator from California, Senator SEYMOUR, is opposed to this bill. It is true the distinguished Senator from California, Senator CRANSTON, supports this bill. It is also true 25 U.S. Representatives from California voted against this particular bill in the House and 18 voted for it.

It is true the Governor of California has written a letter opposing this bill although he made no specific suggestions throughout this whole negotiations process.

The distinguished Senator from California has been very forthcoming in terms of his original bill. It is true some political appointees in Washington have written letters urging the

President to veto it, namely the Secretary of Interior and the Secretary of Agriculture. But what about other people? What about people who live in California who are not politicians? What do they do?

I would like to list the following organizations that support H.R. 429: Bay Area Economic Forum, California Association of Family Farmers, Bay Area Council, Metropolitan Water District of Southern California, Western Urban Water Coalition, American Fishing Tackle Manufacturers Association, City of Oakland, City of San Francisco, Port of San Francisco, Port of Oakland, Sacramento Municipal Utility District, Mendocino County, Trinity County, Contra Costa County, Humboldt County, Ducks Unlimited, Grasslands Water District, Central Basin Water District, West Basin Municipal Water District, Three Valleys Municipal Water District, and this list goes on and on.

Mr. President, I ask unanimous consent the list be printed in the RECORD at this time.

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

LETTERS OF SUPPORT FOR CONFERENCE REPORT ON H.R. 429

Bay Area Economic Forum.
California Association of Family Farmers.
Bay Area Council.
Metropolitan Water District of Southern California.
Western Urban Water Coalition.
American Fishing Tackle Manufacturers Association.
City of Oakland.
City of San Francisco.
Port of San Francisco.
Port of Oakland.
Sacramento Municipal Utility District.
Mendocino County.
Trinity County.
Contra Costa County.
Humboldt County.
Ducks Unlimited.
Grasslands Water District, Los Banos, CA.
Central Basin Municipal Water District, Carson, CA.
West Basin Municipal Water District.
Three Valleys Municipal Water District.
Las Virgenes Municipal Water District.
Calleguas Municipal Water District.
California Advisory Committee on Salmon and Steelhead Trout.
City of Eureka.
East Bay Regional Park District.
Las Vegas Valley Water District.
Citizens for a Better Environment.
Audubon Society.
Bay Institute of San Francisco.
California League of Conservation Voters.
California Striped Bass Association.
Golden Gate Fishermen's Association.
Trout Unlimited.
Environmental Defense Fund.
Natural Resources Defense Council.
Friends of the River.
Sacramento River Council.
Sierra Club.
Wilderness Society.
Pacific Coast Federation of Fishermens' Association.
National Wildlife Federation.
Committee for Water Policy Consensus.
Central Utah Water Conservancy District.
National Wildlife Refuge Association.
United Anglers of California.
California Waterfowl Association.
Clean Water Action.
Friends of the Earth.

Mr. BRADLEY. I would simply like to call attention to two or three very relevant endorsements to this bill.

First, the Metropolitan Water District represents 15 million Californians. They have issued a press release that says the following:

"H.R. 429, a Western water omnibus bill, is good for California in general and Southern California in particular." said Carl Boronkay, general manager of Metropolitan Water District of Southern California. "It is California's first major water policy advancement in decades and provides benefits for farmers, cities and the environment," he said.

It goes on to say:

"If managed properly, California has ample water supplies to take care of the reasonable needs of cities, farms and the environment for some time to come," Boronkay said. "Passage of this bill is a crucial element of good water supply management."

That is from the Metropolitan Water District of Southern California, serving 15 million Californians.

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

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

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
*Los Angeles, CA.*

PENDING FEDERAL LEGISLATION COULD MEAN MORE WATER FOR SOUTHERN CALIFORNIA

LOS ANGELES.—Legislation nearing congressional vote could reform the massive Central Valley Project (CVP) irrigation system and allow for the voluntary transfer of water to help meet the needs of California's water-short urban economy.

"H.R. 429, a Western water omnibus bill, is good for California in general and Southern California in particular," said Carl Boronkay, general manager of Metropolitan Water District of Southern California. "It is California's first major water policy advancement in decades and provides benefits for farmers, cities and the environment," he said.

The CVP improvement provision of H.R. 429 would permit farmers in California to voluntarily sell their federal water on the open market. Most likely buyers include the state's cities that have struggled in recent years to meet the increasing water demands of growing urban centers.

The legislation also provides water for the rehabilitation of California's drought-stressed fisheries and wildlife.

"If managed properly, California has ample water supplies to take care of the reasonable needs of cities, farms, and the environment for some time to come," Boronkay said. "Passage of this bill is a crucial element of good water supply management," he said, supporting the adoption of H.R. 429 before Congress adjourns this week.

Through its 27-member public agencies, Metropolitan provides almost 60 percent of the water used by more than 15 million people in Los Angeles, Orange, San Diego, Riverside, San Bernardino and Ventura counties.

Mr. BRADLEY. Also, today, I received a letter from the California Business Roundtable. The argument has been made that H.R. 429 is bad for California jobs. This group speaks for the 100 largest companies in California, and they support it.

I will just quote from the chairman, Mr. James Harvey, of Transamerica, who says:

I think the water compromise for California is great and supported by a majority of business in California.

JIM.

Now who are the Business Roundtable Water Task Force members? James Harvey; John Bryson, Southern California Edison; Harry Conger, Homestake Mining; Lawrence Del Santo, Lucky Stores; San Gin, Pacific Telesis; Paul Hazen, Wells Fargo.

Mr. President, I ask unanimous consent that the remainder of this list—and it is a long list—be printed in the RECORD.

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

CALIFORNIA BUSINESS ROUNDTABLE WATER TASK FORCE MEMBERS

James R. Harvey, Chairman, Transamerica Corp.
John E. Bryson, Chairman & CEO, Southern California Edison Company.
Harry M. Conger, Chairman & CEO, Homestake Mining Company.
Lawrence A. Del Santo, Chairman & CEO, Lucky Stores, Inc.
Sam Ginn, Chairman & CEO, Pacific Telesis Group.
Paul Hazen, President, Wells Fargo Bank.
Bruce Karatz, President & CEO, Kaufman & Broad Home Corp.
Thomas L. Lee, Chairman & CEO, The Newhall Land & Farming Company.
Richard M. Rosenberg, Chairman & CEO, Bank of America.
Alan Seelenfreund, Chairman & CEO, McKesson Corp.
Raymound L. Watson, Vice Chairman, The Irvine Company.
Phillip L. Williams, Vice Chairman, The Times Mirror Company.

Mr. BRADLEY. The point here is that support for this bill is broad and deep in the business community, in the environmental community, in the community outside of the Central Valley itself.

Mr. President, I know that we will continue this discussion, but there is no question in my mind that after months and months and months of discussion, we are now at a point of decision, and tomorrow will be that decision.

I will reserve the remainder of my comments for a little later in the debate and further discussion tomorrow.

Mr. SEYMOUR addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. SEYMOUR. Mr. President, the distinguished Senator from New Jersey [Mr. BRADLEY] has made a number of points and arguments relative to the Central Valley project. I intend to address those as directly as I can.

Let me say, first, that I want to commend Senator BRADLEY. I want to commend his staff. There is no doubt in my mind that they were and have been totally committed to pursue legislation for the reform of the Central Valley project based upon what they believe is to be in the best interest of California. And for that I commend them. They have done it openly. They have done it fairly. And Senator BRADLEY has been more than forthcoming in his relationships and discussions with me over these last 21 months relative to what is the right answer for California.

Sadly, his priorities for the people of California are different from my priorities. I said it earlier. My priorities are simple. My priorities, first, are people and their jobs, and, second, the enhancement of fish and wildlife, restoration of refuges, and restoration of the value of environmental resources, of fish as well as wildlife.

Senator BRADLEY's priorities are reversed, and if not reversed, if that is an unfair characterization of his priorities, then let me go an extra step and say his priorities say that people in jobs ought to occupy a level playing field, as level a playing field as animals and plants, fish and wildlife.

That has really been one of the bones of contention, what should our priorities be. What is the most important.

I was talking about jobs and the economy earlier.

Mr. President, I want to refer to a memorandum dated October 3, 1992, from the U.S. Department of the Interior that addresses H.R. 429, the measure that we will take up and, unfortunately, pass in the U.S. Senate and send to the President tomorrow.

In this memorandum, they talk about jobs and people. They do not talk about them in exactly those terms, but they talk about them in terms of what if H.R. 429, the conference committee water bill, had been law during 1990 and 1991. And in their analysis, had H.R. 429 been law in 1991, then all of agriculture in the Central Valley would receive zero percent of water.

Then, of course, there are cities involved in the Central Valley project, the city of Redding, the city of Roseville, the city of Sacramento, Contra Costa County, the Sacramento Municipal Water District, Santa Clara Water District. Had H.R. 429 been law in 1990 and 1991, those cities would have received zero water.

Now, without H.R. 429, how would the Central Valley have done as far as the percentage of water? What water allocation would they receive compared to zero? Well, in 1990, compared to zero under H.R. 429, agriculture would receive 50 percent of the water allocation and cities, urban users, people in jobs, would receive 75 percent instead of, under H.R. 429, zero percent. And in 1991, a drought year, agriculture would receive 25 percent of the water allocation compared to zero.

And people and jobs in urban areas represented by the Central Valley project, those cities in 1991, would have received 75 percent of the water allocation as opposed to zero. Those are not my numbers. Those are numbers that come from the U.S. Department of Interior.

So if I make a statement and I say that if H.R. 429 were law in 1990 and 1991, many farms and cities that belonged to the Central Valley project would have received no water at all, as far as an allocation under 429, and that that would have cost in 1990 and 1991 thousands and thousands of jobs. I make that statement based on the Department of the Interior analysis.

I want to refer to an Associated Press story from Fresno, CA. The date is March 20, 1992. The story reads as follows, in fact, the headline in the story says, "San Joaquin Valley Farming Could Be Slowly Crushed." That is the headline in the article. So I put this in perspective when I talk about San Joaquin Valley. Let me talk about some real cities: city of Fresno, city of Visalia, city of Modesto, city of Bakersfield. Those are some of the major cities in the San Joaquin Valley.

This is what the article said on March 20, 1992:

> The San Joaquin Valley's farm economy suffered a $545 million blow last year because of the drought and will be slowly crushed unless irrigation water returns to normal, a study said. 9,000 jobs were lost and 253,000 acres—

That is a quarter of a million acres of land were left fallow because there was not enough water for all the vegetables, the cotton, the nuts, the fruits that were grown in the valley. If these shortages continue, the agricultural industry which provides 50 percent of the San Joaquin Valley's jobs—one-half of the jobs—will slowly be crushed. Economists are already beginning to see the symptoms of an economic death spiral in which the number of farmers remaining in business decreases as water supplies dry up. Lost farm revenue totaled $281.5 million in 1991, and that represents 2.5 percent of the $11.2 billion gross crop value for the eight-county region in 1990. Lost sales by businesses that supply valley farmers added another $264.3 million in lost revenue. So, total in that year because of a lack of water, they lost over a half a billion dollars, economic loss alone in the San Joaquin Valley.

Then the story ends by saying, "People driving on Interstate 5"—that is a major freeway that runs through California—

> "People driving on Interstate 5 may think farmers aren't hurting because they see so many crops," said Dwayne Paul, Vice President of the firm that made the survey. But what they don't see are the jobs that were lost and the suffering in all businesses in the valley community.

That is what we have been talking about, Mr. President, is people and jobs. I contend that should H.R. 429, the bill that Senator BRADLEY and Congressman MILLER support, become law, not only, as according to the Department of the Interior, will we see zero percent of water allocation going to the cities I referenced and to agriculture in the Central Valley, but we will see a total economic loss annually of $4.5 billion, and we will see tens of thousands—not of big farmers. Senator BRADLEY was talking about big farmers. Not of big farmers. They will always find a way to do business, either that or they will sell out and move on. It is not any big deal for them. Well, it is a big deal for them. I should not say that. It is a big deal for any large enterprise. But I am talking about the little guy. The small family farmer who is farming an average of 50 acres. If there are those who think those small family farmers are not worrying about this whole issue, they just do not know. I have been there, I talked with them, I met with them, I met their kids, their families. I heard about their hopes, their dreams, their troubles, their concerns. They are very real people.

Let me talk about another segment of our society in California that is going to be heard and they sure are not big. They are the farm workers, the people who work the farms. Farm laborers, many of them Hispanic, minorities, not getting rich, but at least feeding their families.

I remember in the spring of 1991, the valley having suffered billion dollar losses as a result of an Arctic freeze that hit the Central Valley, San Joaquin Valley, and I looked into the eyes of the farm workers and their kids. Not only were they out of work, they were out of money, they could not pay their rent. They did not have food to feed their families. They were sending their kids to school and the kids were falling asleep. The reason they were falling asleep is they had not been properly fed. I talked to mothers, the wives of some of the farm workers who had babies. And because they were out of work, because they had no other source of income, their babies were getting formula with double the amount of water, taking half of the sustenance of that baby formula that would feed that child. They were hurting. They were not big farmers. They were not even small farmers. They were farm workers.

In that instance, we were able to help them out, thank God. We were able to call on the Department of Agriculture and bring truck loads of food in there, formula for their babies, food for their kids. We helped them through that very tough time of suffering from the Arctic freeze, only to be followed, just when they get on their feet, by a drought.

So I am talking about little people. I am not talking about big farmers. I am

not talking about the corporate enterprises. You cannot get much smaller than the farm workers. Tens of thousands of them will be out of a job if H.R. 429 becomes law.

Senator BRADLEY rightly pointed out that to do nothing would be absolutely wrong. I agree. To do nothing at this critical time in California's history would be a tragedy. We do need to do something.

Senator BRADLEY suggested that H.R. 429 is the answer. I have argued that that is a bad bill. But that does not mean I should not have the responsibility to come up with a better idea. You just cannot afford to go around here saying no, no, no, no. You cannot be against everything. You have to support some things. And I think every one of us has a responsibility that if we do not like something, then you come up with a better idea.

So when it comes to people and jobs first, and wanting to do everything possible, second, to enhance fish and wildlife, to restore that resource, I came up with a bill. The bill, S. 2016. It passed this House, went into the conference committee and then it was destroyed, thrown to the wayside, and H.R. 429, and Congressman MILLER and Senators BRADLEY and JOHNSTON took over.

So let us take a look at an alternative, because I agree we have to do something. And that is what I thought I was doing when I introduced S. 2016. So let me quickly, Mr. President, if I could, go through this bill and talk about some of the very important provisions in answering the needs of the people of California for water, answering the needs of the farmers in Central Valley, answering the needs of urban water users.

Let me say, this bill, Mr. President, is not my bill. This is not JOHN SEYMOUR's. My name is on it. I am the fellow who was to get this bill into law. It was not my bill. This bill was not written in Washington, DC. The wisdom and the thoughts that make up this bill are not from the banks of Potomac. This is a bill that was written in California, for Californians and by Californians.

This bill represents a historic compromise between farmers in the Central Valley and the metropolitan water district. I will have more to say about them later because they now support the other bill. But when we wrote this bill, they wrote this bill, and this historic accord was reached between farmers and the metropolitan water district representing over half the people of the State of California, the metropolitan water district thought that was a great idea. In fact, when it went before their board of directors to either have the board of directors say, it is a bad bill, we oppose it; it is a so-so bill, we like it but we do not like some of this; or it is a good bill, we support it—when their board of directors was asked that question, on a 49-to-2 vote, their board of directors said we want this. We want it.

So it is not my bill. I happen to be the fellow who was selected to be responsible, as a Senator from California, to carry forward this bill on behalf of Californians.

S. 2016, is very much a part of the bill that is currently pending on this floor and at the conclusion of this day will be passed over to the House of Representatives. Although there have been some major changes in this bill that I will also talk about, this is where we started.

So let me, if I can, Mr. President, go through what some of those ideas included.

First of all, let me talk about fish and wildlife and the environment. In fact, I want to commend Senator BRADLEY and Congressman MILLER for at least recognizing that this bill I introduced on behalf of California had some good ideas of what we should do about fish and wildlife refuges. As a matter of fact, this bill contains 22 specific improvement provisions for fish and wildlife restoration habitats. In fact, we did not even create those 22 provisions. We did not create them back here.

They went to the California Department of Fish and Game and said, "Give us a list of the projects that need to be improved so that we can restore this resource that is most valuable to us."

As I said, apparently Senator BRADLEY thought it was a pretty good idea and Congressman MILLER thought it was a pretty good idea because they listed them and put them in their bill. So at least we gave them a specific roadmap out of their efforts of what needs to be done to improve fish and wildlife habitat in California.

In the bill, we talk about doing such things as negotiating and executing an agreement with the California Department of Fish and Game by December 31, 1992. I guess we are not going to make that date, are we? Of course, the bill was introduced almost a year ago. But, anyhow, we gave them a definite time, by December 31, 1992, a given date, gave them a little more than 1 year is what we were giving them—California Department of Fish and Game will enter into an agreement, and that agreement will mitigate the direct fishery losses associated with the operation of the Tracy pumping plant.

We said you come up with an agreement that is satisfactory to the California Fish and Game, and we will give you 1 year to do it, and this agreement will mitigate the direct fishery losses associated with the operation of the Tracy pumping plant.

Then we said we also want another agreement that has to be satisfactory to the California Department of Fish and Game. This one we will give you 3 years, roughly, to get it together, but when you get it together, it has to be satisfactory to the California Department of Fish and Game. This will mitigate for direct fishery losses associated with the operation of the Contra Costa Canal pumping plant, the same kind of problem.

Then we said up at the Shasta Dam we need a temperature control device so that we can ensure colder water coming out of the Shasta Dam. So we said install and make operational a structural temperature control device at Shasta Dam and develop whatever modification you need and you do it all by December 1995. We will give you 4 years to get it done, for control of water temperatures in the Upper Sacramento River sufficient to protect salmon. We said the Coleman National Fish Hatchery will be rehabilitated and expanded by implementing the U.S. Fish and Wildlife Service's Coleman National Fish Hatchery development plan, and you want to get that one done again within 4 years. We said get another agreement that is satisfactory to the California Department of Fish and Game and we are going to give you 1 year to do this. What you are going to do there is eliminate, to the extent practical, losses of salmon and steelhead trout due to flow fluctuations occasioned by the operation of Keswick, Nimbus, and Lewiston regulating dams.

And then we said we want to have a gravel replenishment program. We want you to develop that, and we want you to implement it in 2 years for the purpose of restoring and replenishing on a continuous basis spawning gravel loss due to the construction and operation of Shasta, Folsom, and New Melones Dam bank protection programs and other actions that have reduced the availability of spawning gravel.

We said we want you to have a Delta Cross Channel monitoring and operational program, and we want you to do that in 1 year. You see, we set deadlines. We did not just throw some language in this bill and say do it if you can, do it maybe. We said you are going to do it, and here is the timeframe in which you are going to do it. So we said to the Delta Cross Channel issue, a program be developed in 1 year for the purpose of protecting striped bass eggs and larvae as they approach the Delta Cross Channel gates. The program includes, but is not limited to, closing the Delta Cross Channel gates during times when significant numbers of striped bass eggs and larvae approach the Sacramento River intake to the Delta Cross Channel.

We said the Secretary of the Interior shall—not maybe, not directly—shall, through an agreement with the State of California, provide dependable water supplies of suitable quality to the Central Valley refuges, in accordance

with level 2 quantity and delivery schedules of the dependable water supply needs table for that refuge.

We said: We are going to make you give them water. You have to. Not if you want to; not if you think it is a good idea. We are telling you to do it.

Habitat restoration actions. We have plans in the bill for 13 different projects, specific projects. So for anybody to say we are doing nothing—it is either H.R. 429, or it is nothing—this is a lot more than nothing.

How about people and jobs? Well, we took care of people and jobs in this bill. Like creating an orderly, commonsense kind of approach to transfer water from farmers in the Central Valley to people and jobs in urban areas. We did it by saying that any CVP contractor can negotiate freely into the transfer of an allocation of their water to other users, whether it be municipal or urban, whether it be industrial or jobs, even whether it meet fish and wildlife purposes. They can sell that water, too. So we provided for a water transfer, as well.

Mr. President, the bill that is currently pending before this House is S. 2016, modified for about the fourth time, I guess. And it is a proposal that will transfer water; it is a proposal that will provide up-front water. That is a cliche that is used very often to describe the Central Valley project: We need up-front water.

This bill provides up-front water, an intial up-front commitment to 236,000 acre feet of water, and then requires growth of that up to 525,000 acre feet of water to fish and wildlife within the 10-year period.

So it does those things.

Now we need to do more. That is not enough. As I said, we had offered a number of compromises. But the compromise we have before us today in this bill, that will soon pass to the House of Representatives, I think, was a very generous compromise. It was reaching back to find the last drop of water, so to speak, wring it out of the sponge, so that I might be able to meet the objectives of those on the other side supporting H.R. 429.

What do we do? One issue, a very important issue—Senator BRADLEY talked about that—contract deals, no more 40-year contracts. That is bad. I hope the U.S. Senate, the House of Representatives, and the Federal Government do not decide one day that you cannot get a 40-year mortgage on your home. But farmers really do not need 40-year contracts. They can get by with less, as long as they are good enough, as I said earlier today, to get them to the bank to be able to get a loan.

So what is the compromise? It is that the compromise we have before us today, which is an alternative to H.R. 429, is 25 years.

Then, another very contentious issue: project purpose. We will talk about that as it pertains to H.R. 429. But, at the moment, let me just say that what we are doing in this compromise proposal currently pending is we say fish and wildlife shall be a project purpose.

Let me explain, Mr. President, for those who, like I 21 months ago, did not know what project purpose meant, certainly did not know it had anything to do with water, project purpose says in the law who gets the water. Who gets the water? People and jobs? Fish and wildlife?

So when we refer to project purpose for fish and wildlife, that means that fish and wildlife as a project purpose shall be equal to people and jobs. I have said my priorities are people and jobs first, and fish and wildlife second.

What I am offering in the bill before us says that for the purpose of those projects—I cited them, 22 different provisions—for the purpose of those projects and the restoration, that fish and wildlife will be a project purpose. It will be equal to people and jobs, in those specific projects.

Senator BRADLEY was referring to water pricing. Water pricing is the concept that we are trying to deal with to provide incentives, which is what I do. Or, on the other hand, use a stick. Set up a pricing schedule that will act as an incentive for farmers to conserve water, or just use a stick and take it away.

In our water pricing aspect of our bill, we provide financial incentives for those farmers to conserve. So we are using a carrot as opposed to a stick.

Water transfers: Absolutely critical. We have been talking a lot about water transfers. Here is the alternative to H.R. 429. We would provide that on every water transfer that takes place from a farmer, a contract user, to an urban user, people and jobs, that 20 percent—if they transfer 100,000 acre-feet, they negotiate, they come to a price on 100,000 acre-feet—20 percent of the water will come right off the top of 100,000 acre feet.

Obviously, that would be 20,000 acre-feet of the water right off the top of that transfer sale to be set aside for fish and wildlife purposes.

It also had a provision in the original bill that said: We will take some water off the top, but we will only take 10 percent.

So the compromise is an additional 10 percent. So it is a full 20 percent right off the top of any amount of water that is transferred, and it goes specifically and solely for the purposes of fish and wildlife.

Then Senator BRADLEY provides for a fish and wildlife restoration fund. We would collect money so we would have money in order to do those 22 different, specific provisions included in my bill. And then they were lifted and they were put in H.R. 429. We need money to complete all those projects.

In the original bill I introduced on behalf of the metropolitan water district and the Central Valley farmers, we had no provision for such a fund. We had formulas for getting them some money, but we had not created a fund.

The proposal that is currently pending before this House establishes a $20 million annual fund to restore fish and wildlife habitat.

So those are some of the additional compromises we made to the original bill, S. 2016. I think most who have listened to this description of S. 2016 would have to conclude: Does SEYMOUR have water transfer in this bill?

Is there another answer to water transfers, to ensure water transfers, other than H.R. 429? I think the answer to that question is absolutely, yes, there is water transfer. Well, is there improvement to fish and wildlife? Is there another way to go other than H.R. 429? Do we have any improvement for fish and wildlife in this bill? I think absolutely the answer is yes, unequivocally.

And so for anyone to say that there is no alternative, if we do not pass H.R. 429 we are going to do nothing, it is going to be business as usual, I think that is either misunderstood or patently untrue. This is a plausible, reasonable approach that is currently before us.

Mr. President, I want to talk for a moment about H.R. 429, and the differences between H.R. 429 and this bill that is currently before us that I introduced and will shortly be passed and sent to the House of Representatives. How do we differ? We are both after the same objectives—maybe with different priorities, but the same objectives—to move water around, to help protect fish and wildlife, get water and jobs to people in urban areas. We have some vast differences as to how we achieve those objectives. First of all, let us talk about water off the top.

Water off the top refers to—you have a bucket and there is only so much water in there. This year, it is 4½ million acre-feet for the entire valley. In wet years—although we have not seen one in six—but in wet years it could go as high as 8 million acre-feet. There have been some dryer years, but this year the bucket contains 4½ million acre-feet. So I will talk about that. What H.R. 429 would do is, out of that bucket of 4½ million acre-feet, it would scoop off of the top 1 million acre-feet—800,000 acres, plus 236,000, over 1 million acre-feet. What would be left for fish and wildlife purposes? What is left in the bucket? Common sense should tell us that it is not enough to support an agricultural economy in the State of California, much less get any water to people and jobs in urban areas. So we have a tremendous difference in that.

Let me read about that particular portion of the water off the top, from H.R. 429. It is pretty clear here. It says:

Upon enactment of this title, dedicate and manage annually 800,000 acre feet of Central Valley Project yield for the primary purpose of implementing the fish, wildlife and habitat restoration purposes and measures authorized by this title to assist the State of California in its efforts to protect the waters of the San Francisco bay, Sacramento, San Joaquin delta estuary, and to help meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following the date of enactment of this title, including but not limited to additional obligations under the Federal Endangered Species Act. For the purpose of this section, the term Central Valley Project yield means the delivery capability of the Central Valley Project during the 1928 to 1934 drought period, after fishery, water quality and other flow and operational requirements imposed by terms and conditions existing and licenses permits and other agreements pertaining to the Central Valley project under Federal, State or local law existing at the time of enactment of this bill.

The bottom line of what I read, in addition to the 236,000 acre-feet that my bill commits, right off the top, there is 800,000 acre-feet more off the top. And in dry years, is there any provision for letting up, a lessening of that tremendous burden, as you scoop off the top of the bucket 1 million acre-feet of water?

The answer to the question is, yes, there is some relief. I believe that relief is a reduction of the 1 million acre-feet of 25 percent. In other words, first off the bucket comes water for fish and wildlife, and then what is left, you can move to urban areas, people and jobs, or to the Central Valley agriculture, the No. 1 industry of our State.

But in a dry year, what do they do in H.R. 429? It says here on page 250 of the conference report:

The Secretary may temporarily reduce deliveries of the quantity of water dedicated under this paragraph up to 25 percent of such total whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of Central Valley project water, provided that such reductions shall not exceed in percentage terms and reductions imposed on agricultural service contractors.

In other words, in dry years, we know that the delivery of water is going to be reduced to urban areas and to farmers. What we are saying here, and what they are saying in H.R. 429, is you are not going to reduce fish and wildlife any more than you are farmers, than you are people and their jobs.

I was listening to Senator BRADLEY as he talked about the need to protect the delta smelt. I think he is right. I think we should protect the delta smelt. We have to do everything we can to enhance the resource of the delta smelt. But should we put people out of work for the delta smelt? Do you want to drive farmers out of business? Do you want farm workers who cannot feed their families? Do you want a $4.5 billion hit on the economy of California, putting tens of thousands of people in unemployment lines for the delta smelt?

Something is not right. I want to protect the delta smelt. We all want to protect the delta smelt, but if you do not have a job and you cannot feed your family, do you really care about the delta smelt?

So you see one of the problems with H.R. 429 is that it says the delta smelt is as important as the farm worker and his family, as the small farmer, as the person living in San Francisco, or living in Los Angeles.

The delta smelt is as important as your kids. That is wrong. That does not mean that we should not do everything we can to protect the delta smelt. I suggest that we do that in this bill. But we sure do not make it equal to people and jobs.

We get to the restoration fund. I cited that in the bill pending before us we provide 22 different provisions to improve fish and wildlife refuges, to restore the resources of salmon and steelhead trout, an important resource. We want to do that. That is a worthwhile goal.

How do the two bills go about it? How does H.R. 429 do it? How does the bill before us do it? H.R. 429, the measure this House will vote over my objections, vote it out of here tomorrow, sets up a $50 million fund. I guess I should be more direct—a $50 million tax, a tax on all CVP, Central Valley project, water and power users.

Do you think for a moment that this $50 million of tax is going to be paid for by farmers? Not unless they are crazy. I was a businessman for 17 years and when I had additional costs placed on the back of my business, I passed it on to the consumers if I could. If I could not, I ate it. And if it got too big, I just got out. But if I could, I passed it on.

So where does that $50 million come from? It will come from the price of apples, it will come from the price of oranges, it will come from the price of steaks, and it will come from the price of avocados, and so forth. That does not mean we do not need a restoration fund, but let us use a little common sense. Let us not hit them so hard. That is why in my bill I do not ask for $50 million. I ask for $20 million.

Let us get to another very important and critical and contentious issue—contracts, water contracts. No longer a 40-year contract. That went out the window in 1991 when we first began to discuss this bill. I never thought for a moment, quite honestly, that we would end up with a bill if we were going to get one that would still have a 40-year contract. I have already talked about the bill that is pending before us. It has a 25-year contract.

Here is what my bill, that is currently before us, says about contracts and renewal of existing long-term contracts. And understand, the only importance, by the way, the only importance other than directly to the landowner, the farmer, or the urban dweller that is also part of the CVP, the only importance of any water contracts is to the value of your land. If you have a contract and it is long-term, your land is obviously more valuable than if you did not have a contract.

But it is important in another way that it keeps people working and in business. It is important that you have a contract that you can take to the bank, a contract that you can take to the bank and say, Mr. Banker, water which is an essential commodity not only to the value of my land, but more importantly, water which is the essential commodity for growing my crops is going to be there and, therefore, I have a contract sufficient in length that you can count on the fact that I am going to get some water. I am not going to get a full allocation everywhere. I will get full allocations in wet years and a little less and maybe a lot less, but I will get some water even in dry years. So on the important issue of contracts here is what I say in the bill that is before us:

"Notwithstanding the provisions of the act of July 2, 1956, the Secretary shall upon request renew all existing long-term repayment contracts providing for the delivery of water or water service contracts from the Central Valley Project for a period of 25 years"—not 40, 25 years—"and for successive periods of 25 years each."

The renewals, they are renewals.

That is the approach that is before us today.

The one we will be voting on tomorrow, H.R. 429, they offer a 25-year contract but, like in most contracts, you have to read the small print. I will read the print.

For H.R. 429, renewal of existing long-term contracts.

Notwithstanding the provisions of the act of July 2, 1956 the Secretary shall upon request renew any existing long-term payment or water service contract to the delivery of water from the Central Valley project for a period of 25 years and may renew such contracts for successive periods of up to 25 years each.

We agree. The bill before us and this bill is the same. No, because it goes on. There are conditions, a couple of conditions applied to getting this 25-year contract.

One, no such renewals shall be authorized until appropriate environmental review, including the preparation of the environmental impact statement. It is new, brand new—let me repeat it—requiring the preparation of the environmental impact statement required in section 3409 of this title has been completed.

Contracts which expire prior to completion of the environmental impact statement required by section 3409 may be renewed, they may be renewed, for an interim period not to exceed 3 years in length. And for successive interim periods after the first 3—and I am going to tell you about this these environmental impact statements, they can take a long time to be completed.

So if you do not get it done after your first 3-year contract you get renewals. For successive interim periods for not more than 2 years in length, until the environmental impact statement required by section 3409 has been finally completed at which time such interim renewal contracts shall be eligible for long-term renewal as provided above. Such interim renewal contract shall be modified to comply with the existing law, including provisions of this title.

With respect to all contracts renewed by the Secretary since January 1, 1988, the Secretary shall incorporate in such contracts a provision requiring payment of the charge mandated in subsection 3406(c), subsection 3407(b) of this title and all other modifications needed to comply with existing law, et cetera.

So, yes, both the bill before us and H.R. 429 have 25-year contracts. The big difference is do not try to take that 25-year contract in H.R. 429 to the bank unless you have completed an environmental impact statement. That does not sound bad, does it? An environmental impact statement.

So what? What you have to do and I know a little about that. I was a planning commissioner in the city of Anaheim for about 4 years. And anytime anybody wanted to come in to develop their land, whether it be one lot or 2,000 acres, we would typically require an EIS.

So what is an environmental impact statement? The environmental impact statement was intended by law to assess any potential damages to the environment prior to completion of the project—and that makes a lot of sense. You should do that.

What was well-intended in creating the law of environmental impact statements has been abused and abused and abused.

You see you can argue so much and so long over an environmental impact statement that you will need a battery of attorneys, and you can spend up to a decade in court.

So now let us apply this requirement of H.R. 429 on contract renewals. You can get a 25-year contract provided you have completed the environmental impact statement.

How about the relief? the relief is you will get a 2-year contract or a 3-year contract. First, you get a year contract, and then while you are combating it out on the environmental impact statement, you get 2-year contracts until you either do it, or you do not. If you do it, you get 25 years.

If you do not, then for perpetuity, forever, you will operate under a 3-year contract. Now, is that so bad? It is probably no worse, as I said earlier today, than somebody who wants to go out and buy a home and they cannot pay cash for it—and there are not too many people that can pay cash for houses—so they go to the bank and get a mortgage.

The bank says: I will give you a 2-year mortgage, and then come back in 2 years. We will see about it.

Would any of you—would any of you—buy a home under those conditions? The answer is no. And I think that would be the wise answer, by the way. Then how do we expect farmers to stay in business when all they get is a 2- or 3-year contract?

So yes, in the bold print, it says 25 years in H.R. 429. But read the fine print, that is not there.

Talking about water transfers, that is another important agreement and another objective in the bill. We want water transfers. We all want water transfers. Senator BRADLEY wants water transfers, Senator JOHNSTON, Congressman MILLER. I want water transfers. It is all how you go about doing it.

Well, H.R. 429, the one we will vote on tomorrow, imposes a $25 surcharge per acre-foot transferred. Is that heavy duty?

And what do you do with the money? First of all, I want to tell you, it is heavy duty. If you are a city, and you are paying $400 per acre-foot for your water right now, and many of them are, if you buy 1 acre-foot of water, you are going to pay another $25; your price is now $425. And what happens to that $25 per acre-foot?

Well, let us look at the bill, H.R. 429.

*Provided further*, That the Secretary shall impose an additional annual charge of $25.00 per acre-foot (October 1992 price levels) for Central Valley Project water sold or transferred to any State or local agency or other entity which has not previously been a Central Valley Project customer and which contracts with the Secretary or any other individual or district receiving Central Valley Project water to purchase or otherwise transfer any such water for its own use for municipal and industrial purposes—

That is people and jobs; and what do you do with it—

to be deposited in the Restoration Fund—

That is the restoration fund set up so that we have money and we can do the projects outlined in the bill—

and provided further, that upon the completion of the fish, wildlife, an habitat mitigation and restoration actions mandated under section 3406 of this title—

Those are those 22 provisions I was talking about—

the Secretary shall reduce the sums described in the paragraph (c)(2) of this section to $35 million per year—

Reduce it to $35 million a year; the projects are already completed, now so the Secretary is authorized to reduce it to $35 million per year in stead of the $50 million per year where it sets while we are doing the project—

and shall reduce the annual mitigation and restoration payment ceiling established under this subsection to $15 million on a three-year rolling average basis.

Now, that is in comparison to an alternative. In my bill, the one that is before us now, we provide for water transfer of $15 per acre foot instead of $25.

Is that important? You bet it is. And so here is what it says in the bill that is currently before us, the bill that I say is an alternative.

New Central Valley Project Customer Access Charge. The Secretary shall impose an additional annual charge of up to $15 per acre foot for Central Valley Project water sold by or transferred to any state or local agency which is not within the area watershed or county of origin as those terms are defined in California law and has not previously been a Central Valley Project customer, and which contracts with the Secretary or with any other individual or district receiving Central Valley Project water, to purchase or otherwise transfer any such water for its own use, to be deposited in the Restoration Fund.

A difference to one approach in H.R. 429, this approach in the bill that is before us. I say it is a dramatic, dramatic difference.

Well, Mr. President, those are the primary differences.

Well, perhaps I can expand a little more on one primary purpose—I have already talked about it—my priorities being people and jobs first, and animals and plants second. I talked about the delta smelt. And I talked about the fact that the bill we have before us, as changed, does provide for project purposes; that is putting animals and plants on the same level as people and jobs, as it pertains to those specific 22 provisions.

But there is a big difference between project purposes as defined in this bill that we have before us, and what is in H.R. 429.

This is H.R. 429:

**FISH, WILDLIFE AND HABITAT RESTORATION.**

(a) AMENDMENTS TO CENTRAL VALLEY PROJECT AUTHORIZATIONS.—Act of August 26, 1937.

(1) in the second proviso of subsection (a), by inserting "and mitigation, protection, and restoration of fish and wildlife" after "Indian reservations,";

(2) in the last proviso of subsection (a), by striking "domestic uses;" and inserting "domestic uses and fish and wildlife mitigation, protection and restoration purposes;"

That is it. It is that clause that sets the delta smelt on a level playing field with people and their jobs. As I have said, that is wrong.

And as hard as I have tried to accept this concept where we take plants and animals and we put them at the same level as human beings, people and their jobs—and I have done that on the specific 22 provisions enumerated in the bill—I just think it is wrong to say that is forever in the future how the Central Valley project water will be distributed; how we will determine who gets what out of the bucket of water.

So that is where we stand today, Mr. President.

Let me close my remarks by talking about a number of points that I have made, and Senator BRADLEY has made

in his opening hour. And he has about another hour to go, once I wind down.

Senator BRADLEY said that to do nothing would be wrong. And he is right; I said he is right. We have to do something.

But I have also argued that it should not be H.R. 429. It should be the proposal that we have before us today.

Senator BRADLEY said, if we do not pass H.R. 429, ports might be threatened, might be closed because they need to dredge. Silt builds up in a port. As that silt builds up you cannot get the huge freighters in. They run aground so you need to dredge. And he is right about that. We want to keep the ports open.

But there is another way to do it than placing the delta smelt on par with people and jobs. In fact, I am reminded of the port of Oakland, an extraordinarily important economic force in the entire bay area of California, San Francisco, and Oakland, that entire bay area.

I was visiting that port in August of 1991, and they gave me a tour of the port. And they sure enough said, "Senator, we have a problem here."

I said, "What is your problem?"

They said, "Well, Senator, if we cannot get dredging permits"—that very dredging Senator Bradley was referring to—"we may have close the port."

I said, "What does it mean if you have to close the port?"

They said, "Senator, it means about 100,000 jobs to the bay area and about a $4.5 billion hit on the economy of the bay area when those jobs go."

I said, "Why can you not get dredging permits?"

And they said—as Senator BRADLEY was pointing out—"The reason we cannot get dredging permits is because if we dredge we will threaten an endangered species."

I said, "What endangered species?"

They said, "The winter run of Chinook salmon."

I said, "Gee whiz, 100,000 jobs, $4.5 billion out of the economy, that is pretty important. I am going to go back to Washington and I am going to find out if there is anything I can do about this."

So I did, I called into my office the Department of Commerce, the National Marine Fisheries, and the Corps of Engineers. Those are the folks that issue the permits. I told them about the story.

I said, "Is it true?"

They said, "Yes, Senator, it is true."

I said, "Well, tell me about this endangered species, the winter run of Chinook salmon. How many fish are there in a winter run?"

They said, "Senator, the winter run this year is estimated to be 191 to 200 Chinook salmon."

I said, "Wait a minute." Is aid, "On one hand we are talking about 100,000 jobs, $4.5 billion out of the economy, and on the other side of the scale is 191 to 200 salmon? There has to be a way. There has to be a way."

They said, "Look, Senator, we do not write the laws. We just enforce them and regulate them."

I said, "I do not want you to violate the law. But there has to be a way. Have you folks ever sat down and talked to one another, figured out a way you can protect the salmon, and by all means protect 100,000 jobs?"

They said, "Well, Senator, no, we have not."

I said, "Well, I have news for you. You and I are going to become very good friends. Because we are going to meet in this office every Tuesday morning until we find a way."

Sometimes you succeed in an approach like that. Sometimes you fail. And I have done both.

In that case, within 3 weeks we had found a way to protect 191 to 200 estimated winter run of Chinook salmon, but most important, to protect and save those jobs in the port of Oakland.

Mr. President, I will be very brief in winding up here. I think now is the time to try to draw together the various arguments made throughout the time that I have been afforded this afternoon for which I am thankful.

First of all, regarding the Central Valley project in California, what should be done with it?

Mr. President, I think what should be done and what is being accomplished, as we meet here today, is a transfer of the Central Valley project to the State of California. And, barring that, an agreement under which the State of California would manage and control the Central Valley project and could, in their own wisdom, determine how allocations of water will be made in that most important project.

I think the State of California, the contractors to the Central Valley project, owe the Federal Government full payment, whatever this Nation's taxpayers have invested into the Central Valley project on their behalf. On the other hand, the management and control, the ability to determine their own destiny, their own future, should be left in the hands of Californians, not Washington, DC, and not the Federal bureaucracy.

We are not there yet. The Governor of the State of California, Pete Wilson, has been in close negotiations with the Department of the Interior relative to that objective. He has not achieved it yet, but I believe they are getting close. I am hopeful for, one, that that process is completed in an expeditious fashion so that California and Californians can control their own destiny, as well as their future.

However, in the interim, we do have a responsibility to address a reallocation of water from the Central Valley project to urban areas, to people and jobs, as I refer to it, as well as to fish and wildlife and the improvement of it for California. We need to do it in a way that the water is moved from Central Valley contractors, farmers, to these two other areas, not in a way to destroy the rich economy of the No. 1 industry of the State.

The bill we have currently pending before this body and will soon now pass to the House of Representatives is our best attempt to reach an appropriate compromise, to reach an appropriate balance in the interest of people and their jobs, agriculture, and fish and wildlife purposes. All three are important. And each of those interests in water believe their particular interest is absolutely critical, not just important. So we need to address those three interests. The bill before us, I argue, does that, and H.R. 429 does not.

It is important to protect our environment. It is important to protect fish and wildlife, and it is particularly important to protect those small businesses that work in the fishing industry.

So we need an approach that, in fact, will address their needs, those small entrepreneurs who worked very hard to eke out a living in the fishing industry. We need to protect them and help them. We also need to do whatever we can to protect the environment. I think the measure before us does those things.

Alternatively, the bill we will vote on tomorrow, I argue—and will argue just a bit more tomorrow, but not long—that H.R. 429 will go a long way toward addressing the needs, the real needs, of fish and wildlife. There is no doubt about that. But I argue that it will do it at the expense of the other important parts of the equation—people and their jobs, and agriculture. That, in fact, if passed and if signed—and I will do what I can to ensure that the President does not sign the bill and vetoes it—but if passed and signed, it will lead us to a decade of litigation, a fight over water that the State of California has never seen.

If one is familiar with the history of California, one well realizes that we in California have been fighting many years. Water fights between northeastern California and southern California, between the various users of water, have been violent even at times. In fact, it was Mark Twain that once said: Whiskey is for drinking, and water is for fighting.

So it has been the history of California in its battles over water. I hope that this bill before us, as it makes its way over to the House, that the House would come back and pass that bill to the President of the United States for his signature, and he will sign it, because I think that will avert yet another water war, a decade of litigation, in California.

So, in closing, I want to thank our majority leader, Senator MITCHELL,

our minority leader, Senator DOLE. I thank Senator BRADLEY, who has been more than generous, Senator WALLOP for his efforts on my behalf, Senator JOHNSTON, the chairman of our committee, who has also been very generous, and my colleagues who have worked so closely with me on this issue so critical to California, and the water projects part of the bill we will take up tomorrow in their interests in their States.

It has been a learning process for me. It has been a process in which, for my part, I hope that the people that I have worked with would say that he tried. He tried. That is about all we can ask of anyone, Mr. President, is that they try.

So, Mr. President, at this particular time, I will yield to the floor to Senator BRADLEY and yield all of my remaining time.

Mr. BRADLEY addressed the chair.

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

Mr. BRADLEY. Mr. President, before the distinguished Senator from California leaves the floor, let me say to him that I cannot think of anything else that he could have done to represent and push his position than he has done.

So when he said he hopes he will be thought of as someone who tried, let me say as the subcommittee chairman who has worked with him, that I salute him. He, indeed, has tried and tried very hard.

Mr. President, if I could address some of the loose ends of this argument, so that the RECORD will reflect clearly the strong and broad support for H.R. 429.

I want simply to, once again, read into the RECORD all of those people who have written in support of H.R. 429.

As I said earlier, the Bay Area Council, composed of 250 of the largest employers in the San Francisco Bay area; board of directors, Robert D. Perry, Federal Reserve Bank of San Francisco; James Brown, treasurer, Building Construction Trades; Council of Alameda County; Robert Fisher, director of San Francisco Foundation; William Seton, Chairman and CEO for American President Companies; Michael McGill, Bay Area Economic Forum and various mayors. Quite a distinguished group.

I will ask unanimous consent that the list be printed in the RECORD in support of H.R. 429.

Mr. President, in addition to the Bay Area Council, there is the Bay Area Economic Forum which is a strong supporter of this bill.

I ask unanimous consent that the membership of this group be printed in the RECORD.

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

THE BAY AREA ECONOMIC FORUM

The Bay Area Economic Forum is a public/private partnership of regional leaders concerned with economic issues facing the San Francisco Bay Area. Forum members are committed to fulfilling the economic potential of the area while maintaining its unique quality of life.

BOARD OF DIRECTORS

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Dr. Julius R. Krevans, Chancellor, University of California, San Francisco.

Michael S. McGill, Executive Director; Bay Area Economic Forum.

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Angelo J. Siracusa, President Bay Area Council.

Hon. Richard L. Spees, Council Member, City of Oakland.

William E. Terry, Executive Vice President, Hewlett-Packard Company.

Chang-Lin Tien, Chancellor University of California, Berkeley.

RADM Robert L. Toney, USN (Ret.), President & CEO, Oakland Chamber of Commerce.

Revan A.F. Tranter, Executive Director Association of Bay Area Governments.

James A. Vohs, Chairman, Bay Area Council and Chairman of the Board Kaiser Foundation Health Plan, Inc.

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Mr. BRADLEY. Then, of course, a very important endorsement comes from the California Business Roundtable. I have already read into the RECORD the note from Mr. James Harvey. I simply want to read into the RECORD the names of those in the California Business Roundtable Water Task Force members, representing the 100 largest corporations and banks in California.

The task force consists of Mr. James Harvey, chairman of Transamerica Corp.; John E. Bryson, chairman and CEO, Southern California Edison Co.; Harry M. Conger, chairman and CEO of Homestake Mining Co.; Lawrence A. Del Santo, chairman and CEO, Lucky Stores, Inc.; Sam Ginn, chairman and CEO of Pacific Telesis Group; Paul Hazen, president of Wells Fargo Bank; Bruce Karatz, president and CEO of Kaufman & Broad Home Corp.; Thomas L. Lee, chairman and CEO of the Newhall Land & Farming Co.; Richard M. Rosenberg, chairman and CEO of Bank of America.

Mr. BRADLEY. That list also includes Alan Seelenfreund, chairman and CEO of McKesson Corp.; Phillip L. Williams, vice chairman of the Times Mirror Co.

This is a distinguished list of people who have one objective, and that is to create jobs in California. They strongly support this bill, because they recognize that it will create jobs in California, and they recognize that water is needed in the commercial and industrial sector. Without that water, they cannot expand to create the number of jobs that they otherwise would create.

I want to address, if I could, the letter from the Secretary of the Interior, Mr. Lujan. I would like to quote certain segments of the letter and then offer my analysis of them.

He says, for example: "It provides for a number of expensive measures," referring to H.R. 429, "many of which have not been subjected to feasibility analyses and would be financed largely at Federal expense."

The structural measures in title XXXIV came from Senator SEYMOUR's bill and from Senator Wilson's bill in the 101st Congress. They were proposed by growers and by a State-based task force so the only measures in here have

actually come from California Representatives.

Next Secretary of the Interior Lujan states: "It affects" meaning H.R. 429, "the State of California's authority in matters of water allocation, distribution and use; and conflicts with the equitable distribution of responsibilities embodied in the Coordinated Operating Agreement".

To the contrary the bill contains a detailed savings clause requiring the Secretary to comply with State water law and the Coordinated Operations Agreement in implementing the bill.

The bill contains a section—opposed by the growers—that preserves the State of California's authority to condition the CVP's water rights for any purpose. I would like to repeat that. The bill contains a section that preserves the State of California's authority to condition the CVP's water rights for any purpose.

Mr. President, the greatest threat to California's authority over CVP water is the Secretary's continuing efforts to renew CVP water contracts for another 40 years. That is the fact. The Secretary goes on to say:

> Contrary to one of its stated purposes, the title reduces the operational flexibility needed to achieve increased multiple uses of water, including the ability to provide water for wildlife refuges.

The only flexibility that this bill reduces is the Secretary's flexibility to dry up rivers and wildlife refuges. This bill authorizes voluntary water transfers, water conservation, conjunctive use facilities, new conveyance facilities, and requires the Secretary to develop a plan to increase the overall water supply of the CVP by as much as 1 million acre-feet.

Next, the Secretary says:

> It diverts repayment revenues to a special interest fund.

The bill does nothing of the kind. It diverts increased repayment revenues raised from water transfers, which would be impossible without this bill. It diverts—it actually raises it in places—to a fund to be used to mitigate for the project's environmental damage. The money is raised in the CVP and used in the CVP.

Next the Secretary says:

> It mandates operational changes which fail to consider the consequences on other statutory or current contractual obligations. The current delivery infrastructure and contractual water commitments are not designed to accommodate such a large mandatory allocation to fish and wildlife flows. In most years, reclamation would be unable to meet current contracts or provide stable water levels for reservoir recreation and power generation.

Just a couple points on that.

Current operations fail to consider the consequences on fish and wildlife. That's why the project is in so much trouble under State and Federal environmental laws.

The current delivery structure and contractual water commitments must be changed so that the project stops causing so much damage. That's why the bill authorizes changes in the project's delivery structure and contractual water commitments.

The Bureau's inability to meet—this is an important point—current contracts is simply a result of the fact that current contracts is the project's water.

And the Chair, the distinguished Senator from Colorado, I am sure would be interested in this point. The Bureau's inability to meet current contracts is simply the result of the fact that they have overcontracted the project's water. In other words, the CVP has about 9 million acre-feet under contract but in a normal year it delivers only about 6–7 million acre-feet.

This is one of the mind-boggling facts of this whole issue which I think the distinguished Senator from Colorado, who is in the Chair, has indeed an abiding interest in. I know he will look carefully at this whole area which is the overcontracting of water. The project has never produced 9 million acre-feet. So why did the Bureau of Reclamation contract for 9 million acre feet?

That is a mystery that we hope to get to the bottom of next year.

Further, reservoir recreation is not an authorized project purpose, and power generation is a subordinate purpose behind irrigation, municipal and industrial fish, and—under this bill—fish and wildlife mitigation.

Next, the Secretary of Interior in his letter goes on to state:

> The title's goal of "all reasonable efforts" to double the natural production of anadromous fish imposes unnecessary uncertainly on CVP users and makes it difficult to plan for either implementing the bill or mitigating its effects on agriculture.

The bill's doubling goal is taken directly from State law. It does nothing more than put the CVP under the same duty as the State Water Project.

The doubling goal, if enacted all by itself, might impose uncertainty on CVP users, but it is not by itself, it's accompanied by the explicit caps on the amount of water and money the CVP users can be called upon to contribute toward meeting the doubling goal.

Finally, Secretary Lujan states:

> The title also introduces a significant uncertainty in water contract provisions by reducing the length of renewed contracts, creating the ability to allocate water to fish and wildlife as contracts are renewed, and providing no requirement to renew contracts after an initial 25-year period.

I know the Chair, the distinguished Senator from Colorado, would like to hear this point. The Secretary of Interior has written in this letter that it is not enough to renew a contract guaranteed for 25 years. In my view that just reflects the Bureau's unbelievable determination to try to renew water contracts indefinitely. The Bureau wants to lock in 40-year-old patterns of water use for another 40 years and more 40 year periods after that.

I knew that this situation was very difficult to get compromised when, after we agreed that anyone holding a water contract will automatically get another 25 years and, at the end of that 25-year period, the Secretary may renew for another 25. I mean, 25 years from the time the contract expires—which would be in the middle of the 21st century—California might be a little different place than it is now. Those receiving the benefit said, "no," we want that benefit for the next 50 years. At that point I realized that ultimately we were not going to be able to get 100-percent agreement.

Now, there is one thing I would like to place also in the RECORD. One of the more disturbing features of whole debate on CVP reform has been the Bureau of Reclamation's steadfast opposition to even the most modest proposals to improve the CVP's environmental accountability. For example, just last week, the Bureau circulated a letter criticizing the offer House conferee's offered on CVP reform. In an ideal world, where good public policy reigned, the Bureau would have tried to help the conferees weigh the proposal. Instead, the Bureau did its best to mislead the conferees with dubious numbers, specious assumptions, and flawed conclusions.

To begin with, the Bureau's analysis completely ignores the future the project faces even in the absence of CVP reform legislation. The Bureau wants the reader to compare the House offer to some long-gone perfect world scenario, overlooking the inescapable fact that the easy days of CVP irrigation are gone for good—largely due to the Bureau's resistance to fixing environmental problems before they became emergencies. Some changes are coming soon; some have already happened. We know, what they are going to be. For example:

Winter-run chinook salmon will require, for the foreseeable future, at least 300,000 acre-feet per year of additional project yield. CVP bay-delta obligations will require at least 250,000 acre-feet per year of additional project yield. This sum amounts to only 5 to 10 percent of the additional bay/delta water needs identified by State and Federal fish and wildlife agencies in recent testimony before the State water resources control board. It would be significantly more than the 250,000.

Minimum releases to the Trinity River were increased to 340,000 acre-feet per year by secretarial decision in May 1991, thereby reallocating up to 117,000 acre-feet per year more than the Bureau's cited historic release levels.

Finally, there is a general agreement, reflected, among other places, in the Seymour and Dooley-Lehman-Condit proposals for CVP reform that

the CVP should provide up to 424,000 acre-feet per year of level 2 refuge supplies during normal water years, up to 188,000 acre-feet per year more than the historic refuge supplies referenced by the Bureau.

Taken together, the above elements alone could result in a reallocation of CVP yield totaling almost 900,000 acre-feet per year, but, in the absence of legislation, this reallocation could happen by virtue of court decree, could happen by secretarial decision, could happen a number of ways up to 900,000 acre-feet. This reallocation would happen with no Federal support or authority for conservation, no off-project transfers, no conjunctive use or water banking. None of those factors was incorporated in the Bureau's retrospective analysis.

The Bureau's also focuses on a period of severe and unprecedented drought. In sum, they've put together a scare story. To merely superimpose on historic project operations the nominal requirements of the House offer completely ignores: First, the normal flux of wet and dry years in western surface water hydrology; and second, the demand side of the equation including price response—prices go up consumption down.

Moreover, the letter entirely ignores project supplies and deliveries in the Friant Division, which ranged from 540,000 AF/yr to 1.1 million AF/yr during the study period selected.

The Bureau asserts, without any documentation, that the House offer would severely restrict the CVP's ability to provide water to municipalities, farms, households and industries in most years. Yet the Bureau completely ignores the effects on water supply and demand resulting from improved water management, conservation, banking, transfers, and conjunctive use—all primary elements of the House offer. These techniques may not be how things were done during the Bureau's heyday, they may not like them, but they are certainly major features of the way everyone in California expects to manage water today and in the future.

The Bureau asserts that drought relief associated with water transfers under the House offer is highly questionable because otherwise available water supplies are irrevocably dedicated to fish and wildlife purposes. This ignores, at a minimum, the potential for normal-year/drought-year alternatives, such as options and exchanges with other sources of supply—alternatives that any creative water manager would pursue as an element of a CVP water-transfer portfolio. Finally, it also ignores the importance of water banking, and more generally the use of CVP conveyance capacity by all Project entities in the marketing of supplies "off Project."

In other words, Mr. President, the Bureau wants the reader of this document to leap to the conclusion that changes in CVP deliveries translate immediately and inescapably into economic ruin. Actual experience during this drought indicates that the CVP agricultural water users are far more resilient than the Bureau would have us believe. Consider, for example, the case of Westlands Water District. From data presented in a report entitled "Analysis of the Economic Impacts of the Central Valley Project Improvement Act" (Zilberman et al., March 1992), what can be observed for the period 1987–90 is as follows:

First, a 31-percent decline in available CVP supplies;

Second, a 17-percent decline in total water use—including groundwater;

Third, a 5-percent increase in irrigated acreage;

Fourth, an 8-percent increase in crop receipts; and fifth, a 30-percent increase in crop receipts per acre-foot of water.

Now what they did was shift to higher value crops and use water more efficiently.

According to the Congressional Research Service, actual experience during the present drought indicates that:

The end result of a significant reduction in surface water deliveries or a significant increase in the cost of water to agriculture would probably include:

Reductions in the acreage of farm program crops such as rice, cotton, and grain.

Remember, 50 percent of the water goes to 4 crops which produce 11 percent of all the crop value. People should stop investing water in those crops and go to higher value crops.

Maintenance of tree and vine crop acreage, with perhaps some yield reductions, at least through their economic life.

More specialization in high value crops, as dictated by current market conditions. At present these include vegetables, along with tree and vine crops.

Retirement of marginal farmland. . . .

Do not grow if it is not producing.

Lower agricultural land values leading to increased municipal and industrial development of farmland in some areas. However, declining land values may be more than offset by increases in land values in areas that either receive more water or have a more stable assurance of long-term supplies.

Additional capital investment in technology that improves the conservation and efficiency of irrigation water.

More rapid depletion of underground aquifers with reduced supplies and higher costs for all underground water users.

In other words, what happens in a drought is you use water more efficiently, you conserve, you move to a higher value crop. Pretty simple. A lot of farmers know it, and they are doing it. That is why even in drought circumstances farmers are able to increase the value of their crop.

The Bureau's letter complains about—and completely misstates—the House offer's "obligation to concurrently mitigate project operations." The third paragraph on page 1 of the Bureau's letter implies that "concurrent mitigation of operations, the achievement of as yet undetermined San Francisco Bay and Delta outflows, and the implementation of a program to fully mitigate fishery impacts associated with the operations of the Tracy Pumping Plant" are somehow additive obligations, one burden heaped upon another. Again, the contrary is true. These are concurrent and complementary obligations—not additive. They are, in fact, merely three ways of restating the same environmental obligation.

The Bureau is correct in asserting that meeting these obligations may require some pumping curtailments during the late winter and spring months. This will not, however, necessarily adversely affect the ability to deliver irrigation water south of the Delta, although it may, and should, entail some change in the timing of the pumping. As additional south-of-Delta storage becomes available—Kern water bank, Los Banos Grandes, or demand is reduced—dry-year land fallowing, retirement of drainage problem lands, improved conjunctive use of groundwater—supply impacts associated with this temporal displacement in pumping would become negligible.

The Bureau's letter objects to the House offer's requirement that the CVP meet or attempt to meet temperature requirements in the Sacramento River, suggesting that to do so may not be operationally feasible. In fact, the contrary is true: meeting temperature requirements would be one of the purposes of the block of water dedicated to fish and wildlife purposes under the bill. That new asset, combined with the ability to carry the water over from year to year, will greatly improve the ability of Shasta reservoir to meet Sacramento River temperature requirements.

Moreover, in making their case on this point, the Bureau suggests that it is currently bound to meet certain goals for storage in Shasta that, in fact, don't match the Bureau's actual practice in recent years. "Watch what we say, not what we do". Consider, for example, assumption No. 2 in the Bureau's analysis, which states that "storage of 8 million acre-feet as of September 30 each year is desirable to provide reasonable assurance of an adequate water supply to all beneficial uses * * *" including, presumably, temperature control for endangered salmon.

Why, then, did the Bureau sustain 100 percent deliveries—including the sale of surplus water—through 1989, in the midst of the current drought, thereby depleting carryover storage to 4.6 million acre-feet?

Why, in the same year, was the Bureau attempting to market and commit an additional 1.5 million acre-feet for consumptive uses?

Recognizing the potential tension between increased minimum flows to improve temperatures for fish and desired increases in carryover storage, the House offer provides not only for improved operations and revised carryover objectives, but for construction and funding of temperature control devices at Shasta, Trinity, and Lewiston Dams.

By the way, the House offer does not create new temperature standards for the Sacramento. They are in place today, under existing State law. If the Bureau had complied with State law, the winter run chinook very probably would not be in anything like the dire condition it is in today. Unfortunately, State law does not seem to be something the Bureau has shown much concern about in the past.

Mr. President, I will make one last point. Throughout this debate, the distinguished Senator from California has said if H.R. 429 passed, there would be a loss in farm income in the State of $4.5 billion. I would respectfully disagree with my colleague from California.

The reason I do not believe this bill would produce a loss of $4.5 billion in the sector is because the total agriculture sector of the State is $18.5 billion. The total agriculture value attributable to the Central Valley project is $3.5 billion. The Senator from California is asserting that if we reduce the amount of water going to Central Valley agriculture by 15 percent, the result will be a loss which is greater than the total value of all of the crops produced in the Central Valley project. It is on its face an unsupportable position, to say the least.

How could he have asserted that if you simply cut back on the amount of water going to Central Valley project agriculture by 15 percent, you will lose more agriculture product, economic product, than exists in the entire Central Valley project? One could have to say because he was using a bad economic model, to be generous.

He is probably using a bad economic model. I think I have discovered that model. It is called the California Department of Food and Agriculture. It is that model he has used to get his $4.5 billion figure, which on its face is nonsensical.

I then asked the most respected economic consulting group in the Central Valley of California, Law & Economics Consulting Group out of the University of California, Davis, to take a look at this and tell me what they thought. Their response was:

CDFA's prediction of lost farm income represent a very unlikely outcome of the proposed legislation. The CDFA analysis strongly overestimates the possible impact of the water supply reduction for the simple reason that growers will cease production of low-value crops before they will alter their production decisions concerning high-value crops. The experience of California's recent drought shows clearly that when farmers are denied water, they reduce irrigation to the lowest-value crops while continuing to irrigate high-value crops.

That is the point I made in my previous comments.

A more appropriate analysis of the impacts of the CVPIA must recognize that the reduction in water use will primarily affect lower-value crops and compute outcomes accordingly.

In other words the model is flawed.

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

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

LAW & ECONOMICS
CONSULTING GROUP, INC.,
*Berkeley, CA, May 14, 1992.*

Hon. GEORGE MILLER,
*Chairman, Committee on Interior and Insular Affairs, House of Representatives, Longworth Office Building, Washington, DC.*

DEAR CHAIRMAN MILLER: The Law & Economics Consulting Group, Inc., has been requested to review two analyses of the economic impacts of the Central Valley Project Improvement Act (CVPIA); one prepared by the California Department of Food and Agriculture (CDFA) in March 1992 and one generated recently by the California Agricultural Resources Management (CARM) model developed by economists at the University of California. It is our opinion that the CDFA analysis is fundamentally flawed and grossly overstates the actual economic impacts of the proposed legislation. We conclude further that the CARM impact analysis is a far more accurate representation of the economic effects of the proposed legislation. This model predicts a reduction in gross farm income of $262 million and an elimination of 570,000 acres from production following a 1.5 million acre feet reduction in water supplied to farmers by the CVP.[1]

CDFA ANALYSIS

The CDFA analysis assumes extreme rigidity in the allocation of supply reductions and in the response on individual farmers. Specifically, the analysis assumes that there will be no water trading and that agricultural output will be reduced in proportion to water reductions.

CDFA's prediction of lost farm income represent a very unlikely outcome of the proposed legislation. The CDFA analysis strongly overestimates the possible impact of the water supply reduction for the simple reason that growers will cease production of low-value crops before they will alter their production decisions concerning high-value crops. The experience of California's recent drought shows clearly that when farmers are denied water, they reduce irrigation to the lowest-value crops while continuing to irrigate high-value crops. A more appropriate analysis of the impacts of the CVPIA must recognize that the reduction in water use will primarily affect lower-value crops and compute outcomes accordingly.

[1] It is our understanding that the 1.5 MAF of fish and wildlife water in question will normally result in substantially less than 1.5 MAF reduction in water supplied to farmers. In above average years, available supplies tend to exceed total CVP demands and the "surplus" would be used to meet the CVPIA's fish and wildlife requirements; in drought years, the 1.5 MAF will itself be reduced by applicable deficiency criteria. To the extent that CVP supply reductions are minimized, the impacts stated herein will also be reduced.

CARM ANALYSIS

A far more accurate and sophisticated analysis is that incorporated in the 1987 California Agricultural Resources Management (CARM) model developed at the University of California to conduct policy impact analyses. CARM is a quadratic programming model that gauges the response of farmers to policy and environmental changes in six subregions: the Sacramento Valley, the Northern San Joaquin Valley, the Central San Joaquin Valley, the Southern San Joaquin Valley, and remainder categories for counties north and south of the Bay area. The Table below summarizes the changes anticipated by the CARM model:

The Impact of a 1.5 MAF Reduction in CVP Water Supply on Gross Farm Income:

*Change in Gross Farm Income*

[In millions of dollars]

| Region: | *Amount* |
|---|---|
| SACV | −27 |
| NSJV | 6 |
| CSJV | −174 |
| SSJV | −79 |
| NR | 1 |
| SR | 11 |
| Total | −262 |

The model predicts that the loss in gross farm income associated with the reallocation of 1.5 million acre feet of water is only $262 million. The CARM model further suggests that the proposed legislation will result in the elimination of 570,000 acres of land from production; most of this removal will be in low- or medium-value crops, including cotton, alfalfa, hay, rice, and wheat. These estimates are significantly below the CDFA's predictions of between $1.6 and $2.2 billion in lost farm income and the elimination of over 800,000 acres of farmland.

The CARM model is not a perfect predictor of the impacts of the CVPIA for several reasons. Most importantly, the CARM model assumes a well-functioning market for water. To the extent that such a market will function imperfectly, at least the short-run, the model underestimates the actual impact on the farm sector. On the other hand, the CARM model understates the actual impacts of a reduction in supply in that it does not consider the possibility for adoption of water-saving irrigation technologies by farmers in the affected regions. While there has been some movement towards adoption of advanced drip irrigation in response to the recent drought, farmers have been far more likely to increase their attention to irrigation management by adjusting the quality of existing furrows. There is clearly room for adoption of more advanced technologies. With these considerations in minds, it is our opinion that the impact analysis generated by the CARM model represent the actual consequences of the CVPIA far more closely than do the estimates offered by the CDFA.

We hope that this brief analysis is helpful in your efforts to resolve this important matter and responsive to the requests we have received to address the economic impacts of the proposed legislation. If you have any questions regarding this letter, or wish to discuss our work further, please do not hesitate to write or call.

Sincerely,

DAVID ZILBERMAN,
*Professor of Agricultural and Resource Economics, University of California at Berkeley.*

DAVID SUNDING,
*Assistant Professor of Economics and Law, Boston College.*

Mr. BRADLEY. Mr. President, one should not need even that to realize that the estimate is wrong. How could 15 percent reduction of water produce a loss in crop value that exceeds the total crop value of the whole Central Valley Project?

I might say this consulting group goes on to say that, instead of $4.5 billion economic value loss from Agriculture, they conclude that, even with a reallocation of 1.5 million acre-feet, the total lost value in farm income would be $262 million. Since here we are only talking about 800,000 acre-feet, we are really talking about a half of that, $130 million, $140 million out of $3.5 billion.

One final comment points out that the State of California has a gross State economic product of close to $700 billion. In 1992, it is projected to be $752 billion, of which agriculture is projected to be about $16 billion, $18 billion manufacturing is $117 billion; finance, insurance, and real estate is $139 billion; services is $146 billion; transportation is $49 billion; wholesale trade is $46 billion.

So clearly it is a very diverse State, and yet a State in which out of $700 billion-plus, $760 billion gross State economic products, agriculture is $18 billion, and it uses 80 to 85 percent of the water. A 10-percent reduction in agriculture water use means you double the amount available in the commercial and residential sector.

The economic growth and diversity of California requires that we alter the way water is used in California. We simply cannot continue committing those amounts for agriculture.

In terms of employment, the State has 12.7 million people employed of which agriculture represents 400,000. Government services is 3.5 million; finance is 800,000; retail is 2.1 million; manufacturing is 1.9 million; transportation and utilities is 600,000; Government is 2 million; and construction is 521,000. All of these groups have more workers.

Mr. President, one final set of statistics so anyone reading this RECORD will be able to see we have tried to be fair. You have a gross economic product in the State of about $750 billion; $760 billion, with agriculture products of about $18 billion, and CVP agriculture products at $3.5 billion.

The CVP share of the economic product is 0.45 percent of the California economic product, and the CVP environmental water as a share of the California economic product is about .063. Basically, it is a little more than six one-hundredths of a percent. It is ludicrous to argue this would ultimately be the end of California agriculture. Or have a significant adverse impact on the state of the economy.

So, Mr. President, one last point. And this is, earlier in the debate the distinguished Senator from California made the argument that he is all against the project purpose section that we have in the bill. Let me just point out that the project purpose that we have in the bill is taken directly from the bill that was introduced by Congressman DOOLEY, by Congressman LEHMAN, and endorsed by the distinguished Senator from California himself. So the language in project purpose that he criticized earlier came directly from a bill he supported.

Mr. President, I am about ready to wrap up this phase of this debate and move on to tomorrow. Tomorrow, of course, we will be dealing with the whole of H.R. 429. At that time we will have an up-or-down vote. It is my hope there will be strong support for the legislation. But before we close this debate, I would like one last bit of information to be in the RECORD, because some people have asserted that 800,000 acre-feet of water for fish and wildlife is excessive; it will never be achieved; it will create an agricultural depression.

Let me suggest several ways that that 800,000 acre-feet could easily be obtained.

First, water conservation in areas tributary to the Delta;

Second, conjunctive use—ground water pumping in lieu of surface water diversions—in the Delta and Sacramento Valley, 200,000 to 300,000 acre-feet; $40 to $60 per acre-foot;

Third, dry year fallowing in areas tributary to the Delta—300,000 to 500,000 acre-feet; $125 to $200 per acre-foot;

Fourth, delta islands water storage and release—150,000 to 270,000 acre-feet; $150 per acre-foot;

Fifth, increased use of the four new State project pumps—66,000 acre-feet up to 344,000 acre-feet if Los Banos Grandes reservoir is built;

Sixth, rice field water storage—little new water, but much better timing of releases for fish and much improved wildlife habitat; $4 per acre-foot;

Seventh, purchase of stored water from the west slope of the northern Sierra, including Yuba and Placer counties—130,000 to 200,000 acre-feet; $5 to $125 per acre-foot; and

Eighth, Stanislaus River Basin and Calaveras River water use program—155,000 acre-feet.

That is all on the supply side. Those are all suggestions, how you could end up improving the supply side by a total of way over 800,000 acre-feet.

On the demand side of course, which none of the Bureau's analyses ever looked at, are the following options to reduce demands for pumping from the delta.

First, water conservation in urban and agricultural areas south and west of the delta—urban estimate 1 to 1.8 million acre-feet; $300 per acre-foot;

Second, conjunctive use of surface and ground water in the San Joaquin Valley—50,000 to 300,000 acre-feet;

Third, dry year fallowing in agricultural areas south of the delta—included in 300,000 to 500,000 acre-foot estimate in A(3) above;

Fourth, reduction of water use in the drainage problem area of the San Joaquin Valley—100,000 to 240,000 acre-feet by year 2000, additional 150,000 to 300,000 by 2020;

Fifth, water recycling in urban areas—250,000 to 400,000 acre-feet.

Then we finally get to water recycling and urban areas, some of the waste water recycling that we have in this bill for San Diego and a number of other places in California, could save about 250,000 to 400,000 acre-feet. Getting to 800,000 acre-feet is not a serious problem, or a serious burden on anyone.

So, Mr. President, I have done my best to accommodate the distinguished Senator from California. We held many hearings. We worked on things together for a long time. And the Senate tomorrow will vote on H.R. 429, that includes not only the Central Valley project that we have discussed here for nearly 6 hours today but also 20 other western water projects, many of which have landmark environmental provisions.

Mr. President, I would be prepared to yield back the remainder of my time with the understanding, when we are finished, the bill of the distinguished Senator from California will be read three times, passed, and go to the House. Where it will remain. I want to thank the distinguished Senator from California.

I would also like to say to the Chair I appreciate his forbearance here, and I look forward to tomorrow's debate.

The PRESIDING OFFICER. Under the previous order, S. 3365, a bill entitled the Central Valley Project Fish and Wildlife Act of 1992 is considered read three times, passed, and the motion to reconsider the vote is laid upon the table.

So the bill (S. 3365) was passed as follows:

S. 3365

*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 "Central Valley Project Fish and Wildlife Act of 1992."

**SEC. 2. STATEMENT OF PURPOSE.**

The purposes of this Act are:

(a) to mitigate, protect and restore fish and wildlife habitat in the Central Valley of California as specifically provided for within this Act;

(b) to partially mitigate the impacts of the Central Valley Project on fish and wildlife habitat by requiring the implementation of specific habitat restoration actions;

(c) to provide for the continued orderly operation of the Central Valley Project;

(d) to encourage, through cost sharing and other related actions, the cooperation and contribution by the State of California and other non-Central Valley Project entities toward the mitigation, protection, and restora-

tion of fish and wildlife habitat within the Central Valley of California;

(e) to increase the benefits provided by the Central Valley Project to California through the expanded use of water conservation and water transfers;

(f) to achieve the purposes of this Act through implementation of projects, procedures and programs which do not result in further degradation of resources, including, but not limited to, groundwater, of the area presently served by the Central Valley project; and

(g) to coordinate the efforts and actions authorized in this Act with other activities being undertaken within the State of California to insure that work is not unnecessarily duplicated and is coordinated to minimize inconsistent and counterproductive results and maximize the benefits to be obtained.

(h) to study transfer of the Central Valley Project to the State of California.

**SEC. 3. DEFINITIONS.**

As used in this Act:

(a) The term "anadromous fisheries" includes runs of salmon, striped bass, steelhead trout, sturgeon, and American shad that ascend the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Delta to reproduce after maturing in the San Francisco Bay and/or the ocean.

(b) The terms "artificial propagation" and "artificial production" include spawning, hatching, incubating, and rearing fish in a hatchery or other facility constructed for fish production.

(c) The term "Central Valley" means the watershed of the Sacramento and San Joaquin Rivers and their tributaries including the Sacramento-San Joaquin Delta.

(d) The term "Central Valley Project" means the Central Valley Project, California, as authorized in the Act of August 26, 1937 (50 Stat. 850) and all acts amendatory thereto.

(e) The term "Central Valley Project Service Area" means that area where the Secretary is authorized by law to provide water service and other benefits of the Central Valley Project.

(f) The term "Central Valley Project water" means all water that is diverted, stored or delivered by the Bureau of Reclamation pursuant to water rights acquired pursuant to California law, including water made available under the so-called "exchange" and Sacramento River settlement contracts.

(g) The term "Central Valley Project Water Contractor" means any entity which contracts for Central Valley Project water.

(h) The term "Central Valley Project Water Contractors Fund" means the fund established in section 4(h) of this Act.

(i) The term "Central Valley Refuges" includes the Sacramento, Delevan, Colusa, Sutter, Kesterson, San Luis, Merced, Pixley, and Kern National Wildlife Refuges, the Grassland Resource Conservation District, the Gray Lodge, Los Banos, Volta, and Mendota State Wildlife Areas, and those National Wildlife Refuges and State Wildlife Areas identified in the Bureau of Reclamation's report entitled "San Joaquin Basin Action Plan/Kesterson Mitigation Plan" (1989).

(j) The term "critically overdrafted groundwater basin" means those areas defined by the California Department of Water Resources, in its Bulletin No. 118-80, to have a critical groundwater overdraft problem.

(k) The term "natural production" means fish produced to adulthood without the direct intervention of man in the spawning or rearing processes.

(l) The term "Refuge Water Supply Report" means the report entitled "Report on Refuge Water Supply Investigations" published in March 1989 by the Bureau of Reclamation, Department of the Interior.

(m) The term "Secretary" means the Secretary of the Interior or his designee, except as otherwise provided.

(n) The term "transfer" means:

(1) all conjunctive use programs that provide for the transfer of all or a portion of the surface water made available by the use of groundwater as a substitute supply to another water use,

(2) exchanges between water users,

(3) groundwater storage programs that provide for transfer of all or a portion of the stored water to another water user directly or through exchange,

(4) conservation programs that provide for all or a portion of the water conserved to be transferred to another water user, or

**SEC. 4. LIMITATION ON CONTRACTING AND CONTRACT REFORM**

(A) NEW CONTRACTS.—The Secretary shall not enter into any new short-term, temporary, or long-term contracts or agreements for water supply from the Central Valley Project, with terms in excess of three years, for any purpose other than fish and wildlife before:

(1) the provisions of subsections 6(c)(1) and 6(c)(2) of this Act are met;

(2) the California State Water Resources Control Board concludes the review ordered by the California Court of Appeal in the *United States* versus *State Water Resources Control Board*, 182 Cal. App. 3d 82(1986), of San Francisco Bay/Sacramento-San Joaquin Delta Estuary water quality standards and determines the means of implementing such standards, including any obligations of the Central Valley Project; and

(3) at least one hundred and twenty days shall have passed after the Secretary provides a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives explaining the obligations, if any, of the Central Valley Project system, including its component facilities and contracts, with regard to achieving San Francisco Bay/Sacramento-San Joaquin Delta Estuary water quality standards as finally established and approved relevant State and Federal authorities, and the impact of such obligations on Central Valley Project operations, supplies, and commitments.

(b) RENEWAL OF EXISTING LONG-TERM CONTRACTS.—

(1) Notwithstanding the provisions of the Act of July 2, 1956 (70 Stat. 483), the Secretary shall, upon request, renew all existing long-term repayment contracts providing for the delivery of water or water service contracts from the Central Valley Project for a period of 25 years; and for successive periods of 25 years each:

(2) Upon renewal of any long-term repayment contract providing for the delivery of water or water service contracts from the Central Valley Project, the Secretary shall insure that all pricing requirements of reclamation law which exist at the time of renewal are incorporated within such renewed contracts.

(c) WATER THROUGH COURT DECREE.—Notwithstanding any other provision of this act, the provisional water provisions in the Stipulation, and the Order and Judgment, dated December 30, 1986, by the United States District Court for the Eastern District of California in the consolidated cases entitled Barcellos and Wolfsen, Inc. et al v. Westlands Water District, et al. (No. CV 79-106 EDP) and Westlands Water District, et al v. United States, et al. (No. CV F-81-245 EDP) shall, for the purposes of this section, be deemed to be an existing long-term water service contract; subject to renewal;

(d) Exceptions to Limits on New Contracts; the prohibition on execution of new contracts under subsection (a) of this section shall not apply to contracts authorized pursuant to Public Law 101-514, Sec. 206; Stat. 2087; Public Law 102-250; section 203 of the flood control act of 1962, to enter into a long-term contract in accordance with the reclamation laws with the Tuolumne Regional Water District, California, for the delivery of water from the New Melones project to the county's water distribution system and a contact with the Secretary of Veteran Affairs to provide for the delivery in perpetuity of water from the project in quantities sufficient, but not to exceed 850 acre-feet per year, to meet the needs of San Joaquin Valley National Cemetery, California, and to enter into a water service contract authorized for the Watsonville subarea of the San Felipe Division of the Central Valley Project pursuant to Public Law 90-72 upon completion of the plan of study.

**SEC. 5. WATER PRICING REFORM.**

(a) All Central Valley Project repayment contracts providing for water service and water service contracts for agricultural, municipal, or industrial purposes that are renewed after the date of enactment of this Act shall provide that all project water subject to contract shall be made available to districts, agencies, and other contracting entities pursuant to a system of tiered water pricing. Such a system shall specify rates for each district, agency or entity based upon an inverted block rate structure with the following provisions:

(1) The first rate tier shall apply to a quantity of water up to 20 percent of the contract total and shall be set at one-half the applicable contract rate;

(2) The second rate tier shall apply to the quantity of water over 20 percent and under 80 percent of the contract total and shall be set applicable to contract rate;

(3) The third rate tier shall apply to that quantity of water over 80 percent of the contract total and shall be set at one and one-half times the applicable rate; and

(4) The Secretary shall charge contractors only for water actually delivered.

The tiered water pricing system established in this subsection shall apply only to class I water, and not to class II water, in the Friant Division of the project. It shall also apply only to firm, and not to interim, intermittent and provisional water in other divisions of the water project.

(b) All Central Valley Project repayment contracts providing for water service and water service contracts for agricultural, municipal, or industrial purposes that are entered into after the date of enactment of this Act, shall provide that all project water subject to contract shall be made available to districts, agencies, and other contracting entities pursuant to a system tiered water pricing. Such a system shall specify rates for each district, agency, or entity based on an inverted block rate structure with the following provisions:

(1) The first rate tier shall apply to a quantity of water up to 80 percent of the contract total and shall be the applicable contract rate;

(2) The second tier shall apply to the quantity of water over 80 percent of the contract total and shall be one and one-half times the applicable contract rate; and

(3) The Secretary shall charge contractors only for water actually delivered.

The tiered water pricing system established in this subsection shall apply only to firm, and not to interim, intermittent and provisional water.

**SEC. 6. PROTECTION, RESTORATION, AND MITIGATION OF CENTRAL VALLEY FISH AND WILDLIFE HABITAT.**

(a)(1) AMENDMENTS TO CENTRAL VALLEY PROJECT AUTHORIZATIONS.—Act of August 26, 1937. Section 2 of the Act of August 26, 1937 (Chapter 832, 50 Stat. 850), as amended, is amended—

(A) in the second proviso of subsection (a), by inserting "and mitigation, protection and restoration of fish and wildlife," after "Indian reservations,".

(B) in the last proviso of subsection (a), by striking "domestic uses;" and inserting "domestic uses and fish and wildlife mitigation, protection and restoration purposes;"

(2) MITIGATION, PROTECTION, AND RESTORATION.—The Secretary's participation in the development and implementation of the programs, activities and facilities authorized in this section shall be deemed to meet the mitigation, protection and restoration purposes of subsection 6(a).

(b) GENERAL AUTHORITY.—The Secretary shall:

(1) Implement the actions established by sections 6(c)(1), 6(c)(2) and 6(c)(3) and 6(c)(4).

(2) Develop, select, and implement actions, using the criteria established in section 6(e), that address the fish and wildlife habitat issues listed in sections 6(c)(1), 6(c)(2), 6(c)(3) and 6(c)(4).

(c)(1) ACTIONS AND FACILITIES.—Subject to limitations contained in sections 6(f)(6) and 6(f)(7), the following fish and wildlife habitat protection, restoration, and enhancement actions shall be implemented by the Secretary.

(A) Negotiation and execution of an agreement with the California Department of Fish and Game by December 31, 1992 which, when implemented, will mitigate the direct fishery losses associated with the operation of the Tracy Pumping Plant. Direct losses are defined as fish lost after they enter the Tracy Pumping Plant intake channel, taking into account numbers of fish that survive and are returned to the Sacramento-San Joaquin Delta. The cost of this action shall be allocated under section 6(f)(1).

(B) Negotiation and execution of an agreement with the California Department of Fish and Game by December 31, 1994 which, when implemented, will mitigate for direct fishery losses associated with the operation of the Contra Costa Canal Pumping Plant No. 1. Direct fishery losses are defined as fish lost after they enter Rock Slough. The cost of this action shall be allocated in the same manner as costs associated with the Contra Costa Canal are currently paid.

(C) Installation and operation of a structural temperature control device at Shasta Dam and development and implementation of modifications in Central Valley Project operations, if needed, by December 31, 1995, to allow for control of water temperatures in the upper Sacramento River from Keswick Dam to Red Bluff Diversion Dam sufficient to protect salmon. The cost of this action shall be allocated under section 6(f)(1).

(D) Coleman National Fish Hatchery shall be rehabilitated and expanded by implementing the United States Fish and Wildlife Service's Coleman National Fish Hatchery Development Plan by December 31, 1995. The Secretary shall negotiate and execute a contract for the operation of the hatchery by the California Department of Fish and Game. The contract shall provide that its operation shall be coordinated with all other mitigation hatcheries in California. In addition, the Keswick Dam Fish Trap shall be modified to provide for its operation at all project flow release levels. The cost of this action shall be allocated under section 6(f)(1).

(E) The negotiation and execution of an agreement with the California Department of Fish and Game, within one year after the enactment of this Act, which, when implemented, will eliminate, to the extent practical, losses of salmon and steelhead trout due to flow fluctuations caused by the operation of Keswick, Nimbus, and Lewiston Regulating Dams. The agreement shall be patterned after the agreement between the California Department of Water Resources and the California Department of Fish and Game with respect to the operation of the California State Water Project Oroville Dam complex. Any costs associated with this Agreement shall be non-reimbursable.

(F) A gravel replenishment program shall be developed and implemented by December 31, 1993 for the purpose of restoring and replenishing, on a continuous basis, spawning gravel lost due to the construction and operation of Shasta, Folsom and New Melones Dams, bank protection programs, and other actions that have reduced the availability of spawning gravel in the upper Sacramento River from Keswick Dam to Red Bluff Diversion Dam, and in the American and Stanislaus Rivers downstream of Nimbus and Goodwin Dams, respectively. The cost of this action shall be allocated under section 6(f)(2).

(G) A Delta Cross Channel monitoring and operational program shall be develop and implemented, within one year after the enactment of this Act, for purpose of protecting striped bass eggs and larvae as they approach the Delta Cross Channel gates. This program includes, but is not limited to, closing the Delta Cross Channel gates during times when significant numbers of striped bass eggs and larvae approach the Sacramento River intake to the Delta Cross Channel. Since this action will, by its nature, also restrict pumping at the Tracy Pumping Plant, other restrictions on the operation of the Delta Tracy Pumping Plant, which may currently exist to protect striped bass eggs and larvae, shall be modified, relaxed or eliminated to comport with this action. The cost of this action shall be allocated under section 6(f)(1).

(H) The Secretary, in coordination with the California Department of Fish and Game, shall, within one year after the enactment of this Act, establish a comprehensive assessment program to monitor fish and wildlife resources in the Central Valley and to assess the biological results of actions implemented pursuant to sections 6(c)(1) and 6(c)(2). The cost of this action shall be allocated under section 6(f)(2).

(c)(2) HABITAT RESTORATION ACTIONS.—Subject to the limitations contained in sections 6(f)(6) and 6(f)(7), and utilizing the criteria in section 6(e), the Secretary shall develop, evaluate, select, and, unless otherwise specifically provided, by December 31, 2000, implement actions that will address the following fish and wildlife protection, restoration, and enhancement issues.

(A) The Secretary shall develop and implement a program to eliminate the need to reduce Keswick Dam releases every Spring to place the Anderson-Cottonwood irrigation District's Diversion Dam into operation, and every Fall to take the Dam out of operation. Additionally, the program will include structural measures need to address upstream migrating adult salmon passage problems at the Diversion Dam due to inadequate ladder attraction flows. The cost of this action shall be allocated under section 6(f)(3).

(B) The Secretary shall develop and implement a program to minimize fish passage problems for salmon at the Central Valley Project Red Bluff Diversion Dam. The cost of this action shall be allocated under section 6(f)(4).

(C) The Secretary shall develop and implement a program to augment natural production of salmon and steelhead trout population levels in the San Joaquin River system in above normal water years through means of artificial production. The cost of this action shall be allocated under section 6(f)(2).

(D) The Secretary shall construct and operate a new satellite hatchery to augment the single and dual purpose channels at the Tehama Colusa Fish Facility and to further mitigate the impact of Shasta Dam on fishery resources. The new satellite hatchery shall be located at a suitable location upstream of the Red Bluff Diversion Dam. This new hatchery shall be operated by the California Department of Fish and Game under contract with the Secretary. The cost of this action shall be allocated under section 6(f)(2).

(E) The Secretary shall construct a salmon and steelhead trout hatchery on the Yuba River. The Secretary shall negotiate and execute a contract with the California Department of Fish and Game to operate the hatchery. The objective of such hatchery is to assist in California's efforts to realize the full potential of salmon and steelhead trout natural production on that river and to assist in maintaining the existing runs of salmon and steelhead trout and create enhancement potential for natural production in above normal water years. The cost of this action shall be allocated under section 6(f)(3).

(F) The Secretary shall negotiate and execute an agreement with the California Department of Fish and Game by December 31, 1993 that requires the release of the minimum flows necessary to take full advantage of the spawning, incubation, rearing and outmigration potential of the upper Sacramento River and the Lower American River for salmon subject to the physical capabilities of the Central Valley Project facilities involved. The Agreement shall provide for less than these minimum flows in dry and critical water years if the Secretary determines that in so doing he can minimize the impacts of providing the fishery flows on other Central Valley Project authorized purposes, provided the fishery benefits lost in those years are offset by enhancing spawning, incubation, rearing and outmigration conditions in other water years. The cost of this action shall be allocated under section 6(f)(1). The Secretary is authorized to assist in the funding of biological studies, in cooperation with the California Department of Fish and Game and the California State Water Resources Control Board, focused on furthering the scientific understanding of the salmon fishery in these rivers and to provide the information needed to verify that the intended fishery benefits are being provided by the minimum fishery requirements in this agreement and to allow for adjustments to the flow requirements in the fu-

ture, if needed. If the Secretary and the California Department of Fish and Game determine that the flow conditions in the upper Sacramento River and the lower American River provided by the Central Valley Project under this agreement are better than conditions that would have existed in the absence of the Central Valley Project facilities, the enhancement provided shall become credits to be provided Central Valley Project water and power contractors to offset future mitigation responsibilities identified pursuant to section 6(d).

(G) The Administrator of the Environmental Protection Agency is directed to expedite and by no later than December 31, 1995, complete efforts to clean up mines causing intermittent releases of lethal concentrations of dissolved metals from the Spring Creek Debris Dam. In the interim, the Secretary shall provide water from Keswick Dam sufficient to dilute the Spring Creek Debris Dam discharges to concentration levels that allow survival of fish life below Keswick Dam except when the United States Corps of Engineers' flood control criteria for Shasta Dam limit that capability. The cost of this action, not including the cost of EPA actions, shall be allocated under section 6(f)(3). If the Administrator of the Environmental Protection Agency fails to complete such efforts by December 31, 1995, all such costs shall be assumed by the Agency.

(H) The Secretary shall provide flows to allow sufficient spawning, incubation, rearing and outmigration conditions for salmon and steelhead trout from Whiskeytown Dam as determined by instream flow studies conducted by the California Department of Fish and Game after Clear Creek has been restored and a new fish ladder has been constructed at the McCormick-Saeltzer Dam. The cost of providing the required flows shall be allocated under section 6(f)(1). Any federal cost associated with the restoration of the Clear Creek or in the construction of a fish ladder at the McCormick-Saeltzer Dam shall be allocated under section 6(f)(3).

(I) The Secretary is authorized to construct, in partnership with the State of California, a barrier at the head of Old River in the Sacramento-San Joaquin Delta, by December 31, 1995 to partially mitigate the impact of the Central Valley Project and State Water Project pumping plants in the south Sacramento-San Joaquin Delta on the survival of young outmigrating salmon that are diverted from the San Joaquin River to the pumps. The Secretary shall consider the effect of this barrier on South Delta channels, and if determined appropriate, shall construct other necessary South Delta barriers. The cost of constructing, operating and maintaining the barrier shall be shared 50% by the State of California and 50% by the federal government. The federal share shall be allocated under section 6(f)(1).

(J) The Secretary shall participate with the State of California and other federal agencies in the implementation of the ongoing program to mitigate fully for the fishery impacts associated with the operations of the Glenn-Colusa Irrigation District's Hamilton City Pumping Plant. Such participation shall include replacement of the defective fish screens and fish recovery facilities associated with the Hamilton City Pumping Plant. This authorization shall not be deemed to supersede or alter existing authorizations for the participation of other federal agencies in the mitigation program. The cost of this action shall be allocated under section 6(f)(3).

(K) The Secretary shall assist in the funding, in coordination with the California Department of Fish and Game, of enforcement measures that will reduce the numbers of striped bass illegally taken from the San Francisco Bay Estuary and Sacramento-San Joaquin Delta. The cost of this action shall be allocated under section 6(f)(3).

(L) The Secretary shall provide such assistance as may be requested by the State of California to develop and implement fishing regulations that will protect the older more productive striped bass females in order to maintain a viable reproducing striped bass population.

(c)(3) SAN JOAQUIN RIVER PLAN.—With respect to mitigation or restoration of upper San Joaquin River fish, wildlife, and habitat, the Secretary is directed to participate in the San Joaquin River Management Program under development by the State of California. In support of the objectives of the San Joaquin River Management Program and the Stanislaus and Calaveras Basin Environmental Impact Statement, and in furtherance of the purposes of this Act, the Secretary, in consultation with the Fish and Wildlife Advisory Committee and affected counties and interests, shall evaluate in-basin needs in the Stanislaus River basin, and shall investigate alternative storage, release, and delivery regimes for satisfying both in-basin and out-of-basin needs. Alternatives to be investigated shall include, but shall not be limited to, conjunctive use operations, conservation strategies, exchange arrangements, and the use of base and channel maintenance flows to assist in efforts to restore fish and wildlife populations and riparian habitat values in the San Joaquin River. Nothing in this Act or the amendments to the Act of August 26, 1937 shall be construed as requiring a reestablishment of flows between Gravelly Ford and the Mendota Pool for mitigation or restoration of fish, wildlife and habitat.

(c)(4) WETLAND HABITAT AREAS.—In support of the objectives of the Central Valley Habitat Joint Venture and in furtherance of the goals and objectives of this Act, the Secretary, directly and/or in cooperation with other State, Federal and local agencies, is authorized and directed to provide firm water supplies of suitable quality to maintain and improve wetland habitat areas on units of the National Wildlife Refuge System in the Central Valley of California; in the Gray Lodge, Los Banos, Volta, North Grasslands, and Mendota state wildlife management areas; and in the Grassland Resources Conservation District in the Central Valley of California. The Secretary shall implement his obligation to provide such firm water supplies through long-term contracts where the primary source of supply is the Central Valley Project or other federal sources; shall enter into contracts or take other appropriate action to firm up supplies provided by state, local and private water suppliers; and shall provide supplemental or interim contracts where needed to supplement supplies from non-federal sources.

(A) Upon enactment of this Act, the quantity and delivery schedules of water for each wetland habitat area described in this paragraph shall be in accordance with Level 2 of the "Dependable Water Supply Needs" table for those habitat areas as set forth in the Refuge Water Supply Report, and two-thirds of the water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation. Such water shall be supplemented by the incremental water supply provided for in subparagraph (B) of this paragraph. Central Valley Project costs associated with the implementation of this subparagraph shall be treated as costs of main project features and shall be first allocated among Central Valley Project purposes, with reimbursable costs then allocated between Central Valley Project water and power contractors pursuant to applicable statutory and regulatory procedures; Provided, that costs for Level 1 water supplies identified on the "Dependable Water Supply Needs" table for those habitat areas set forth in the Refuge Water Supply Report shall not be allocated for reimbursement by the Central Valley Project to the extent such costs were not costs of the Central Valley Project or were non-reimbursable costs of the Central Valley Project prior to the date of enactment of this Act. The discharge of obligations by the Secretary under this subparagraph (A) provides full mitigation for wetland impacts of the Central Valley Project.

(B) Not later than ten years after enactment of this Act, the quantity and delivery schedules of water for each wetland habitat area described in this paragraph shall be in accordance with Level 4 of the "Dependable Water Supply Needs" table for that habitat area as set forth in the Refuge Water Supply Report, and the full water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation. The increment of water required to supplement the quantities provided under subparagraph (A) of this paragraph shall be acquired by the Secretary in cooperation with the State of California, the Central Valley Habitat Joint Venture, and other interests under the authority of section 7 of this Act. Fifty percent of the costs associated with implementation of this subparagraph shall be considered a nonreimbursable Federal expenditure, and 50 percent shall be paid by the State of California.

(C) The Secretary may temporarily reduce deliveries of Central Valley Project water provided under subparagraph (A) of this paragraph only when reductions are imposed upon agricultural deliveries of Central Valley Project water; Provided, that such temporary reductions shall be equal to reductions imposed on non-water rights Central Valley Project agricultural contractors; Provided further, that the Secretary shall be authorized and directed to utilize money available in the Restoration Fund created pursuant to section 6(h) of this Act, in order to acquire supplemental sources of water for the purposes of subparagraph (A) of this paragraph during all years when such shortages are imposed on agricultural deliveries. The Secretary may temporarily reduce deliveries of Central Valley Project water provided under subparagraph (B) of this paragraph only when reductions are imposed upon agricultural deliveries of Central Valley Project water; the delivery priority or priorities applicable to the increment of water provided under subparagraph (B) of this paragraph shall be the priority or priorities which applied to the water in question prior to its acquisition for the purpose of providing such increment.

(D) The Secretary is authorized and directed to construct and/or to acquire from non-federal entities such water conveyance facilities and conveyance capacity, and to construct or acquire such wells as are necessary to implement the requirements of this

paragraph, including, but not limited to, conveyance needed to avoid an adverse effect on the Secretary's ability to deliver water pursuant the Secretary Central Valley Project contractual obligations because of limitations in conveyance capacities. Central Valley Project costs associated with the implementation of this subparagraph shall be treated as capital expenditures. To the extent new or supplemental conveyance is acquired or constructed to allow delivery of water to and through, but not exclusively within, the wildlife habitat areas described in subparagraph (A) of this paragraph, costs shall be allocated and recovered in accordance with subparagraph (A); to the extent such conveyance is acquired or constructed to allow delivery of the incremental water supply set forth in subparagraph (B) of this paragraph, costs shall be allocated in accordance with subparagraph (B).

(E) The Secretary, in consultation with the State of California, the Central Valley Habitat Joint Venture, and other interests, shall investigate and report on the following supplemental wetland habitat actions on or before September 30, 1997:

(i) alternative means of improving the reliability and quality of water supplies currently available to privately owned wetlands in the Central Valley and the need, if any, for additional supplies; and (ii) water supply and delivery requirements necessary to permit full habitat development for water dependent wildlife on 120,000 acres supplemental to the existing wetland habitat acreage identified in Table 8 of the Central Valley Habitat Joint Venture's "Implementation Plan" dated April 19, 1990, as well as feasible means of meeting associated water supply requirements.

(d) ADDITONAL HABITAT RESTORATION ACTIONS.—Subject to the criteria in section 6(e), the Secretary in consultation with the Governor of California shall identify additional actions that would provide mitigation of Central Valley Project impacts on Central Valley fish and wildlife habitat and would protect and restore Central Valley fish and wildlife habitat. The Secretary shall develop the information needed to evaluate these actions technically, determine the economic and biological feasibility using the criteria established in section 6(e), determine appropriate cost allocations specific to each action, and select actions to recommend to Congress for authorization to implement. The Secretary shall make its first report to Congress no later than December 31, 1996 and shall report every five years thereafter, at a minimum, until the year 2010. Fish and wildlife habitat issues to be evaluated by the Secretary shall include, but not be limited, to the following:

(1) Determination of the flows and habitat restoration measures needed to protect, restore and enhance salmon and steelhead trout in the San Joaquin River below the confluence with the Merced River, Mokelumne River, and Calaveras River and in the Butte, Deer, Mill, and Battle Creeks, which are tributary to the Sacramento River, and development of feasible means of maintaining those flows and implementing the habitat restoration measures identified.

(2) Investigation of actions allowing closure or screening of the Delta Cross Channel and Georgiana Slough to prevent the diversion of out-migrating salmon and steelhead trout through those facilities.

(3) As a means of increasing survival of migrating young fish, investigation of the feasibility of using short pulses of increased water flows to move salmon, steelhead trout, and striped bass into and through the Sacramento-San Joaquin Delta.

(4) Investigation of ways to maintain suitable temperatures for young salmon survival in the lower Sacramento River and in the Sacramento-San Joaquin Delta by controlling or relocating the discharge of irrigation return flows and sewage effluent.

(5) Investigation of the need for additional hatchery production to mitigate the impacts of water development on Central Valley fisheries where no other feasible means of mitigation is available or where hatchery production would enhance efforts to increase natural production of a particular species.

(6) Investigation of measures available to correct flow pattern problems in the Sacramento-San Joaquin Delta created by the operation of the Central Valley Project and the California State Water Project as well as San Francisco Bay inflow pattern changes caused by the operation of water development projects in the Central Valley.

(7) Evaluation of measures to avoid unquantified losses of juvenile anadromous fish due to unscreened or inadequately screened diversions on the Sacramento and San Joaquin Rivers, their tributaries, and in the Sacramento-San Joaquin Delta such as construction of screens on unscreened diversions, rehabilitation of existing screens, replacement of existing non-functioning screens, and relocation of diversions to less fishery-sensitive areas.

(8) Elimination of barriers to upstream migration of salmon and steelhead trout adults to spawning areas downstream of existing storage facilities in the Central Valley caused by agriculture diversions and other obstructions which reduce the natural production of these species as well as removal programs or programs for the construction of new fish ladders.

(e) SOCIAL, ECONOMIC AND BIOLOGICAL CONSIDERATIONS.—In fulfilling their responsibilities as specified in sections 6(c)(2) and 6(d), the Secretary shall consider the following criteria and factors, and issue findings thereon, when determining which alternate programs, policies or procedures should be implemented to protect and restore fish and wildlife conditions. The alternative programs available to implement specific actions in sections 6(c)(2) and 6(d) that best meets all of the following criteria shall be selected.

(1) Natural production alternatives shall be given priority over artificial production alternatives when possible;

(2) Alternatives that have the highest biological probability of achieving the desired objective shall be preferred.

(3) Alternatives that provide a greater magnitude of potential benefits shall be given priority over alternatives which have a lesser magnitude of potential benefits.

(4) Alternatives that are determined to be the most cost effective, measured in economic terms considering impacts within the Central Valley Project service area's water and power resources and related industries.

(f) COST ALLOCATIONS.—The fiscal cost of implementing actions listed in sections 6(c)(1) and selected pursuant to section 6(c)(2) shall be allocated as follows:

(1) Costs specified within sections 6(c)(1) and 6(c)(2) as allocated under this sub-section shall be first allocated among Central Valley Project purposes, with reimbursable costs then allocated between Central Valley Project water and power contractors pursuant to applicable statutory and regulatory procedures and assessed pursuant to the provisions of section 6(h) of this Act.

(2) Costs specified within sections 6(c)(1) and 6(c)(2) as allocable under this subsection shall be allocated 37.5% to the Central Valley Project, 37.5% as a Federal non-reimbursable cost, and 25% payable by the State of California. Central Valley Project costs shall be first allocated among Central Valley Project purposes with reimbursable costs then allocated between Central Valley Project water and power contractors and assessed pursuant to the provisions of section 6(h) of this Act. Central Valley Project costs determined to be non-reimbursable shall be added to the Federal non-reimbursable costs.

(3) Costs specified within sections 6(c)(1) and 6(c)(2) as allocable under this subsection shall be allocated 50% as a Federal non-reimbursable cost and 50% to the State of California.

(4) Costs associated with actions that are determined to be a Central Valley Project responsibility under sections 6(f)(1) and 6(f)(2) that pay for the replacement of existing Central Valley Project facilities that have not properly mitigated the effects of the Central Valley Project on the environment because of design errors by Federal agencies, shall be allocated as a Federal non-reimbursable cost.

(5) Central Valley Project power shall be used to supply the capacity and energy needs of actions identified in sections 6(c)(1) and 6(c)(2) where the costs or a portion of the costs have been allocated to the Central Valley Project as a reimbursable cost pursuant to subsections (1) and (2) of this section. The value of the Central Valley Project power, calculated as the cost of obtaining dependable power from other available sources, shall be credited against the Central Valley Project power contractors' share of the cost of actions that are mitigating the effects of the Central Valley Project and the effects of others on Central Valley fish and wildlife habitat as determined pursuant to section 6(f)(2).

(6) Notwithstanding any other provisions of this Act, the Secretary shall not undertake any action authorized herein unless the State of California makes appropriate commitments to participate in the actions identified in this Act, provides relevant state approvals for identified actions, and agrees to participate in the cost sharing provisions of this Act. Where local agency action or approval is required within this Act, the Secretary shall not proceed unless that local agency approval or participation is secured: *Provided*, however, that nothing herein is intended to require Central Valley Project water or power contractors' approval or participation as a condition on the Secretary's ability to proceed with the mandated actions.

(7) Notwithstanding any other provisions of this Act, no actions authorized in this Act shall be implemented unless such actions are consistent with state water law and will not constitute an unreasonable use of water as that term is used within Article X, section 2, of the Constitution of the State of California.

(g) ADDITIONAL AUTHORITIES.—

(1) The Secretary is authorized to promulgate such regulations and enter into such agreements as may be necessary to implement the purposes and provisions of this Act.

(2) In order to carry out the purposes and provisions of this section, the Secretary is authorized, consistent with state law, to obtain water supplies from any source available to the Secretary: Provided, that such acquisition shall be pursuant to State law and any purchases shall be from willing sell-

ers only. The Secretary, however, except as specifically provided herein, shall not diminish water supplies available to Central Valley Project contractors without compensation.

(3) The Secretary is authorized to increase, on a permanent basis, the yield of the Central Valley Project.

(4) The Secretary shall determine and implement the actions mandated in this act in the most efficient and cost effective means available, and in a manner consistent with the transfer of the Central Valley Project to the State of California. Should the Secretary determine that the State of California or a local agency of the State of California is best able to implement an action authorized by this Act, the Secretary shall negotiate with the State of California or a local agency of the State of California an agreement which would allow the State of California or a local agency of the State of California to undertake the identified action. In the event no such agreement can be negotiated, the Secretary shall proceed to implement the action through means available to him.

(5) The Secretary is hereby authorized and directed as an integral part of this Act, to initiate studies of any and all facilities that would assist in fully meeting the fish and wildlife purposes of this Act. The Secretary shall, for each facility identified, also study the feasibility of these facilities for other purposes, including, but not limited to, water and power supplies. Cost allocations for identified multiple purpose facilities should be in accordance with the allocation of water developed or conveyed or otherwise made available by those facilities.

(h) FUNDING.—

(1) Authorization. There are authorized to be appropriated such sums as may be necessary to carry out the purposes and provisions of this Act. Funds appropriated under this section are authorized to remain available until expended.

(2) Central Valley Project Water Contractors Repayment. The amount to be repaid by water contractors under sections 6(f)(1) and 6(f)(2) of this Act shall be collected as follows:

(i) Notwithstanding the provisions of section 105 of P.L. 99-546, the amount to be repaid by the Central Valley Project water contractors under sections 6(f)(1) and 6(f)(2) shall be capitalized for a period necessary to insure repayment, consistent with the provisions of sub-section 6(h)(2)(ii).

(ii) Annual payment of the capitalized costs to be repaid by the Central Valley Project agricultural water contractors under sections – 6(f)(1) and 6(f)(2) shall not exceed an amount within the probable ability of water users to pay.

(iii) The annual payments set forth in subsection 6(h)(2)(ii), together with interest thereon, shall be placed into a Central Valley Project Water Contractors Fund to be established by the Secretary. The first assessment shall be collected as part of water charges during the first water year which commences at least ninety days after enactment. The Central Valley Project Water Contractors Fund shall be utilized exclusively to repay costs to Central Valley Project water contractors incurred under sections 6(f)(1) and 6(f)(2). The Secretary is authorized to use the funds within the Central Valley Project Water Contractors Fund, for these purposes, without further authorization, but subject to appropriation.

(iv) The provisions of this sub-section 6(h)(2)(i) shall apply only to Central Valley Project water delivered to Central Valley water contractors for water delivered under contract with the Bureau of Reclamation pursuant to which additional payments for such water are required.

(3) Central Valley Project Power Contractors Repayment. The amount to be repaid by Central Valley Project power contractors, pursuant to sections 6(f)(1) and 6(f)(2), shall be collected by the Secretary in accordance with existing law, policy, and practices for the repayment, by Central Valley Project power contractors, of operation and maintenance and capital costs allocated to those power contractors.

(4) Cost Sharing. The State of California and other parties identified in sections 6(f)(2) and 6(f)(3) shall pay an amount equal to the amount allocated within those sections each year. In addition to cost outlays or payments to the Treasury of the United States, the Secretary may consider as a financial contribution by the State of California, Central Valley Project contractors, or other parties identified in sections 6(f)(2) and 6(f)(3) the value of contributions of personal or real property or personnel which the Secretary determines is beneficial to the achievement of the objectives of this Act. Such contributions may include the provisions of water or water conveyance capacity to meet the requirements of this Act.

(5) Remaining Costs. The remaining costs shall be considered non-reimbursable costs as a federal contribution for preserving, protecting, restoring and enhancing fish and wildlife resources within the Central Valley of California.

(6)(A) RESTORATION FUND ESTABLISHED.—There is hereby established in the Treasury of the United States the "Central Valley Project Restoration Fund" (hereafter "Restoration Fund") which shall be available for deposit of charges and donations from any source provided under this Act. Amounts deposited shall be credited as offsetting collections.

(B) AUTHORIZATION OF APPROPRIATIONS.—Such sums as necessary, of at least $20,000,000 per year, are authorized to be appropriated to the Secretary to be derived from the Restoration Fund to carry out the programs and plans adopted pursuant to section 6(c), section 6(d), section 6(g)(2) and the habitat restoration, improvement, and acquisition (from willing sellers) provisions of this Act. Any funds paid in to the Restoration Fund by Central Valley Project water and power contractors and which are also utilized to pay for the projects and facilities set forth in section 6(c) and section 6(d) shall act as an offset against any water contractor cost share obligations that are otherwise provided for in this Act.

(C) ADDITIONAL CHARGE FOR WATER USERS.—

(i) General Authority. To the extent required in appropriation Acts, the Secretary shall assess and collect an additional annual charge consisting of charges of direct beneficiaries of the Central Valley Project under (D) of this subsection in order to recover a portion of all of the costs of fish, wildlife and habitat restoration programs and projects authorized under this Act.

(ii) Charges Contingent on Appropriation Authority. The charge described in (C)(i) of this subsection shall be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such year to carry out activities authorized pursuant to (B) of this subsection.

(D) ADJUSTMENT AND ASSESSMENT OF CHARGES.—

(i) Adjustment Procedure. In assessing the charge to carry out (C) of this subsection, the Secretary shall, prior to each fiscal year, estimate the maximum amount that could be collected in each fiscal year under (D)(ii) of this subsection. The Secretary shall decrease all such charges on a proportionate basis from amounts contained in the estimate so that an aggregate amount is collected pursuant to the requirements of paragraph (c)(ii) of this subsection.

(ii) Assessment and Collection of charges. The Secretary shall assess and collect the following charges subject to the requirements of (D)(i) of this subsection:

(A) Additional Charges Allocated to CVP agricultural water users. The Secretary shall impose on Central Valley Project agricultural water contractors such additional annual charges as are necessary, up to $20,000,000, to be deposited in the Restoration Fund: *Provided*, that such charges shall be allocated so as to not exceed $4.00 per acre-foot for agricultural water sold and delivered by the Central Valley Project; $2.00 per acre-foot for municipal and industrial water sold and delivered by the Central Valley Project; *Provided further*, that the charge imposed on agricultural water shall be reduced, if necessary, to an amount within the probable ability of the water users to pay.

(B) New Central Valley Project Customer Access Charge. The Secretary shall impose an additional annual charge of up to $15.00 per acre foot for Central Valley Project water sold by or transferred to any state or local agency which is not within the area watershed or county of origin as those terms are defined in California law and has not previously been a Central Valley Project customer, and which contracts with the Secretary or with any other individual or district receiving Central Valley Project water, to purchase or otherwise transfer any such water for its own use, to be deposited in the Restoration Fund.

(E) FUNDING TO NON-FEDERAL ENTITIES.—If the Secretary determines that the State of California or an agency thereof, or other non-profit entity concerned with water management, restoration, protection or enhancement of fish, wildlife, habitat, or environmental values is best able to implement an action authorized by this Act in an efficient, timely and cost effective manner, the Secretary is authorized to provide funding to such entity to implement the identified section.

(F) RESTORATION FUND FINANCIAL REPORTS.—The Secretary shall, not later than the first full fiscal year after enactment of this Act, and annually thereafter, submit a detailed report to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate and the Committee on Interior and Insular Affairs and the Committee on Appropriations of the House of Representatives. Such report shall describe all uses made of moneys within the Restoration Fund during the prior fiscal year and include the Secretary's projection with respect to the uses to be made of the funds during the next upcoming fiscal year.

**SEC. 7. PROVISIONS FOR TRANSFER OF CENTRAL VALLEY PROJECT WATER.**

(a) TRANSFERS WITHIN THE CENTRAL VALLEY PROJECT SERVICE AREA.—Subject to the provisions of section 7(f), the Secretary is authorized to approve all transfer agreements among Central Valley Project contractors and between Central Valley Project contractors and non-contractors involving Central Valley Project water within the authorized Central Valley Project service area.

(b) TRANSFERS WHICH RESULT IN NO NET EXPORT OF WATER OUTSIDE THE CENTRAL VALLEY PROJECT SERVICE AREA.—Subject to the provisions of section 7(f), the Secretary is authorized to approve all transfer agreements between Central Valley Project contractors and parties outside of the Central Valley Project service area upon the determination that as a result of the proposed transaction over the term of the transfer agreement there is no net export of water out of the Central Valley Project service area of the transferor.

(c) TRANSFERS WHICH RESULT IN A NET EXPORT OF WATER OUTSIDE THE CENTRAL VALLEY PROJECT SERVICE AREA.—Except for transactions authorized under sections 7(d) and 7(e) and subject to the provisions of section 7(f), the Secretary is authorized to approve all transfers between Central Valley Project water contractors and parties outside of the Central Valley Project service area where the Secretary determines that as a result of the proposed transaction over the term of transfer agreement there will be a net export of water out of the service area of the transferor, provided that the transfer meets the following conditions:

(1) The water being transferred would not otherwise be available to other consumptive beneficial uses absent implementation of the program; and

(2) Over the term of the agreement in question, the transfer will have no significant, long-term, adverse impact on groundwater conditions in the transferor's service area.

(d) TRANSFERS OF WATER DEVELOPED THROUGH TEMPORARY FALLOWING OR PERMANENT LAND FALLOWING.—Subject to the provisions of section 7(f), the Secretary is authorized and directed to approve transfers of Central Valley Project water within or outside of the authorized Central Valley Project service area where the water to be transferred is available for transfer because of the implementation, by the transferor or landowner, of a temporary fallowing or permanent land fallowing program, including land retirement, provided that the involved Central Valley Project water contractor determines that the following conditions are satisfied:

(1) The program will have no significant long-term adverse impact on groundwater conditions.

(2) The water developed under the program shall be that water that would have been consumptively used on crops had those crops been produced during the year(s) of the transfer or water that would have otherwise been lost for beneficial use.

(3) No more than 70% of the water developed under such transfer shall be made available for export out of the Central Valley Project service area with 10% distributed within the transferor's service area to assist in the protection of groundwater resources and 20% applied to fish and wildlife purposes within the Central Valley Project service area pursuant to a program approved by the Secretary.

(4) In order to avoid adverse third party impacts the total quantity of water exported under all such transfers by the transferor or landowner shall not exceed 20% of the total annual water supply delivered by the Central Valley Project that otherwise would have been available in any particular year for use within the service area of the transferor or 3,000 acre-feet, whichever is greater.

(5) The program will have no unreasonable impacts on water supply, operations or financial condition of the water contractor or its water users.

(f) GENERAL PROVISIONS.—The following provisions shall also apply to any transfer:

(1) No program and/or agreements authorized under this Act shall be approved unless the action is between a willing buyer and a willing seller under such terms and conditions as may be mutually agreed upon;

(2) No program and/or agreements authorized under this Act shall be approved unless the proposed action is consistent with State law including, but not limited to, the provisions of the California Environmental quality.

(3) All programs and/or agreements authorized under this Act must include a Central Valley Project water contractor as a transferor and as a contracting party. The criteria established within section 7(d) are intended to govern the exercise of a Central Valley Project water contractor's approval of a transfer proposed by a landowner within the service area of the Central Valley Project water contractor. The provisions of this Act are only intended to govern the transfer of Central Valley Project water.

(4) Notwithstanding any contrary provisions contained within Central Valley Project water contracts, in implementing programs and/or agreements authorized under this Act, there shall be no limitations on the use of agricultural water for municipal and industrial purposes or municipal and industrial water for agricultural purposes. All transferees of Central Valley Project water shall strictly comply with acreage and pricing requirements of reclamation law applicable to the actual use of Central Valley Project water by the transferee, rates for the applicable uses of water by the transferee shall apply to the transferee during the year or years of actual transfer and shall not be applied to the transferor.

(5) All agreements entered into pursuant to this Act between Central Valley Project water contractors and entities outside of the Central Valley Project service area shall be subject to a right of first refusal on the same terms and conditions by entities within the Central Valley Project service area. The right of first refusal must be exercised within ninety days from the date that notice is provided of the proposed transfer. Should an entity exercise the right of first refusal, it must compensate the transferee who had negotiated the agreement upon which the right of first refusal is being exercised for that entity's full costs associated with the development and negotiation of the agreement.

(6) Agreements entered into pursuant to this Act shall not be considered as conferring new, supplemental or additional benefits, nor shall they be otherwise subject to the provisions of section 203 of P.L. 97-293 [43 U.S.C. §390(cc)].

(7) No programs and/or agreements authorized under this Act shall be approved unless the Secretary has determined that the action will have no adverse effect on the Secretary's ability to deliver water pursuant to the Secretary's Central Valley Project contractual obligations because of limitations in conveyance or pumping capacity.

(8) Notwithstanding any other provisions of this Act, after September 30, 1996 or upon enactment of California State Law, whichever is first, all Central Valley Project water transfers shall be governed by the provisions of section 7(f) of this Act and State law.

(g) THE ESTABLISHMENT OF CENTRAL VALLEY PROJECT WATER CONTRACT TRANSFER SECURITY AND CERTAINTY.—

(1) All existing and future contracts for Central Valley Project water shall be deemed to allow for the transfers and exchanges provided for within this section.

(2) All agreements entered into under sections 7(b), 7(c), 7(d) and 7(e) of this Act shall provide that, during the year(s) of actual transfer, Central Valley Project water subject to transfer shall be repaid at "full cost" as that term is defined at 43 U.S.C. Sec. 390(bb).

**SEC. 8. AGRICULTURAL WATER CONSERVATION FEASIBILITY STUDIES.**

(a) GENERAL.—The objective of this section is to encourage implementation of financially feasible water conservation practices. Water conservation practices include those practices which make water available that would not otherwise have been available to Central Valley streams or which do not worsen groundwater conditions. Water conservation, for the purposes of this Act, does not include land following.

(b) WATER CONSERVATION FEASIBILITY STUDIES.—All existing Central Valley Project agricultural contractors shall submit a report to the Secretary which identifies water conservation practices within two years after enactment of this Act. For such practices identified, the report shall analyze the cost and benefits to that entity and its customers of implementing each of the water conservation practices listed in this section, to the extent they apply to that entity, and any additional practices the Secretary determines should be analyzed.

(1) Water management:

(i) monitoring water supplies, deliveries and accounting;

(ii) providing farmers with crop evapotranspiration information; and providing scheduling procedures for ordering water which correspond with demand for irrigation water to the extent practical;

(iii) monitoring of surface water qualities and quantities;

(iv) monitoring of groundwater elevations and quality; and,

(v) monitoring of quantity and quality of drainage waters within facilities the district owns or controls.

(2) District Facility Improvements:

(i) improving the maintenance or upgrading of water measuring devices;

(ii) automating canal structures;

(iii) lining or piping ditches and canals;

(iv) modifying distribution facilities to increase water delivery flexibility;

(v) constructing or lining regulatory reservoirs;

(vi) developing recharge basins, implementing in lieu recharge programs or other means of recharging groundwater basins when adequate supplies are available; and

(vii) evaluating and improving pump efficiencies of district pumping facilities.

(3) District Institutional Adjustments:

(i) improving communications and cooperation among districts, farmers and other agencies;

(ii) adjusting the water fee structure to provide incentives for efficient use of water and to reduce drainage discharges;

(iii) increasing flexibility in the ordering and timing of deliveries to meet crop demands; and

(iv) increasing conjunctive use of groundwater and surface water.

(4) District Water User Water Management Programs:

(i) assisting the facilitation of the financing of physical improvements for district and on-farm irrigation systems;

(ii) providing educational seminars for staff and farmers; and conducting public information programs, which seminars and programs shall address the following subjects, to the extent applicable to the area; and

(A) improving existing on-farm and district-wide irrigation efficiency;

(B) monitoring of soil moisture and salinity;

(C) promoting of efficient per-irrigation techniques;

(D) promoting of on-farm irrigation system evaluations;

(E) constructing tail-water deliveries;

(F) improving on-farm irrigation and drainage systems; and

(G) evaluating and improving water user pump efficiencies.

(iii) providing water users with crop evapotranspiration data and information.

(c) BENEFITS AND COSTS.—The benefits and costs of implementation of specific water conservation practices shall be evaluated through analysis of, but not limited to, the impact on the following:

(1) water usage;

(2) electrical energy usage;

(3) labor and equipment required, including costs of training personnel;

(4) crop yields;

(5) reduction or increase in drainage related problems;

(6) fish and wildlife habitat conditions;

(7) costs of construction;

(8) costs of operation and maintenance;

(9) costs of water information programs; and

(10) costs of computer equipment and software.

**SEC. 9. IMPLEMENTATION.**

(a) AGRICULTURAL CONTRACT WATER CONSERVATION REQUIREMENTS.—All Central Valley Project agricultural contractors shall develop a plan for implementation of water conservation practices determined by the entity within the water conservation report required under section 8 of this Act to be financially and otherwise feasible for the specific entity. The entity shall complete the plan for implementation within one year after completion of the report required in section 8. Financially feasible conservation practices which will cause environmental harm, including, but not limited to, adversely affecting groundwater conditions, or are inconsistent with other requirements of law, shall not be required to be implemented.

(b) ON-FARM WATER CONSERVATION INCENTIVE PROGRAM.—There is hereby established a Water Conservation Incentive Program, which shall be administered by the Secretary to encourage and assist with the on-farm implementation of the water conservation practices set forth in section 8(b)(4). Said program shall be a Guarantee Loan Program, and the Secretary may enter into a Memorandum of Understanding with the Secretary of Agriculture to administer such program in conjunction with other programs offered through the Department of Agriculture.

(c) MUNICIPAL AND INDUSTRIAL CONTRACT WATER CONSERVATION REQUIREMENTS.—The Secretary shall require all Central Valley Project municipal and industrial water users, to the extent they provide retail, municipal and industrial water service, to comply with the provisions of the September 19, 1991, "Memorandum of Understanding regarding Urban Water Conservation in California".

(d) SECRETARIAL REVIEW.—The Secretary shall evaluate the benefits and cost analysis for each of the water conservation practices found by the specific water user preparing the water conservation reports required by section 8 of this Act to be not feasible and determined the following:

(1) Which water conservation practices, if implemented, would make additional water available to Central Valley streams or to a usable groundwater basin that would not otherwise be available in the absence of implementation of the water conservation practice.

(2) For each water conservation practice identified in section 9(d)(1), the benefit/cost ratio of implementing that water conservation practice if that water were used to fulfill wildlife supply obligations established by this Act; or made available to other water agencies through the transfer provisions established by this Act.

(e) WATER CONSERVATION PRACTICES.—The Secretary may implement those water conservation practices identified which conserve water, are economically feasible, and which the Secretary determined are prudent, through implementation of the identified water conservation practice with the entity holding the contractual right to the water conserved and then making that water available to use by Central Valley refuges as required by provisions of this Act, provided that an agreement is entered into between the entity and Secretary that insures the entity and its water users are not damaged by such measures, including, but not limited to, increasing cost to the entity of its water users or interferes with the ability of the entity water users to produce crops. The Secretary shall fund the implementation of a specific water conservation practice in exchange for the use of the saved water. If the Secretary determines that purchasing water for the Central Valley refuges by implementing specific water conservation practices found to meet the requirements of section 9(d)(1) is not feasible, he shall make that water available to other California water agencies by negotiating and executing agreements between the United States, the entity holding the Central Valley Project contractual right to the saved water and entities interested in obtaining the conserved water in exchange for funding the implementation of the water conservation practice.

**SEC. 10. CENTRAL VALLEY PROJECT TRANSFER.**

(a) The Secretary shall cooperate with the Governor of the State of California to explore and negotiate provisions for the transfer of the Central Valley Project to the State of California. The Secretary shall report to the Congress on or before February 1 of each year on the Status of efforts to negotiate a transfer, the progress on steps necessary to comply with the requirements of the National Environmental Policy Act, the Development of any interim measures designed to achieve closer cooperation and operational efficiency between the Central Valley Project and the State Water Project, and the steps being taken to assure that any time deadlines agreed to between the Secretary and the Governor for completion of the NEPA process and the negotiations are being met.

(b) the Secretary shall credit any expenditures by the State of California in this act for fish and wildlife mitigation, protection and restoration to the purchase price negotiated by the Secretary and the State of California for the sale of the Central Valley Project.

The PRESIDING OFFICER. Under the same order the Finance Committee is discharged from further consideration of H.R. 3837, the Federal Program Improvement Act, all after the enacting clause is stricken and the text of that amendment 3408 is substituted in lieu thereof, the bill is considered read a third time and passed and the motion to reconsider that vote is laid upon the table.

So the bill (H.R. 3837) was passed, as follows:

Strike all after the enacting clause and insert:

The following text is added as subsection 781(c) of the Tariff Act of 1930 (19 U.S.C. 1677j(a)) and subsections (c)–(e) are renumbered subsections (d)–(f) respectively.

"(c) SPECIAL MERCHANDISE COMPLETED OR ASSEMBLED IN THE UNITED STATES OR IN OTHER FOREIGN COUNTRIES.—

"(1) SPECIAL PROVISION.—If—

"(A) merchandise sold in the United States is the same class or kind as any merchandise that is the subject of an antidumping duty order issued under section 736 on May 9, 1980 or August 28, 1991,

"(B)(i) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the relevant order applies or supplied directly or indirectly by an exporter or producer covered by the order, or from parts or components from suppliers that have historically supplied the producer or to any other exporter or producer covered by the order, or from any party related to the exporter, producer, or historical supplier, whether such parts or components are supplied from the foreign country or any third country(ies), or

"(ii) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which—

(I) is subject to the relevant order.

(II) is produced in the foreign country with respect to which such order applies, or

(III) is supplied by an exporter or producer covered by the order, or by suppliers that have historically supplied that merchandise to that exporter or producer or to any other exporter or producer covered by the order, or by any party related to the exporter, producer, or historical supplier, whether such merchandise is supplied from the foreign country or any third country(ies), and

"(C) with respect to merchandise under paragraph (B)(ii), the administering authority determines that action is appropriate under such paragraph to prevent evasion of such order, and

"(D) the difference between the value of such merchandise sold in the United States and the value of the imported parts or components referred to in subparagraph (B)(1), or the merchandise referred to in subparagraph (B)(ii), is small, the administering authority, after taking into account any advice provided by the Commission under subsection (f), may include within the scope of the relevant order the imported parts or components referred to in subparagraph (B)(i) that are used in the completion or assembly of the merchandise in the United States, or such imported merchandise referred to in subparagraph (B)(ii), at any time such order is in effect. Parts or components not identified in subsection (c)(1)(B)(i) and merchandise not identified in subsection (c)(1)(B)(ii) shall not be included within the scope of the outstanding order if a finding of circumvention is made under this section.

"(2) FACTORS TO CONSIDER.—In determining whether to include parts or components, or merchandise assembled or completed in a foreign country, in the relevant antidumping duty order under paragraph (1), the administering authority shall take into account such factors as—

"(A) the pattern of trade,

"(B) (i) whether the manufacturer or exporter of the parts or components described

in (1)(B)(i) is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order described in subparagraph (1)(A) applies, or

"(ii) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B)(ii) is related to the person who uses the merchandise described in paragraph (1)(B)(ii) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and

"(iii) whether imports into the United States of the parts or components described in subparagraph (1)(B)(i), or imports into the foreign country of the merchandise described in paragraph (1)(B)(ii)(I), (II) and (III), have increased after the filing of the petition, issuance of such order or, if the allegation of circumstance has been raised more than one year after the issuance of such order, have increased since the time circumvention is alleged to have commenced.

"(C) FORCE AND EFFECT.—This section shall have no force or effect if the petitioner in the investigations referenced in paragraph (a)(1) ceases production or final assembly if such products in the U.S. or shifts the sourcing of major components to a foreign country.".

The Chair recognizes the Senator from Colorado.

Mr. BROWN. Mr. President, I ask unanimous consent to proceed for 30 minutes as in morning business.

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

## CENTRAL VALLEY PROJECT

Mr. BROWN. Mr. President, I want to address briefly and concisely four subjects this evening. The first relates to the Central Valley project that was just discussed in depth by both the Senator from California and the distinguished Senator from New Jersey. I might say, as having spent my productive lifetime earning a living in agriculture, I wanted to share one viewpoint that I think may be somewhat foreign, or seem somewhat unusual to people who have not worked in agriculture.

The enormous impact indicated by the Senator from California, if, indeed, the Central Valley project measure goes through as was debated, is indeed significantly larger than simply the impact on the agriculture in the Central Valley.

How in the world can that be, some ask? Let me simply give, in answer, an analogy. Many people do not realize the enormous impact agriculture has, because it is not a final product. It is a raw material. Some agricultural production generates an enormous amount of spinoff economic activity.

In Colorado, for example, 200 to 300 workers in a feed lot finish enough cattle to generate many, many times their number of jobs. Those 200 to 300 workers in the feed lot will supply enough cattle to keep a packing plant busy. For those 200 to 300 feed lot workers the packing plant needs 1,100 workers. The total number of workers is far more than simply those in the feed lot—in some cases, 5 to 6 times as many.

Those 1,100 packing plant workers are not the only impact. Other jobs are created from the byproducts. For instance, more workers are needed to cure hides, process the inedible meat products, and process the tallow. The fact is, there are another 1,000 jobs in addition to the packing plant jobs simply from the necessary processing of byproducts. But the impact does not stop yet.

A portion food plant that cuts those packing plant products into individual steaks could well employ another 4,500 more employees. A meat processing plant that would take a product and cook it, prepare it for the consumer and for grocery stores, might employ 200, 300, 400, 500, or even 1,000 more employees, depending upon how extensive the processing was. So, you see when you talk about economic impact of agricultural products as raw materials you barely scratch the surface.

A multiple such as the distinguished Senator from California used is very feasible and quite reasonable when you look at the total complete economic impact. I would assume the figure being quoted by the Senator from California in this debate related to this number. Whether you favor or oppose the project in California, the simple fact is, it is going to have an enormous impact on the economy of the State.

## SENATOR WIRTH

Mr. BROWN. Mr. President, the second item I wanted to discuss are some remarks about the distinguished senior Senator from Colorado. Senator WIRTH'S announcement earlier this year that he would not seek reelection came as a surprise and a shock to many in Colorado. For Republicans it was an announcement greeted with great relief. Senator WIRTH is the toughest competitor we have had to face in the last two decades. He has been elected six times to the House of Representatives, one time to the U.S. Senate, and has never been beaten.

As senior Senator from Colorado he has compiled a distinguished record. He is as bright, as competitive and as aggressive as any Member we have had from Colorado.

He is bright, far more than his competitors would have wished. A bachelor's degree from Harvard, a masters in education from Harvard graduate school, a Ph.D. from Stanford University merely started him on his way.

That early ability was recognized when he was named as a White House Fellow in 1967 and 1968—a rare honor. I choose to think that he received that honor partly because he was bright enough to be a Republican in his early years, but there are those who would dispute that fact.

Education clearly is one of his fondest interests and one of his greatest dedications. It is not simply the field in which he holds a masters and a Ph.D.

He served in the old Department of Health, Education and Welfare in 1969 and 1970 as a special assistant to the Secretary and later as a deputy assistant to the Secretary of Education.

He has further demonstrated his commitment to education while serving in the House of Representatives and the U.S. Senate, and in his spare time working with young men and women, whether pages in the U.S. Senate or talking to classes throughout the State of Colorado.

One knows not what he will choose to do when he leaves this Chamber. Some of us have speculated that he will be a Cabinet member should there be a new administration. Others of us hope very much that things work out so that he teaches at a university rather than serves in a new Cabinet, but the election will decide that particular issue.

Regardless of what the future brings, the past demonstrates his record clearly. Senator WIRTH has had a major impact on many national issues, including his work in the telecommunications, banking, and financial industries. He is perhaps best known for his leadership in addressing environmental and energy issues. As the chairman of the House Subcommittee on Telecommunications and Finance, he played a key role in developing innovative proposals and educating the country on telephone, broadcasting, and banking deregulation.

Senator WIRTH has been passionately dedicated to the protection and preservation of our public lands and natural resources. He put aside partisan differences which had plagued earlier wilderness negotiations and, together, we forged a strong, balanced Colorado wilderness bill. The Wirth-Brown bill will protect nearly 700,000 acres of Colorado lands as wilderness and conservation areas, while ensuring protection of water resources within the areas.

If, indeed, it passes tomorrow—as we hope it will—it culminates an effort of over 12 years. Not only that, but it is a symbol of the bipartisan efforts he has made to bring common sense to this particular issue.

Senator WIRTH also has fought to protect forest resources in Colorado and around the Nation. He has cosponsored legislation to protect old-growth forests and was an advocate of protections for the spotted owl in the Endangered Species Act.

He has been a true leader in the Senate in examining the possibility of global climate change. In addition to calling attention to this issue on the Senate floor, he has chaired numerous hearings to bring it to public attention. In 1990, he authored the National Energy Policy Act, which was passed in

the Senate. It addresses the issue of global warming, and aims to develop an energy policy focused on reducing emissions of carbon dioxide.

Senator WIRTH also is chairman of the Alliance to Save Energy. He has been a long-time supporter of natural gas, both as a legislator and has set an example as a consumer in using natural gas as fuel for his jeep. His efforts to encourage the use of alternative fuels played an important role in crafting the comprehensive national energy policy legislation, which will hopefully be signed into law in this Congress.

As an outspoken advocate for the environment and a member of the Senate Environment Committee, Senator WIRTH's dedication to our national and global environment has been of great significance. He worked toward approval of the Strategic Environment Program, which opens Defense Department data up for use in global environmental analysis. He has fought hard for what he believes.

Some of us who have not always agreed with him, but there is no question that he is effective. In 1989, he led a delegation from the United States of the Senate and House of Representatives to the Amazon Basin to examine tropical rain forests. He has pushed for consideration of environmental issues as part of the negotiations on the North American Free Trade Agreement.

Anyone who remembers the fight over the Clean Air Act will recall the close relationship between Senator WIRTH and his close friend, Senator John Heinz. Together they negotiated a successful act. It changed the record of clean air in this country. He has also led the effort to require the Environmental Protection Agency to test the ability of existing car models to continue to meet the pollution emission standards. Senator WIRTH introduced legislation to control toxic pollution and to ban leaded gasoline.

Mr. President, this exceptional, talented individual has made a difference in our country. He has made a difference in the House, he has made a difference in the Senate, he has made a difference in Colorado, he has made a difference in America. He has never shrunk from a fight, he has never pulled his punches, he has never failed to stand up for what he believes in. He carries the respect of everyone who knows him.

Public service has not simply been his commitment, it has been a family commitment. His wife, Wren, is an accomplished national cochair of the Environmental Defense fund and cofounder of the Congressional Wives for Human Rights. Their commitment, their team commitment, has made an enormous difference in people's lives.

When I began my term in the Senate, the Wirths went out of their way to make Nan and me feel welcome. Their friendship, warmth, guidance, and cooperation will be missed.

Senator WIRTH will be missed by all of us. Perhaps, more than anything else, he will be missed as a strong dedicated, committed champion of what he believes in.

I know not what will be the next chapter in his life. Without wishing him ill, I do hope it is not necessarily as a Cabinet member, but, if it is, I know he will bring the same commitment and the same hard work and the same creative mind to that task that he has shown throughout his life.

Nan and I appreciate the Wirths' friendship and wish them and their children, Christopher and Kelsey, the best as they begin the next chapter in their lives.

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## DESTRUCTION OF NUCLEAR WEAPONS OF THE FORMER SOVIET UNION

Mr. BROWN. Mr. President, the third item that I wish to address deals with the institution of a very special award. It will highlight the taxpayer's ripoff of the month. This particular award will be awarded on a monthly basis, when Congress is in session, to the most outstanding example of Government ripoff of the taxpayers that can be found. Some, of course, are concerned that there would not be enough examples to award this on a monthly basis. Far from there being a shortage of candidates, I think that we will find we have far too many.

The amount of this month's winner will be made at 10:30 a.m. tomorrow. Tonight, I want to share with the Senate one of the front runners for that award: A $400 million appropriation this session of Congress voted to destroy the stockpile of nuclear weapons in the Soviet Union. Let me make it clear that we all have a very significant and important interest in seeing those weapons are destroyed.

Almost 1 year ago, I voted against an amendment later passed by the Congress that set aside $400 million to aid the newly independent States of the former Soviet Union under the guise that it would be used to dismantle their nuclear weapons. Destroying nuclear weapons has great merit, but using our funds to do something the independent states are already committed to do by international treaty frees funds in military budgets for use in developing other military weapons. With the newly independent states in chaos and disorder, I was doubtful that $400 million would be effectively used to decrease the former Soviet Union's nuclear threat.

Those concerns appear to be well-founded. Nearly half of the $400 million has been committed for support functions, not for dismantling nuclear weapons; $191 million has been committed to date, and the only thing that is planned for destruction are the wallets of the American taxpayer. The money will go for fissile material storage containers, armored blankets, accident response equipment and training, modification kits for Russian railway cars, material control and accountability for fissile materials, including assistance with computer hardware and software to inventory the materials, physical security, and the International Science and Technology Centers in Moscow and Kiev that will be used to retrain their weapons scientists.

Mr. President, even worse than the fact that nearly one-half of the $400 million has been spent on support functions that will keep their nuclear weapons SAFE—not destroyed—is the fact that never has there been a study done that decides, from the United States' perspective, how the money should be spent. Instead, it is my understanding that we solicited from the Russians their list of places and functions on which they would like us to spend $400 million. Funny thing is, they came back with a list of ways to store their nuclear weapons better, to improve the safety of transportation of the weapons within Russia, and so forth. But actual destruction of those weapons was not on the list. That does not make sense.

What does make sense is a process by which the United States decides which functions are in our interest to do first—like disassemble the nuclear weapons—and then negotiate with the Russians to fund that project. To my knowledge, though, no overall assessment of U.S. interests in the weapons destruction process has been accomplished, nor has a game plan been assembled to ensure we fund these activities first. We must take the lead to ensure that the United States is not spending hundreds of millions of American taxpayer dollars just to improve the Russian military's storage infrastructure. We must spend it to actually dismantle nuclear weapons. The State Department and Defense Department need to develop a clear plan for the use of the $400 million that reflects our interests, not the Russians.

One thing that seems to have been overlooked is the involvement of American industry. Reports we have received indicate that few plans include the use of the huge talent base of American companies that exists in the area of nuclear weapons destruction. We have the world's experts. In fact, when the $400 million was announced, some of our leading companies combined their expertise to best respond to this new challenge. But instead of looking to these companies who employ the Nation's leading experts, the Defense and State Departments started sending armies of bureaucrats to Russia to investigate. One week's worth of meetings in Moscow that saw nearly

100 Washington bureaucrats in attendance caused 1 government official to note that probably all the United States would get for its $400 million was a lot of airline tickets.

In the view of many experts, the United States must develop a list of projects that puts American objectives first by putting nuclear weapons accountability at the top, a plan to assist the Russians in the destruction of the weapons next, and a clear blueprint for involving American industry in the process. A plan like this should be negotiated immediately.

The conference report accompanying this year's defense authorization bill seems to agree on both the importance of the destruction of these assets and the involvement of the U.S. private sector. I wish to compliment the Senate Armed Services Committee, and particularly Senator JOHN WARNER, for their attention to these issues. It is my hope that we will lay a planning foundation that will ensure accelerated dismantlement and destruction of these weapons.

In spite of the fact that we have literally hundreds of people situated in the Moscow Embassy and in consulates around Russia and the other embassies in the old Soviet Union, it was thought necessary to send almost 100 United States experts to visit the Soviet Union.

## THE BUDGET

Mr. BROWN. Mr. President, this body is known for Members with a very striking sense of humor. Some of those Members have addressed the serious subject of the budget and the budget deficit in recent years and have done it by suggesting that this Congress is significantly more fiscally responsible than the President. In that regard, they have referred to figures which seem to indicate this Congress has appropriated and spent less money than the President has recommended.

That is a significant subject. It is an important one. I think it deserves a close look. So I took the opportunity to dig through and get the facts from the Congressional Research Service. This is a publication put out by Congress itself, not the executive branch but the Congress.

I asked a pretty simple question of the Congressional Research Service: How much money did the President ask for in his budget, how large was the deficit he recommended, and what action did Congress take.

The figures from the CRS report of March 4, 1992 with updates are very clear.

In fiscal 1990, the President recommended a budget deficit of $91.1 billion. But the actual deficit for that year, the one Congress presided over and voted for was $220.5 billion. Congress' deficit in fiscal year 1990 was more than double what the President had recommended. Let me repeat that—Congress' deficit in 1990 was more than two times the deficit President Bush recommended.

What happened in 1991? The contrast is even more dramatic. As reported by the Congressional Research Service, the President that year called for budget deficit of $63.1 billion. Congress' actual deficit was $269 billion.

Mr. President, this is not from some campaign folder. These are figures from the Congressional Research Service on the actual budget. They describe what the President asked for and what Congress delivered—a $63 billion he asked for; he got a staggering $269 billion in deficit spending.

What happened in 1992? As I think all Members know, we are not through the year yet. The President had originally recommended $280.9 billion in the way of a deficit, part of that necessitated by the runaway deficits of the prior years. Thus far, the latest estimate is that Congress will deliver a deficit of $333 billion, dramatically higher still than what the President asked for—$29.5 billion more.

How is it possible then for Members to come to this chamber and imply that the President has asked for more spending and bigger deficits than Congress has given?

Part of the answer—and it is a complicated one—lies in a variety of topics. First, estimates can vary. The fact is the President's estimates for the economy are the same ones Congress has adopted except in one instance. For the budget for this coming year, Congress took more optimistic estimates than those the President had recommended to make their numbers look better than the President's numbers.

Some say that we ought to look at only appropriated monies, I believe the figures which have been shown on this floor and discussed publicly do, indeed, deal with appropriated money.

Mr. President, it is totally accurate to say that in these years the President has asked for more appropriated funds for defense than Congress has provided. If the statements—that the President's requests for appropriated funds—were mentioned strictly in terms of defense spending, they would be accurate.

But to imply that overall the President's spending requests exceed the Congress's actual allocations is simple misrepresentation. It does not square the facts as reported by the Congressional Research Service.

The argument thus is something like this. There is a category of spending in which Congress has spent less than the president has asked, and thus, the argument goes, Congress is more frugal and more protective of the taxpayers than the President.

But that is a little like the folks who were caught in the House banking scandal for their ills. Some blamed their dog or their secretaries for their ills, but the more creative blamed their spouses. Why? Because they claim the checks their spouses wrote on the account were the ones that bounced. The checks the Members themselves wrote on their checking account was balanced. But, whether it is your own account or the Nation's, the other side of the checking account cannot be ignored. All of the figures in the checking account must be reviewed to balance a budget. To simply blame it on your spouse or to blame it on your dog or to blame it on a different category of spending is not enough.

This Congress controls every penny our Nation spends, including entitlements. This Congress can say yes or not to the entitlement reforms the President recommends. In fact, we had votes in this Chamber to control increases in entitlements this year. Only 28 Senators voted to control those entitlements in any way.

Your have to look at the whole picture: entitlement, defense spending, and every other category of spending. We must look at the whole ball of wax, and not try to mislead our listeners with only some of the facts. According to our own Congressional Research Service, all the facts are:

In fiscal 1990, Congress spent ($95 billion in outlays) Almost $100 billion more spending by Congress than what the President requested.

In 1991, Congress spent $89.7 billion more than the President requested.

Thus far, using the estimates for 1992, Congress has spent $29.5 billion more than the President's request.

The budget is complicated. The figures are involved. Let me be the first to acknowledge that both the executive and the legislative branches could have and should have done a better job to control spending and hold down the deficit. But to claim that Congress has spent less than the President simply does not square with the facts our own research service has produced.

Mr. President, I yield back the remainder of my time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## MORNING BUSINESS

### THE EXTRA EFFORT

Mr. FORD. The Journal of our proceedings—the CONGRESSIONAL RECORD—is an essential tool in the conduction of the day-to-day business of Congress.

Particularly in periods like this one we are completing—periods of intense legislative activity, the RECORD is sometimes the only written account of an amendment or bill.

My hat is off to the men and women in both Chambers—in the Secretary of the Senate's office and on the staff of the Clerk of the House who get this job done. My appreciation includes those men and women at the Government Printing Office who get the copy, compose it into print, print it, bind it, and get it back up to the Senate and House floors the following morning.

For years the work force at the Government Printing Office has come through for us against adverse conditions. GPO's management has not always fully understood the immediate need in a vital legislature.

In the past the RECORD has backed up for days at the end of the session. Not so this year, even though both floors sent record amounts of copy to GPO during the night. I think it only proper that we give these men and women the recognition they are due for doing a difficult job well. And my thanks for the extra effort many of you extended.

## REPUBLIC OF CHINA'S REPRESENTATIVE DING MOU-SHIH ADDRESSES THE CHAUTAUQUA INSTITUTION

Mr. DOLE. Mr. President, much has been written about Taiwan's progress in democratization and economic development, but few reports are as comprehensive as Representative Ding Mou-Shih's recent address to the Chautauqua Institution in New York. In his address, Representative Ding comments on the end of the cold war, the North-South gap, the conflict between rich and poor nations, and Taiwan's pivotal role in the Pacific region.

In detailing Taiwan's political and economic progress, Representative Ding argues that Taiwan is a "showcase model of success for other developing nations," including mainland China. In addition, he discusses Taiwan's hopes for a peaceful and democratic unification with mainland China.

Representative Ding characterizes Taiwan's relationship with the United States as harmonious and fully functional. In a post-cold-war era of trade tension and economic protectionism, Taiwan remains a dependable partner of the United States and looks forward to working with the United States and other democratic countries to achieve global peace and prosperity.

For a more up-to-date study of the Republic of China on Taiwan, I urge my colleagues to review Representative Ding's address with diligence and care. I ask unanimous consent that his address be reprinted in full.

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

### POLITICAL AND ECONOMIC DEVELOPMENT OF THE REPUBLIC OF CHINA ON TAIWAN, AND ITS RELATIONS WITH THE UNITED STATES

Ladies and gentleman: I am honored to address this prestigious and historic center for education and the arts. For generations, your Institution has inspired literacy and intellectual discourse among Americans, two elevating principles for mankind that are highly valued in my own Chinese culture as well. The vast political and social issues confronting us today are no less daunting than those our forebears contended with, and they merit thoughtful discussion in forums such as this whenever possible. What a pleasure it is to contribute perhaps a little perspective and wisdom to your proceedings here today.

As general euphoria over the end of the Cold War fades, we realize that a new array of political and security issues confronts us. Perhaps we have entered a new era, but every age has its threats and challenges. As the old East-West security concerns recede, different problems emerge, or re-emerge with greater clarity.

Old ethnic and territorial rivalries threaten to resurface in the void left by the end of superpower confrontation. The growing contract in income and social welfare between the richest and poorest nations, or "North-South gap," jeopardizes global stability and peace. Beset by their own economic problems, the wealthiest nations will have perhaps even more difficulty focusing on problems of developing nations. Trade tension and economic protectionism, even among old friends and allies, is resurgent. And the continuing destruction of our national resources by pollution and waste is a tragic by-product of this generations's rapid progress.

I understand you will focus this week on the Pacific, a dynamic and emerging power in global commercial relations. It is, as you may know, a distinctly heterogeneous and socially diverse region, stretching thousands of miles from the Kuril Islands in the North, down to the South Pacific Islands. The nations of the Pacific are at different stages of political and economic development. Yet together they comprise a major influence on international developments, and will continue to do so throughout the coming century.

There are important currents of change underway, perhaps less sensational in terms of daily headlines, but not less important than the historic transitions in Eastern Europe and other areas of the world. East Asia and the Pacific is the fastest growing region in terms of economic output, with average area-wide growth rates far higher than those of the European Community. Tensions have eased dramatically with the passage of old regimes and the new atmosphere of gradual reconciliation and cooperation. Political democratization is now a prevailing trend throughout the region, with a few notable exceptions like North Korea and Mainland China.

It is true that many political and social issues in the region remain unresolved. Still the region generally is advancing at a remarkable pace, and promises to be a significant factor in the world's destiny for years to come.

The Republic of China on Taiwan shares the same principles, interests, and goals as the majority of our neighbors. As one who has been at the forefront of change this past decade, the ROC expects to be a significant player in the region's modernization. Many of our neighboring states already rely increasingly on Taiwan's investment, trade, technical expertise, and aid programs. Indeed, the level of trade and investment between Northeast and Southeast Asia have soared in recent years. We believe in integrated regional approaches to common problems, such as those concerning natural resources, environmental protection, and energy resource development. The ROC accepts its responsibility to participate in regional planning and development.

I want to take this opportunity this morning to inform you about the broad range of dynamic and progressive developments taking place in my own country. We have embarked upon an historic program to fully democratize the Republic of China on Taiwan. Five years into that effort, we can say confidently that it is pervasive and irreversible. Every member of our legislative and representative institutions has now been closer through free and open elections. Our multiparty political system encourages broad scale representations and freewheeling campaigns. The individual's rights of speech, assembly, and petition are virtually unrestricted, even though we, as a society, still face a potential and unpredictable threat one hundred miles from our shores.

For us, this has been a dramatic and extensive transformation in a very short period of time. For every three decades, we clung to survival as an anti-communist outpost on the periphery of the world's largest communist enclave. We managed to do so only through vigilance and social discipline. Certain restrictions on political and social activity were necessary to protect our people and our governing institutions, similar to those undertaken by the United States during wartime. Even in that environment, opportunities for political participation and commercial initiative were widely available to our enterprising citizens. As our economic health and national security stabilized over time, the ROC leadership recognized the need for evolution in our society's freedom as well. Our government took the initiative in the 1980s to eliminate outdated restrictions, and to introduce democratic reforms that brought our society very quickly into the ranks of the world's freest nations.

It has been the perfect counterpart to our free enterprise tradition, expanding the liberalized climate in which prosperity and democracy are now thriving. Not only is the Republic of China on Taiwan the freest Chinese society in five thousand years of history, we are also among the most progressive nations in the world today, striving ever onward to complete our democratization program.

Political freedoms are reflected most vividly in the regular election forums now conducted on Taiwan. Since 1989, a large spectrum of legally registered political parties have fielded candidates in our Legislative Yuan contests. Like the United States, the ROC has two predominant political parties with significantly contrasting platforms and policy objectives. In addition, dozens of minor parties dot the political landscape, and legally compete in our open elections. Last December, historic elections were held for my country's Second National Assembly. This was a milestone toward fulfilling President Lee Teng-hui's commitment to reform the ROC Constitution and allow the popular election of all members of the nation's representative bodies.

The election itself says a lot about our political modernization process. Some 68 percent of our voters turned out for the smooth and orderly balloting. For weeks prior to the election, our citizens witnessed spirited competition among candidates representing nu-

merous political parties. Our ruling Nationalist Party (KMT) platform advocated prosperity and reform; and was vindicated by receiving over 71 percent of the vote. The Democratic Progressive Party (DPP), received about 24 percent of the ballots cast.

U.S. observers hailed the historic importance of our democratic elections. Your State Department termed them "an important milestone in Taiwan's political reform process," and declared "we are pleased that they were held in an open and democratic fashion which promotes continued peace and stability in the region." The New York Times noted this was "the most democratic vote for a legislature ever held in China." Some opposition candidates tried to characterize this election as a referendum on the issue of "Taiwan independence." Contrary to government policy and our Constitution, the DPP Party platform contained a plank calling for establishment of an independent "Republic of Taiwan." Election results indicated strong popular opposition to this approach; and a clear preference for continuation of the ruling party's policies of economic prosperity, social stability, reform, and a gradual approach to reunification of China under free democratic principles. With its landslide victory in the December elections, the KMT Party emerged with a new popular mandate for the important tasks ahead. This coming December, our Legislative Yuan elections will provide yet another occasion for the vigorous airing of issues and proposals in an island-wide campaign.

Our new National Assembly has the responsibility to review and implement constitutional reform proposals. During its 1992 session, completed on May 30th, the National Assembly adopted eight constitutional amendments for structural reform in the ROC government. These include direct election of provincial governors and county magistrates, and popular election of the ROC president and vice president beginning in 1996. The method or the presidential election—whether by direct ballot or by delegate system—is to be decided within three years, after a careful review of public opinion on the matter. In addition, the amendments provide for national health insurance; environmentally conscious development of the economy; and protection of the rights of women, the handicapped, and minorities. These actions comprise a major step in my country's constitutional development.

In yet another significant step for democratic reform, the ROC Legislature in May revised the sedition clause of our Criminal Code, to apply only to those who commit overt acts of violence and coercion to overthrow the government. Previously, any action that might "tend" to incite rebellion was strictly prohibited. This significant step will liberalize even further our laws regarding freedom of speech and political activity.

Such actions to date signify the historic transition underway to implement western-style democracy and freedom in the Republic of China on Taiwan. Our commitment to this course is clear and firm.

Our successful story of national economic development on Taiwan is well known throughout the world. In the space of three decades, we were able to transform ourselves from an undeveloped, agrarian community into a highly productive consumer-oriented society on par with enterprising countries in the West.

The development of the Republic of China on Taiwan in the past thirty years has been phenomenal. In 1959, our population was 10.4 million; by last year it had doubled. In 1959, our per capita Gross National Product (GNP) was the equivalent of US$120; in 1991 it reached well over US$8,000, ranking 25th in the world. Disposable family income has reached an average of US$19,265 per household, and is still growing.

For the past thirty years, our economic growth rate has averaged 8.8% annually. At the same time, the high savings rate among our people and substantial foreign exchange reserves held by our government, together with low rates of inflation and unemployment, contributed to an atmosphere of increasing prosperity. The jobless rate in Taiwan remains less than two percent, as it has for several years. We are proud of our record in this area. We are also proud of the fact that extremely equitable income distribution has enabled everyone in our country to share the prosperity. In fact, the income gap between the top 20 percent and the bottom 20 percent in my country remains among the world's smallest. Moreover, according to a recent edition of Business Week magazine, the people on Taiwan rank first in the world in housing ownership, at 79.1%.

All this has been accomplished despite necessary heavy expenditures for national defense. We take pride in the fact that we have not grown by "mortgaging" our future and that of our children. On the contrary, our growth has generated government budget surpluses in every year except one (1982). Furthermore, we have not grown by enriching some at the expense of others.

By the end of 1992, we expect our gross national product to surge past $200 billion, ranking us 20th among all nations. Our per capita GNP will reach US$10,000. Moreover, our foreign trade will surpass US$150 billion, making us the 14th largest global trading actor. Despite the fact that our domestic economic structure is still in transition, we are moving toward an increasingly open economy aimed at liberalizing our trade, foreign exchange, and investment regimes. Our goal is to create a system in which private entrepreneurship, national prosperity, and political democracy can continue to flourish.

Taiwan earned its prosperity and its reputation for productivity as a manufacturer of labor-intensive goods, such as footwear and textiles. Today, we are making the transition to that producer of high-tech goods like computers and optic-fibers. As part of our modernization process, we are promoting automation, expanding technical training programs, and pursuing new joint ventures with our international financial partners. We believe Taiwan is destined to became a financial, transit, and technological center in the Western Pacific during the Twenty-first Century.

As I mentioned, we have managed to keep inflation and unemployment well under control in recent years, even as our economic growth rate—more than seven percent last year—has surpassed that of most western industrial countries. The spirit of entrepreneurship, coupled with intellectual creativity and efficient manpower, has provided for balanced growth in all sectors of our society. That same drive will carry us into the ranks of the fully developed economies in a very short time.

Despite our triumphs, we now face a number of economic challenges which we are determined to overcome. These challenges include:

a. a shortage of labor and rising wages;

b. an intensified labor movement and more complex industrial relations;

c. environmental pollution, which has triggered a strong domestic environmental protection movement;

d. rising energy costs and unstable prices of key resources;

e. soaring real estate prices; and

f. the NT dollar's appreciation against the U.S. dollar at a rate of nearly 47% since 1986, with all that this implies.

These factors are being addressed with the same vision and determination which brought us successfully to this point.

The Republic of China's policy abroad is to engage in free and fair trading competition as we pursue greater market diversification overseas, and less restrictive import regulations. While we are not yet a member of GATT (the General Agreement of Tariffs and Trade), we voluntarily adhere to many of its global trading principles, and hope to gain accession in the very near future.

Thirty years ago, the ROC on Taiwan engaged in total global trade of only about US$400 million, with a net trade deficit of some $80 million. By contrast, in 1991, our worldwide trade volume reached nearly US$140 billion. So we do feel our economic stature has been well established, both at home and abroad.

For many years, exports abroad were the engine of our economic progress. But the percentage of Taiwan's foreign trade in our GNP has gone down substantially in recent years, as a result of our policy of expanding domestic demand. Statistics show that our reliance on foreign trade has declined year by year since the late 1980s. The ratio of our foreign trade to the GNP fell from a high of 106% in 1980, to 90% in 1989, and to 84% in the first half of this year. Domestic demand will be accelerated even further by our current National Development Plan.

Perhaps you already know that in September 1990 my government announced a six-year, $300 billion "National development Plan" to upgrade infrastructure on the island. This plan includes a number of major expenditures for housing, schools, medical and transportation facilities. The goal is to improve the national well-being of every citizen. There will be more affordable housing, better schools, and better transportation facilities between schools and towns.

The plan is expected to increase the per capita Gross National Product from the present $8,000 to $14,000 in 1996. As an added bonus, the plan should spur private investment, thereby increasing public demand and reducing Taiwan's trade surplus. The anticipated 775 projects will offer important opportunities for overseas participation in developing our communications and transportation systems; energy resources; environmental protection; flood prevention; science and technology; and health and medical care programs.

Indeed, many of the areas where the ROC requires the most assistance are precisely those areas where US firms have goods and services to offer. For example, American companies are world leaders in the development of environmental technology and in the management of environmental programs. Your companies should be able to provide us with machinery and equipment needed for protecting and preserving our natural heritage and with the management expertise needed for enforcing government environmental policies throughout the nation.

The U.S. Commerce Department recently described us as a prosperous market that "represents significant opportunities for American companies to bid on contracts for major projects, including flood control, city transportation networks, water and sewage plants, and highway construction."

U.S. business already is heavily involved in my country in the fields of pollution control,

computers, automated production equipment, telecommunications, household furnishings and appliances, transportation, high-tech instruments, petrochemicals and processed foods. Ford Motor Company, for instance, which established plants in Taiwan in the 1970's, has gained the largest market share for automobiles in my country, competing against ten other manufacturers. IBM Taiwan Corporation and Hewlett-Packard Taiwan Limited are major distributors of computers, while AT&T is one of our largest telecommunications product suppliers.

I sincerely hope that the success and confidence shown in the ROC on Taiwan by certain U.S. companies will lead other American firms to explore and undertake significant commercial ventures in our market.

In 1991 alone, United States engineering companies won more than a billion dollars worth of major contracts in Taiwan. Some 200 U.S. firms either bid on, or participated in the 50 largest projects covered by the Six-Year Development Plan last year. We hope this trend may continue. Of course, product quality, realistic prices, and after-sales service will help U.S. business sustain its favored position in our market.

Commercial interaction between my country and the United States has always been extensive, and it remains so today. In fact, Taiwan is the sixth largest trading partner of your country, and you remain one of our largest overseas markets. American exports to Taiwan have nearly tripled in the last six years. We have successfully reduced our trade surplus with you by ten percent a year, over the past five years; from $16 billion in 1987 to $9.1 billion in 1990, and to $8.2 billion last year. In addition, an ever-increasing portion of our private investment abroad—more than fifty percent, in fact—is targeted at the United States, where high-tech industries, financial institutions, and construction companies are attracting Chinese investors. Total amounts already run into the billions of dollars, and Taipei intends to encourage our businessmen to set up additional plants and take part in mergers of U.S. companies. Last year, the United States ranked as the number one investor in Taiwan, at about forty percent of the total amount.

In the meantime, the two of us have been able to resolve successfully those few areas of disagreement over commercial policies and practices. In June of this year, we jointly agreed to phase out export curbs of machine tools from Taiwan by the end of 1993. This accord follows the expiration last year of our five-year-old voluntary restraint agreement. Our new Voluntary Restraint Understanding on machine tool exports had been welcomed by U.S. manufacturers.

Also in June, we reached an agreement on intellectual property rights protection after extensive discussions. Taiwan will strengthen its measures for protecting international property rights, including patents and publication copyrights. My government strongly believes that counterfeiting is not only immoral but also damaging to research and development efforts. Our executive branch will work with our legislature to complete the enactment of laws for enhancing and enforcing intellectual property protection.

We are gratified by your government's open support last year for our admission to the Asian Pacific Economic Cooperation forum, and prospectively to the GATT. Our participation in those organizations will enhance their effectiveness and relevance over the long run.

Of course, not all cooperation between our two countries is in the economic or financial realm. The range of our common interests, and the extent of our goodwill, is vast. Educational, cultural, scientific, and technological links between us are well advanced. We have entered dozens of bilateral agreements involving such U.S. agencies as the National Science Foundation, National Institutes of Health, and the Nuclear Regulatory Commission. Exchange of research visits involve hundreds of your citizens and ours each year.

I know that the Chautauqua Institution is a major champion of scholarly discourse. Intellectual dialogue and interaction is a well-established tradition between your country and mine. Chinese students have been coming to the United States to study for well over a century. Among all foreign students currently studying in the United States, Taiwan has the third largest number, at 33,000. Among those foreign students now attending schools on Taiwan, the thousand-plus Americans studying Chinese language and culture far outnumber those from anywhere else.

Three years ago, the Chiang Ching-kuo Foundation for International Scholarly Exchange was established by donations from private and public sectors in my country, in honor of our late president. The Foundation funds research by foreign scholars on subjects related to the Republic of China. With more than $100 million principal, the Foundation also is contributing to educational programs at various overseas institutions, primarily American universities. Since its inception, $11 million dollars has been committed to 176 U.S. universities and research institutions. We expect these projects to significantly upgrade academic cooperation in Chinese-area studies.

As all of you well appreciate, education tends to reinforce those political and social values and objectives which free societies like ours embrace. So it is these scholarly ties between your country and mine that have bolstered our common commitment to democracy, liberty, and justice. Truly, it can be said that the democratic reform movement in the Republic of China on Taiwan was inspired, and has been stimulated by the American model of liberty, free speech, and universal political participation.

Before closing, I want to say a word about the issue of China in general. My government stands for the peaceful and democratic unification of China. The present reality is that China is temporarily separated into two areas—the mainland and Taiwan—with two political entities. The timing and method of China's eventful reunification must respect the rights and interests of the Chinese people on Taiwan, safeguard their safety and welfare, and recognize the rights of the Chinese people on the mainland to freedom and democracy.

In his inaugural address of May 1990, President Lee Teng-hui advocated the institution of democratic and free market reforms on the mainland. He held forth the possibility of broader exchanges and discussions with Peking once it renounces the use of military force against Taiwan and pledges not to interfere with the R.O.C.'s external relationships.

The growing network of private contacts and exchanges between Chinese people on Taiwan and on the mainland already enhances prospects for eventual reunification. To date, Taiwan residents have made more than 2 million trips to the mainland, while over 17,000 mainland residents have visited Taiwan. Indirect trade through Hong Kong surpassed $5 billion in 1991.

The Guidelines for National Unification which my government adopted last year include these essential points:

(1) The ROC adheres to the Principle of "one China," and seeks China's unification.

(2) It insists on peaceful unification, and opposes the use of force.

(3) The rights and interests of the people in the Taiwan area should be respected.

(4) Peaceful unification of China should proceed in three phases: near-, mid-, and long-term.

In the "near-term phase of exchanges and reciprocity," the ROC government encourages people-to-people contacts between two sides of the Straits. At present, the ROC government has set up the Straits Exchange Foundation (SEF) to act as an intermediary organization for handling affairs concerning both sides of the Straits. In the "mid-term phase of mutual trust and cooperation," we hope that both sides of the Straits would establish official communication channels on an equal footing, and we propose joint development of the south-eastern coastal area of the mainland. in the "long-term phase of consultation and unification," the Guidelines suggest that a consultative organization for unification be established for joint discussion of the grand task of unification. This is our constructive program to reunite the Chinese people.

Last month, our legislature approved a "Statute for Relations across the Taiwan Straits" to provide a legal basis for bi-coastal contact between people on Taiwan and the Chinese Mainland. It authorizes our Executive Branch to initiate the set-up of direct trade, shipping, and postal links. But any move in that direction must first be approved by the legislature, based on assurances of Peking's sincerity in improving bi-coastal ties. Such assurances remain elusive.

Allow me to close this morning with the observation that the Republic of China's longtime friendship and cooperation with the United States is a cornerstone of my country's international policy. The Cold War "victory" of the free world is due as much to the cohesion of global democracies as it is to the disintegration within the communist system. The same common vision of universal freedom and peace which brought us, together, to this point will sustain us all in the future as we contend with new challenges and circumstances.

The broad range of interests, objectives, and principles which our two countries share means that we view many global issues in the same way. Your country, as leader of the progressive nations, can count on the ROC as a dependable partner in the era ahead. We have much to offer. Though small geographically, Taiwan today is a showcase model of success for other developing nations, large and small. Our example, and our assistance, can serve the interests of East Asian progress over time. We look forward to working with the United States and other democratic countries to achieve global peace and prosperity for this generation and those to come.

Thank you very much.

## STATEMENT ON SENATOR CRANSTON AND THE STAFF OF THE VETERANS' AFFAIRS COMMITTEE

Mr. AKAKA. Mr. President, before we adjourn for the year, I wanted to take a few moments to wish Godspeed to our dear friend and colleague, ALAN CRANSTON, who is departing the Senate after 24 stellar years as a legislator and statesman of international stature, as

well as to thank the staff of the Veterans' Affairs Committee for their many years of outstanding service to the Nation's veterans.

During his four terms as a U.S. Senator, ALAN CRANSTON left an indelible mark on virtually, every major issue of the day. Think of any of the following—arms control, improved relations with the then Soviet Union, SALT II, START, the Panama Canal Treaty, the Mideast peace process, affordable housing, environmental protection, national parks, mass transit, a woman's right to choose, the disabled, civil rights, civil liberties, health, immigration reform—and one cannot help associating them in some way with the Senator from California.

But my own experience with Senator CRANSTON has been largely confined to my acquaintance with him as a member of the Veterans' Affairs Committee, which he has chaired so ably over the years. For the 2½ years that I have served as a member of that panel, I have some to know and appreciate the full extent of ALAN CRANSTON's grand legacy to veterans.

ALAN CRANSTON, as chairman or ranking member or member of the Committee, and of its precursor, the Subcommittee on Veterans' Affairs, has either written or helped write every major veterans initiative of the last two decades, from the Montgomery GI bill to creation of the Readjustment Counseling Service, from the Job Training Partnership Act to agent orange compensation, from expansion of the Home Loan Guaranty Program to passage of the Judicial Review Act, from reform of the Dependency and Indemnity Compensation Program to services for women veterans who have been sexually abused. He will be given special credit for drawing attention to the needs of Vietnam veterans, women, minorities, and veterans of such recent conflicts as Grenada, Panama, and the Persian Gulf. The depth of his commitment to those who served will be forever engraved in the thousands of improvements he made to title 38, of the United States Code. His philosophy of veterans benefits—that the Nation owes a fundamental, continuing obligation to veterans, particularly to disabled veterans, and to the survivors of those who died in battle—will serve as a standard for all those who follow.

Apart from his legislative accomplishments, Senator CRANSTON was a delight to work with. As chairman, he was unfailingly courteous, ever willing to entertain dissenting views, and eager to offer assistance to his less experienced junior colleagues. Though it was his right, he never abused the authority conferred by seniority, preferring accommodation to raw displays of power, and gentle persuasion to parliamentary legalisms. For ALAN CRANSTON is that rare man: A politician with a conscience, a statesman for whom goals and means are inextricably linked, an individual whose public ideals are more than matched by an inner grace.

And so, Mr. President, I will miss this good man who has taught this junior Member much about what it means to be a U.S. Senator. I honor his service to the Nation, and I cherish him for his humanity.

Mr. President, in wishing the best of luck to Senator CRANSTON, I also would like to bid farewell to the outstanding staff of the Veterans' Affairs Committee, including staff director and chief counsel Ed Scott, general counsel Bill Brew, associate counsels Michael Cogan and Thomas Tighe, professional staff members Janet Coffman, Chuck Lee, and Susan Thaul, and the rest of the staff, including Charlotte Hughes, Neil Koren, Virginia Rowthorn-Apel, Kelly Cordes, Tom Hart, Chris Mohr, Jo Meuse, and Rosalie Dukasin.

Mr. President, I do not exaggerate when I say that these individuals collectively represent the finest staff I have ever had the privilege of working with in my 16 years on Capitol Hill. They are bright, hard working, knowledgeable, and truly dedicated to their mission—which is to help us help veterans. I know that I have relied on them for advice and background material on any and every conceivable veterans issue—to the point where I often thought they were really just extensions of my personal staff.

I am particularly grateful to Ed, Bill, Michael, Thomas, and Neil for their assistance in working on specific initiatives I have supported, including my efforts to establish a VA medical center on Oahu to help native American veterans obtain direct VA home loans, to make members of the National Guard and reservists eligible for the VA home loan program, to establish a special center in Hawaii to assist veterans suffering from combat-related psychological problems, to require VA to undertake a comprehensive study of posttraumatic stress disorder in minority veterans, and to establish the position of Chief Minority Affairs Officer within the Department of Veterans Affairs.

In addition, Ed, Bill, and Thomas accompanied me on several different occasions to Hawaii to help me conduct oversight hearings and inspection tours on VA health care matters, activities which materially aided the veterans of my State.

Mr. President, I will miss the Veterans' Affairs Committee staff. I will miss their earnestness. I will miss their youthful idealism. I will miss their enthusiasm. I truly hope that their energy and experience will not be lost to the Senate or the Nation, that their services will be utilized by the next chairman of the committee or by the new administration.

Thank you, Mr. President. Senator CRANSTON and his staff represent the best traditions of public service. I know that I speak for the entire Senate when I thank them for their service to the Nation and urge their continued involvement in the great public issues of the day.

## JEWISH GERIATRIC SERVICES, INC. OF LONGMEADOW—80 YEARS OF SERVICE TO THE ELDERLY

Mr. KENNEDY. Mr. President, it is a privilege to take this opportunity to congratulate the Jewish Geriatric Services, Inc., of Longmeadow, MA, which is celebrating 80 years of excellent service and tireless dedication to older Americans.

Established in 1912, the Jewish Geriatric Center was pioneered by a group of 18 women and 1 man. Bound by a common goal, they combined their efforts to raise funds to provide food for elderly citizens throughout the Springfield Jewish community. Today, after 80 years of outstanding service, this distinguished organization still maintains its funding commitment to provide needed services and support for elderly residents in the area.

In keeping with its longstanding tradition, the women's division of today's Jewish Geriatric Services continues its efforts to carry on these services. This year's celebration marks a milestone. It continues to enrich the lives of those in need, by offering comfort and dignity to all those assisted by its services.

Jewish Geriatric Services, Inc., is an exemplary institution that offers indispensable aid to the community. It has become one of the most effective organizations serving the elderly, and I commend it for its success, and I extend my best wishes for many more years of successful accomplishments.

## THE NEWS ON THE PRESCRIPTION DRUG PRICE FRONT: BAD, AND GETTING WORSE

Mr. PRYOR. Mr. President, today, I want to update my colleagues on an issue that is very important to me and vital to millions of older Americans: their ability to afford prescription medications. Day after day, older Americans write to me as chairman of the Special Committee on Aging, pleading that Congress do something about the high cost of drugs.

### PLEAS FOR HELP COMING IN BY THE THOUSANDS

In the past 6 months, new reports have been released which demonstrate that millions of older Americans are unable to obtain their drugs. Before I describe these reports, however, I want to share with my colleagues the events of the past few days, which, in my opinion, put a more compelling human face on the prescription drug cost crisis facing the United States than any report can.

This past Monday night, CBS aired a special segment on their nightly news program describing the impact that rising drug prices have had on Americans of all ages. The segment also described a new report developed by the Senate Special Committee on Aging staff which lists all the programs that drug manufacturers have to make their prescription drugs available free of charge to patients that cannot afford them.

Since the airing of that report, the committee has been absolutely deluged with thousands of requests from individuals of all ages and from all across the country, asking desperately for a copy of this report. Extra phone lines had to be installed to accommodate the number of calls that have been coming in, validating what I have been saying all along: That people are hurting and cannot afford their medications. In call after call, we are hearing the heart-wrenching stories of individuals who describe the astronomical cost of medication that they absolutely have to take, and how they often wonder whether they will be able to afford them the next time they need a refill.

Even more startling is the news that we are hearing from many physicians that are also calling in. These physicians are telling us that they were shocked to hear that these free drug programs existed and that, in spite of the drug companies' claims to the contrary, they have never heard about them from the drug manufacturers that regularly visited them.

Mr. President, why have we reached this sorry state of affairs in the United States today? The lion's share of the blame rests squarely on the shoulders of the drug manufacturers of this country. These five reports will clearly and unequivocally illustrate that all we receive in return for the extravagant tax credits and tax breaks, monopolistic patent protection, and generous Federal Government research subsidies that we give to the drug industry is the highest medication prices in the industrialized world. It is these pricing policies that are responsible for the thousands of calls that we have received over the last few days, and the thousands of more I am sure that we will receive over the next few days and months.

GAO REPORT ON SECTION 936 DRUG INDUSTRY TAX BREAKS

Mr. President, last May, the General Accounting Office released a report that shocked and startled even those of us who have long known that the pharmaceutical industry is the beneficiary of some of the most lavish tax breaks and tax credits given to any industry in the United States. Not only does this industry receive hundreds of millions of dollars in research and development tax credits, orphan drug tax credits, and marketing and advertising deductions, it also receives the largest share—about $2 billion dollars each year—of a tax credit which is clearly the mother of all tax credits: section 936.

Under the section 936 tax credit bonanza, the pharmaceutical industry is able to close up manufacturing operations in the United States and move them to Puerto Rico, transfer drug patents to the island, avoid paying millions of dollars in taxes on the sales of these items, and then receive a credit of about $70,000 per employee on an average salary of about $24,000 that they pay to each employee. This tax credit, which was designed to stimulate the growth of jobs in Puerto Rico, has done more—much more—to add to the drug industry's already-bloated bottom line rather than create jobs.

In fact, while the drug industry receives 56 percent of all section 936 tax credits, it only employs 18 percent of all section 936 employees. And, for some companies, the tax credit received per employee hired is higher—much higher—than the $70,000 average.

For example, Pfizer receives a tax credit of $156,000 for every employee that they hire in Puerto Rico, 636 percent more than the salary that they pay that employee. Merck receives $110,000 for every employee that they hire, 450 percent more than the salary that they pay. No wonder why these companies hired an army of lobbyists to defeat my proposal that would use this tax credit as an incentive for drug companies to contain drug prices.

In March 1992, I offered an amendment to the tax bill that would pare back these section 936 windfall tax credits to drug manufacturers that increased their prices faster than the rate of inflation. While I was not successful in convincing my colleagues in March to enact this amendment, had this report been in my hands on the Senate floor during that debate, I believe that the outcome would have been much different. This report provides more weight to the argument that we should target this windfall tax credit as a good first step in reducing drug costs in the United States.

AMERICAN ASSOCIATION OF RETIRED PERSONS REPORT

In 1982 and 1986, the American Association of Retired Persons released reports on the ability of older Americans to afford their medications. In 1986, the report found that three of four older Americans said that their highest out-of-pocket medical cost was for prescription medications. Last year, the association did a telephone survey of thousands of older Americans to determine whether this sorry situation had improved or deteriorated. Unfortunately, the July 1992 report showed that the situation had definitely deteriorated:

About 8 million Americans over 45 now say that they have to cut back on necessary items such as food or fuel to pay for their medications. This sorry statistic is being validated this very day by the number of requests that we have been receiving for the Aging Committee report on the drug manufacturer indigent patient programs.

About 18.4 million older Americans over 65 report that they have trouble paying for their medications.

About 43 percent of older Americans age 55 and over have absolutely no prescription drug coverage. That means 23 million older Americans are left exposed to potential financial catastrophe from exorbitant medication bills.

The problem is worse—much worse—for older Americans over age 75. Only 40 percent of this population group has drug insurance coverage, leaving 8 million older Americans in this age group without drug coverage.

REPORT OF THE SENATE SPECIAL COMMITTEE ON AGING

Mr. President, the staff of the Senate Special Committee on Aging completed its own report in August, 1992 on the ability of older Americans to afford their medications. Here is what that report showed:

Because of 12 years of triple digit price inflation for medications, the ability of older Americans to afford their drugs has reached a crisis situation in this country. Many older Americans are having to skip doses or cut their tablets in half to stretch their prescription.

The majority of older Americans do not have private or public health insurance for prescription drugs. In fact, over 64 percent of all medication costs for older Americans are paid out-of-pocket. It is the near-poor elderly that do have have Medicaid that have the highest out-of-pocket drug costs, and the hardest time paying for their medications.

While Medicaid's prescription drug program can act as a safety-value in helpling the poorest of the poor obtain their medications, only about 16 percent of older Americans—about 1.9 million—that are classified as poor or near poor qualify for Medicaid. That means that 84 percent of poor or near poor Americans—about 10 million—do not qualify for Medicaid's prescription drug coverage.

Although many manufacturers say that they have special programs to make their medications available free-of-charge to patients that cannot afford them, the report found that only a handful of the millions of older Americans that could benefit from the programs are actually taking advantage of them. The thousands of requests that we have received over the last few days for information about these programs are all the evidence we need that patients and physicians are unaware of these programs. In addition, these programs are not particularly user-friendly. Indigent patients often have to wait

weeks before they are able to get the medications that they need to live.

GAO REPORT ON SKYROCKETING PRESCRIPTION DRUG PRICES

Another report about the high costs of medications was released in August by the General Accounting Office [GAO]. In that report, manufacturers of 29 widely used prescription drugs were asked to explain the reasons for the excessive price increases that we have seen on some of their products over the last few years. As we might expect, the report found that the drug manufacturers gave their standard boilerplate argument that their price increases were needed to fund research and development of new drugs.

Although that argument is now threadbare, the fact is that a manufacturer which is spending 15 percent of its sales on R&D would only have to increase its prices by 1.5 percent each year to increase R&D by 10 percent. Where are all these excess price increases going? To marketing, advertising, and profits. That is the bottom line.

Not only are drug manufacturers increasing prices on drugs that are still on patent, but some of the stiffest price increases occurred on drugs that have been off patent for decades, such as Dilantin, used to treat epilepsy, Synthroid, used as a thyroid replacement, and Nitrostat, used for angina. Price increases of the magnitude described in this report for products that have been off patent for decades are totally inexcusable and the most blatant example of price gouging the American public.

FAMILIES USA REPORT

Just last month, in September 1992, Families USA released a most compelling indictment of the pharmaceutical industry's pricing practices. We know that the industry has wrecked havoc on the American public by increasing drug prices over the past 12 years by three times the rate of inflation. This report went one step further. It showed us how the industry abuses the monopoly power that we have given them by granting patents on their products. Patents are needed to encourage innovation in all areas of our society. Patents allow the inventor assurance of adequate time to recover their investment in discovering and making the product. However, Congress did not create patents to encourage price gouging, especially on products as vital as medications. Here's what the Families USA Report found:

Over the past 6 years—from 1985 through 1991—the top 20 prescription drugs used by older Americans almost quadrupled in price. Many of these medications are still on patent, and no lower-cost generic alternative is yet available.

The profits of the manufacturers of the top 20 drugs used by Americans have increased at 5 times the average of the Fortune 500 companies. That is, while the average Fortune 500 company was making profits of 3.2 percent, the average profit of the manufacturer of the top 20 drugs was 15.1 percent. They have been able to make these monopoly profits because they have been abusing the patent that we have given them.

Because of this incredible price gouging on patented pharmaceutical products, older Americans at the lowest income level, who are unprotected by Medicaid, have the highest out-of-pocket prescription drug costs of any income group of older Americans. These Americans spend 10 percent of their total income on prescription drugs. No wonder that 8 million older Americans say that they have to make choices between paying for food and medications. These older Americans go to bed at night wondering whether they will be able to afford a pill to treat their diabetes or their high blood pressure. These are choices that no American should have to make.

VOLUNTARY EFFORTS FALL FAR SHORT OF WHAT IS NEEDED

Mr. President, we have heard much rhetoric from the drug companies and their supporters that they are voluntarily going to restrain their drug price increases in 1992. Well, recent data do not show that the drug manufacturers are putting their money where their mouth is.

In fact, drug inflation is increasing at an even faster rate. According to the Bureau of Labor Statistics, during the period between August 1991 and August 1992, while the overall inflation rate was 1.5 percent, drug prices 6.3 percent, more than 4 times the amount. Unfortunately, these data show why voluntary approaches to pharmaceutical cost containment can not and will not work.

First, not all manufacturers have taken the pledge to keep their price increases to inflation. In fact, only six drug companies have taken this pledge, and we have no idea whether these manufacturers will continue to show restraint if we take their outrageous behavior out of the spotlight. Second, these voluntary commitments do nothing about the astronomical cost of new drugs coming to the market. In recent years, we have seen some drugs come to market at a cost of $3,000 to $4,000 a dose. The bottom line is this: nothing short of legislative initiatives will assure that the American public will pay fair prices for medications.

Mr. President, when the 103d Congress convenes, I will continue to seek enactment of practical, reasonable approaches to pharmaceutical cost containment. We must also find ways to expand access to needed medications among various vulnerable population groups. Health care reform is inevitable, and whether prescription drug costs are 5 percent or 10 percent of the health care dollar, they are too important and too expensive to be left out of meaningful health care cost containment mechanisms.

The only real solution to the crisis so vividly described in these reports lies in strong mechanisms that reduce the cost of pharmaceuticals for all Americans. We have to be sure that Americans are not being price-gouged by an industry that has clearly abused the patent protection on their products.

We have to protect Americans against paying high drug prices to subsidize lavish and extravagant drug manufacturer marketing campaigns which have little or no educational value for health care professionals. We have to be certain that the American taxpayer pays a fair price for those drugs that are developed with financial support from Federal Government laboratories and institutions, such as the National Institutes of Health.

Finally, Americans want to know why we should continue to allow the drug industry to reap the benefits of a $2 billion a year windfall tax credit when all we get in return are drug prices that climb higher and higher into the outer stratosphere. Mr. President, these are among the issues that I intend to take up once again shortly after we convene the 103d Congress next January.

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## IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, the Federal debt run up by the U.S. Congress stood at $4,059,483,157,798.59 as of the close of business on October 5, 1992.

Anybody familiar with the U.S. Constitution knows that no President can spend a dime that has not first been authorized and appropriated by the Congress of the United States.

During fiscal year 1991, it cost the American taxpayers $286,022,000,000 just to pay the interest on Federal spending approved by Congress—spending over and above what the Federal Government collected in taxes and other income. Averaged out, this amounts to $5.5 billion every week, or $785 million every day, just to pay the interest on the existing Federal debt.

On a per capita basis, every man, woman and child owes $15,804.33—thanks to the big-spenders in Congress for the past half century. Paying the interest on this massive debt, averaged out, amounts to $1,127.85 per year for each man, woman, and child in America—or, to look at it another way, for each family of four, the tab—to pay the interest alone—comes to $4,511.40 per year.

What would America be like today if there had been a Congress that had the courage and the integrity to operate on a balanced budget?

## IN TRIBUTE TO THE FIREFIGHTERS WHO DIED IN THE LINE OF DUTY IN 1991

Mr. DODD. Mr. President, on October 11, 1992, firefighters who died in the line of duty during 1991 will be honored at the 11th Annual National Fallen Firefighters' Memorial Service in Emmitsburg, MD. Since I am unable to attend the memorial service, I would like to take this opportunity to extend my condolences to the families and friends of our fallen firefighters.

Our Nation owes a great debt to the brave men and women of the fire service who work tirelessly and risk much to protect us. No matter how dangerous or difficult the emergency, they are always there. Whether they are battling the intense flames, heat, and smoke of a fire raging out of control, freeing a motorist from the twisted wreckage of his car, or helping a town rebuild after a natural disaster; our dedicated firefighters are there to perform their lifesaving duties with courage and compassion.

Tragically, the dangers of the job take a terrible toll. Last year, 105 firefighters made the ultimate sacrifice for their communities. Included in their number are four firefighters from Connecticut: Ronald C. Altieri who served with the Hamden Fire Department; Robert A. Cole who served with the Beacon Hose Co. No. 1; Michael Moriarty who served with the Canterbury Volunteer Fire Co.; and Daniel E. Wannagot who served with the Shelton Fire Department. These men worked hard to make their communities a better and safer place and they will live on in our hearts and minds. To their families and friends I extend my sympathy. My thoughts and prayers are with them.

## DEDICATION OF THE FEDERAL JUDICIARY BUILDING

Mr. CHAFEE. Mr. President, last Wednesday, the city of Washington was presented with a grand architectural achievement: The new Federal Judiciary Building. The building is a brilliant complement to Daniel Burnham's Union Station and newly restored Postal Square. Wednesday's dedication ceremony was graced with the words of the chairman of the Environment and Public Works Committee, Senator MOYNIHAN, who served as chairman of the Commission for the Judiciary Office Building, Chief Justice William Rehnquist, and the Honorable L. Ralph Mecham, Director of the Administrative Office of the U.S. Courts.

Mr. President, dedication of any new Federal building, let alone one of this magnificence, is a special and rare ceremony. It is not something we do every day, nor should we take it lightly. The words of Senator MOYNIHAN, Chief Justice Rehnquist, and Mr. Mecham were dignified and celebratory, and should be shared with the full Senate. Accordingly, I ask unanimous consent that their statements be entered into the RECORD at this point.

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

REMARKS BY DANIEL PATRICK MOYNIHAN

One of the engaging features of the American experiment, as we persist in calling it, is the counterpoint between our insistent association with classical republican forms of government, and equal insistence that ours is indeed a wholly "New Order of the Ages". As proclaimed in Latin on the Great Seal.

The founders had few illusions about the "fugitive existence", as Madison put it, of those ancient republics. Yet, you cannot doubt their dream that the mind of man might yet devise a mode of republican government that would endure.

The experiment goes on, not least in the evolution of the Nation's Capital, a wholly new city designed to facilitate and to celebrate this republic, and to illustrate its character with Greek and Roman architectural forms. In this regard, there have been good times, and, well less good. (The Persian drinking horns that festoon the Rayburn Building being one not altogether fortunate example.) But one of the finest moments came at the beginning of this century with the Report of the Senate Committee on the District of Columbia on the Improvement of the Park System of the District of Columbia, named for its chairman, Senator James McMillan of Michigan. The Commission recovered the neoclassical clarity of the L'Enfant plan for the city, most particularly by proposing to clear the Mall of existing and prospective railroad stations. Instead, we would have one station on the present sight. But no ordinary railroad shed.

"The plans call for a station eight feet and eight inches longer than the Capitol, the building to be of white marble, the facade to be Roman in stile of architecture, and the construction and arrangements to be so planned as to make this station superior to any structure ever erected for railway. Facing the Capitol, and yet not too near that edifice, the new station will front upon a plaza six hundred feet in width and twelve hundred feet in length, where bodies of troops or large organizations can be formed during inaugural times or on other like occasions. Thus located and constructed, the union depot will be in reality the great and impressive gateway to Washington.[1]

Daniel Burnham, who could make no little plans, conceived an arrangement of three buildings, and in turn design the station itself and the Post Office to the west, bequeathing the present eastern site to our age. As chairman of the Commission for the Judiciary Office Building, I hope you will agree with us that the American genius has never been more on display than here and now. The critic Benjamin Forgey has described this work of Edward Larrabee Barnes and his associates as "an abstract variation of classicism." We are now beyond Greek and Roman. Yet, the antiphony persists. As President Kennedy would say Pericles would say, "We do not imitate, but are an example to others."

Not only in the arts, but also in government. The McMillan Commission report concluded with this passage:

"By the patient and steadfast cooperation of all those persons charged with the upbuilding of the District of Columbia, a result may be attained such as has been reached in no other capital city of the modern world. The task is indeed a stupendous one; it is much greater than any one generation can hope to accomplish. The very hearty and intelligent cooperation that the plans have received by the officers of the Government, the committees of Congress, and by the public generally makes it reasonably certain that the development of the National Capital will be prosecuted along the general lines proposed; and that the city which Washington and Jefferson planned with so much care and with such prophetic vision will continue to expand, keeping pace with national advancement, until it becomes the visible expression of the power and taste of the people of the United States.[2]

Lest too much gravitas descend, let us recall Mencken's observation that "No one ever went broke underestimating the taste of the American people." As for McMillan, it would seem closest *he* ever came to going broke was in the elections of 1895 and 1899, when, as his biographer notes, as sometime Republican State chairman, "he took considerable trouble and expense to insure his unanimous election by the Michigan legislature.[3] This required that he buy every Democratic vote in Lansing.[4] Money well spent, say I.

REMARKS OF THE CHIEF JUSTICE

I am pleased to join you in dedicating our new Federal Judiciary Building. My predecessor, Warren Burger, recognized more than twenty years ago the need for a building to house in one location the various agencies which comprise the support system of the federal judiciary. Today, his vision has become reality. Its realization has been much aided by the efforts of those in the judicial branch—especially Ralph Mecham and his colleagues in the Administrative Office of United States Courts—and by those in the executive and legislative branches—particularly by Senator Moynihan.

We also express our appreciation to George White, the Barnes/Lee architectural partnership and those who brought their design to fruition. This handsome structure surely provides a fitting complement to Union Station and Postal Square, both of which were recently refitted to their original splendor, albeit modified to serve contemporary needs and functions. It has often been said that the public buildings of an era reflect the mood of its times. Adjacent to us on Columbus Circle, Union Station's architectural style exemplified an era of robust optimism and a sense of limitless potential that, as many historians have noted, has been considerably toned down as the century has advanced. What can be said of this building and its style, which evokes so many of the patterns of its predecessors?

We can speak of the timelessness of the classical architectural elements that make up both buildings—and a timeless style is particularly appropriate in a building dedicated to the administration of justice. The strong classical elements symbolize the timeless strength of the system left to us by

[1] "The Improvement of the Park System of the District of Columbia," Report of the Senate Committee on the District of Columbia, 57th Cong., 1st sess., Senate Report No. 166 (Washington, D.C.: Government Printing Office, 1902), p. 16.

[2] Ibid., p. 19.

[3] Marie Heyda, O.P., "Senator James McMillan and the Flowering of the Spoils System," Michigan History, LIV:3 (Fall, 1970), p. 194.

[4] Ibid.

the framers of the Constitution, who themselves consciously referred to classical models. The modern elements of the design—the glass walls around us and the glass canopy above us, floating on few visible means of support—do not detract from the classical symbolism. The German philosopher Schelling called architecture "music in space, as it were a frozen music"—and this building admirably fits that description.

It will soon teem with more than one thousand employees who staff the Administrative Office of the United States Courts, The Federal judicial Center, the United States Sentencing Commission, and the Panel on Multidistrict Litigation—agencies whose purpose is to support the programs, policies, and goals of the federal judicial branch. Their integration at last from many scattered locations into this central structure symbolizes the nation's need for a unified, efficient, and properly focused federal court system to meet the serious challenges confronting it today.

Most Americans—indeed, probably most people everywhere—from their impression of the system of justice under which they live by their experience with that system in their own community. For them, the local courthouse is the tangible symbol of the availability of justice, and of its quality. By contrast, most Americans—indeed, most lawyers and probably many judges—will not know the purpose which this building serves. Most of those who have noticed it probably passed it on their way to and from Union Station—their momentary curiosity limited to the progress of the construction, and the unfolding of its architectural design. To them, it will undoubtedly seem just another large government building housing yet another Washington bureaucracy. But we should make no mistake about the importance of this building in the administration of justice.

The federal judiciary has experienced tremendous changes since 1907, when the first train pulled into the newly built Union Station. At that time Melville Fuller presided over the Supreme Court, but not over the federal judicial system, principally because the organization of the federal judiciary 85 years ago bore little resemblance to that today. The local federal courts enjoyed nearly complete independence in the conduct of their business and in the appointment of staff. The circuit courts of appeal had been in existence a mere sixteen years and the beginnings of centralized administration of the federal judiciary—the establishment of the Judicial Conference of the United States—would not take place until 1922.

Until 1939, funding for the administration of the federal courts came from the budget of the Department of Justice. The report of the Judicial Conference of the United States was submitted to the Attorney General of the United States, who incorporated it into his own annual budget. To alleviate the potential interbranch friction this arrangement occasioned, Congress passed legislation in 1939 creating the Administrative Office, Circuit Conferences, and Circuit Councils. And, as some of you know, for the first three decades of its existence, the Administrative Office had quarters on the ground floor of the Supreme Court Building.

Almost thirty years after creation of the AO, President Johnson in 1967 proposed the establishment of the Federal Judicial Center to promote a more effective federal judiciary through research, planning and education. The President included the proposal in his "Message on Crime in America" partly because the federal courts were inundated by the federalization of criminal laws. It is interesting to note parenthetically that today, twenty-five years later, we face a similar inundation of federal courts as a result of the accumulation of congressional decisions to transfer matters previously handled in state courts to the federal courts. What a fitting illustration of the French proverb "Plus ca change, plus c'est le meme chose"—(the more things change, the more they remain the same). The United States Sentencing Commission and the Panel on Multidistrict Litigation are of even more recent vintage and, like the other judicial agencies, were created to promote more effective administration of criminal and civil justice in the federal courts.

Although the frontline administration of justice will continue to be done in courthouses throughout the United States, the work that will transpire within these walls will do much to support it. The federal judiciary has become too complex and large-scale an organization to continue to grow in a purely reactive way; it must develop plans for future growth that may be presented to Congress in order to aid that body in making the necessary determinations. That work, and the other work done in this building, will contribute importantly to the maintenance of our national ideals of respect for the rule of law and equal justice for all. To these ideals we today dedicate this building.

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REMARKS OF L. RALPH MECHAM

Chief Justice Rehnquist, Chief Justice (Ret.) Burger, Senator Moynihan, Judge Pauline Newman, Architect White, justices and judges, members of the Judiciary Building Commission and distinguished and honored guests, it is a privilege and honor for me to proffer a few words at the dedication ceremony for this magnificent building. This monumental structure represents the culmination of a long-term dream to consolidate the third branch agencies into one facility. For decades, we have been scattered like the ten Lost Tribes of Israel throughout downtown Washington, DC. Now we are to be gathered into a building of our own which gives the judiciary an administrative promised land where we can work together instead of apart.

Although the Federal Judiciary Building took only 5 years to design and build, it was over two decades in the making. It was the dream of Chief Justice Warren Burger, who worked for over 17 years to provide housing under one roof for the various national administrative agencies of the Federal Judiciary including the Administrative Office, the Federal Judicial Center, and other judiciary agencies. When I was hired by the Supreme Court to serve as Director of the Administrative Office on July 15, 1985, one of my first charges from Chief Justice Burger was to work to get such a building, and to get the job done.

I took that charge seriously and did get right to work to make Chief Justice Burger's dream a reality first, by testifying before the Senate Environment and Public Works Committee just 2 days after taking office. We had to gain congressional approval of not one but three bills starting in 1985 in order to secure all the needed authorization and funding for the building. First, Congress had to authorize the Architect of the Capitol and the Secretary of Transportation, in consultation with the Chief Justice, to study alternatives for construction of a judiciary office building. This was enacted in December of 1985 in part through the good work of Senator Robert Stafford, then chairman of the Senate Committee on Environment and Public Works with important help both from his committee colleagues and from the House Public Works Committee leaders.

Then it was necessary for the judiciary to secure $1.3 million to fund the study. This money was approved in July of 1986 through the effective leadership of our House and Senate Appropriations subcommittees. I then transferred our $1.3 million to the Architect of the Capitol, George White, who had also "dreamed" for years of our new building, so that he could undertake the feasibility study.

Upon the completion of the feasibility study, the patron saint of our building who made it all possible came to the fore, Senator Daniel Patrick Moynihan who was by then the subcommittee chairman. He introduced authorizing legislation in December 1987. Through his outstanding leadership coupled with valiant support from Senator John Chafee and from their counterparts in the House Public Works Committee, congressional approval of the authorizing legislation was secured, which on October 7, 1988 was signed into law by President Ronald Reagan.

In virtually unprecedented fashion, the developer, architect and contractor completed this building on time and under budget. It is a prototype for what we think the judiciary could do on all of our judiciary building projects if it were granted the approval to do so by Congress.

Given the fiscal situation prevailing in 1988 when Congress authorized our building, to say nothing of the present fiscal circumstances, our building would never have been built had it not been for the congressional initiative led by Senator Moynihan in authorizing a lease-purchase arrangement to pay for the new structure. Thus, there were no initial capital outlays. By special arrangement, there was no budget "scoring" or charge in advance for the total cost of the building, that would otherwise have been required. The judiciary occupants of the building will pay the equivalent of rent for 30 years and then we will own the building outright.

Creative financing has resulted in converting future rent payments into current working capital at rates very slightly above the cost of 30-year treasury bonds. The judiciary will enjoy a virtually rent-free period until August 1994. This represents a savings of approximately $17,230,000 per year. Thereafter, the bulk of the annual payments equivalent to rent will remain flat for 30 years. Only the much smaller operation and maintenance payments will increase with inflation. Consequently, we estimate that the judiciary, and therefore the taxpayer, will save many millions of dollars over the 30-year life of the project. This is because rent in a GSA or privately owned building charged to the judiciary escalates every year. We will be paying off our own mortgage, rather than someone else's, as we pay our annual rent. In fact we estimate that in a very short time, the rates the judiciary tenants would have been paying in our old and scattered buildings would actually exceed the rate that we will pay in the new Federal Judiciary Building, where we will also enjoy the many operational efficiencies of consolidation.

I have stressed the dream theme. Perhaps that is why I am reminded of the movie "Field of Dreams" in which a mysterious voice continually whispers to Kevin Costner to "Build it and he will come." Against almost insuperable odds, Mr. Costner builds a lighted baseball field in the middle of his

Iowa cornfield and first "Shoeless" Joe Jackson, then other Hall of Fame players, and finally his deceased father, come to play baseball thus fulfilling not only his dreams but also those of the baseball greats who had gone before.

Through your good efforts as in the "Field of Dreams," we "built it" and we "will come." More than 1,200 judicial branch employees will come to this building by October 6th from ten locations scattered throughout the District of Columbia.

The voice of Kevin Costner not only said "Built it and he will come", but the voice also said "Ease his pain." This building will ease retired Chief Justice Burger's pain and I can assure you that it will ease the pain of the judicial administrators such as myself who have tried to run complex, even though modest sized agencies, from multiple locations throughout Washington. We will serve the judiciary much more effectively, and more efficiently while at the same time improve both staff morale and esprit de corps. It has been said that the quality, inspiration, and performance of the world's political and governmental institutions varies inversely with the grandeur of their buildings. You have my solemn pledge that we in the judicial branch shall disprove this adage for we shall not succumb to an edifice complex.

Because of the vital role played by three of the dreamers who have made this building a reality, I thought initially that the Federal Judiciary Building should more correctly have been denominated the "BMW" building, the acronym for Burger, Moynihan and White, not the well-tooled German automobile. Moreover, the "M" had the added utility of permitting two backbench dreamers to surreptitiously claim that the "M" also stood for Ralph Mecham and for my deputy Jim Macklin. Likewise, the "B" in BMW has a trio of added applications, namely to the building's great developer/architect team Boston Properties and Edward Larrabee Barnes as well as for the late Senator Quinton Burdick who until he died a few days ago, sadly, chaired the Senate Environment and Public Works Committee. He has been replaced by Senator Moynihan.

Unfortunately, the "BMW" name while somewhat comprehensive left out many other important players such as all of you who supported the project over the years especially the Federal Judiciary Building Commission, members of the Senate Committee on Environment and Public Works, and the House Public Works and Transportation Committee, to say nothing of the appropriations committees who played a critical role at a vital juncture and will continue to do so as the rental payments kick in 2 years from now. A number of leading House and Senate staffers ought to be mentioned but I shall single out just two as representative of many others. I all but took up residence for about a year and half beginning on July 17, 1985 in the offices of Harold Brayman then on the Senate staff and Dick Sullivan who for decades headed the House staff.

At the risk of making this sound like the Academy Award presentations, I am compelled to mention and indeed must thank the indefatigable project manager, Yong-Duk Chyun along with the distinguished architects, John M.Y. Lee and Ted Oldham of Oldham and Seltz. The Oscar winner for best supporting actor is Ray Karam, Assistant Director of the Administrative Office who did such an outstanding job managing our efforts, and for best supporting actress Kathy Bloom on his staff who has toiled effectively day and night for over a year.

We have already set up a special calendar of solemn, yet joyous, working-holidays that we shall observe here in this splendid new edifice. The first momentous observance will occur on March 17th when we shall give new meaning to St. Patrick's Day by adding to our hagiography the sainted name of Daniel Patrick Moynihan. By driving the snakes off Capitol Hill and from along Pennsylvania Avenue, he has made our building possible. On the next Saints Day, April 23rd, we shall honor as they do in the United Kingdom the memory of a new St. George; who else but Capitol Architect George White. He has slain the dragons and made our building a reality. Happily April 23rd is also my birthday, so once again I can sneak in the back door and bask in the vicarious light of these prime movers.

Then, we shall pay tribute on September 23rd to the United States Constitution, which is virtually holy writ in our Republic. I am delighted to point out that this is also the birthday of Chief Justice (Ret.) Warren Burger. To my knowledge there is no counterpart to St. Warren but we shall not let that deter us. Last but by no means least, we shall on October 1st do homage to Chief Justice William H. Rehnquist who made the planning for and the successful completion of this building his personal concern since he became Chief Justice in October of 1986.

I am pleased now to make way for the true titans of this project who most certainly win the starring role Oscars for their inspired performances. They, with you, have made possible this field of dreams for truly they have built it, and we have come. Our pain indeed will be eased. The ten lost tribes shall gather here in our new Jerusalem.

## TRIBUTE TO SENATOR TIM WIRTH

Mr. PELL. Mr. President, I rise today to pay tribute to TIM WIRTH who will be retiring from the Senate at the end of this Congress.

Public service has been a way of life for TIM WIRTH for at least a quarter century. Starting with his White House fellowship in 1967, he continued his public service in posts at the Department of Health, Education, and Welfare and then put in a dozen years in the House, before he was elected to the Senate in 1986.

He has focused on promoting economic development and has played a key role in infrastructure and transportation projects in his State. He also has been a tireless proponent of a rational national energy policy and he has worked hard to correct problems in banking and S&L industries.

I know TIM WIRTH best as a voice for environmental protection and as an effective advocate for clean air and water legislation and for the protection of conservation areas ranging from the Arctic National Wildlife Refuge and Alaska's Tongass National Forest to Colorado's own wilderness areas.

He has worked hard on global warming, ozone depletion, and protection of rainforests around the world, but he also has provided critical leadership on international population issues and has fought hard for reproductive rights for women.

TIM WIRTH has been a tremendous asset to the Senate and the Nation. He is one of our colleagues who has been a force for reason and he has made a difference. I will be sorry to see him leave and I wish him well.

## EXECUTIVE SESSION

## PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

Mr. FORD. I ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar 47, the Protocol on Environmental Protection to the Antarctic Treaty.

I further ask unanimous consent that the treaty be considered as having been advanced through the various parliamentary stages up to and including the presentation of the resolution of ratification, that no amendments, provisos, understandings or reservations be in order; that any statements appear, as if read, in the RECORD, and that the Senate vote on the resolution of ratification without intervening action or debate.

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

The treaty will be considered to have passed through the various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The resolution of ratification was read as follows:

*Resolved, (two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of the Protocol on Environmental Protection to the Antarctic Treaty, with Annexes, done at Madrid October 4, 1991, and an Additional Annex done at Bonn October 17, 1991.

PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

Mr. PELL. Mr. President, I am delighted that the Senate is considering the protocol on environmental protection to the Antarctic Treaty. The protocol will enhance environmental protection in the Antarctic and should help ensure that the frozen continent remains pristine for years to come. It is a sound treaty and one that my colleagues should support.

I would be remiss if I did not acknowledge at the outset of my remarks, the outstanding, leadership role played by two of our colleagues in the Senate in shaping U.S. policy on the Antarctic: Senator GORE and Senator KERRY.

In 1988, the parties to the Antarctic Treaty concluded negotiation of the Convention on the Regulation of Antarctic Mineral Resource Activities or CRAMRA. That convention alarmed many people, who argued that it would not adequately protect the Antarctic environment.

Senator GORE quickly recognized the dangers in the convention, not only to

the Antarctic environment, but also to one of the keystones of international cooperation on the continent, the principle of free and open exchange of scientific data gathered within Antarctica.

In September 1989, Senator GORE introduced Senate Joint Resolution 206 which declared Antarctica to be a "global ecological commons," called for a new agreement or protocol to provide comprehensive environmental protection for the Antarctic, and called upon the President not to submit CRAMRA to the Senate for its advice and consent pending entry into force of such an environment agreement. The measure was adopted by the Senate and signed into law in 1990.

In addition to this measure, Senator KERRY and Congressman Silvio O. Conte introduced, and the Congress passed, the Antarctic Protection and Conservation Act of 1990 which made it a crime for U.S. persons or entities "to engage in, finance, or otherwise knowingly provide assistance to any Antarctic mineral resource activity." It also called upon the Secretary of State to negotiate a new agreement providing permanent protection for the natural environment of Antarctica, including an indefinite ban on mineral resource activities.

Together, these distinguished Members of Congress brought about a change in course in U.S. policy on the Antarctica. And, it is in part due to their efforts that we are considering this protocol here today.

Let me now provide my colleagues with some brief background information on the Antarctic Treaty system and the major provisions of the protocol.

First, the background. For 30 years, activity in the Antarctic has been governed by the terms of the Antarctic Treaty of 1961 and associated conventions and recommendations. These include: the agreed measures for the conservation of antarctic fauna and flora, the Convention for the Conservation of Antarctic Seals, and the Convention for the Convention on the Conservation of Antarctic Marine Living Resources. Collectively these agreements are known as the Antarctic Treaty system and apply to the area south of 60 degrees south latitude.

Three principles undergird the treaty and are incorporated in its articles; first, that Antarctic shall be used for peaceful purposes only; second, that the continent shall be open for cooperative scientific investigation; and third, that the treaty shall not derogate from or add to a party's territorial claim or potential claim.

As I noted earlier, in 1988, the parties to the Antarctic Treaty concluded negotiation of CRAMRA. Because of their concerns about the treaty, three nations—France, Australia, and, New Zealand—whose approval was necessary for the treaty to enter into force announced their opposition to the regime. Consequently the regime never took effect.

In late 1990, the parties to the Antarctic Treaty initiated a round of new negotiations to resolve the impasse over CRAMRA. The negotiations also aimed at achieving "further elaboration, maintenance and effective implementation of a comprehensive system for the protection of the Antarctic environment." These negotiations were completed on October 1991 and produced the Antarctic environment protocol. The central issue in this negotiation was mineral resources. France, Australia pushed for the adoption of a permanent ban on commercial mineral activities, a position the United States strongly opposed.

The protocol supplements the Antarctic Treaty of 1961 and does the following:

Designates Antarctica as a "natural reserve, devoted to peace and science";

Establishes environmental principles to guide the planning and conduct of activities in the Antarctic;

Establishes detailed mandatory rules for environmental protection in a system of five annexes on: environmental impact assessment, conservation of Antarctic fauna and flora; waste disposal and waste management; the prevention of marine pollution; and area protection and management;

Obligates parties to conduct environmental impact assessments for activities conducted in the Antarctic pursuant to procedures outlined in the annex on such assessments;

Establishes a Committee for Environmental Protection to assess the effectiveness of measures taken pursuant to the protocol and its annexes and to make recommendations to improve their implementation; and

Establishes compulsory dispute settlement procedures for controversies over the interpretation or application of, and compliance with, provisions relating to mineral resource activities; environmental impact assessment and response action as well as most aspects of the annexes to the protocol.

The issue receiving the most attention in the protocol's negotiations was the limitation on commercial mineral activity. The protocol places a 50-year moratorium on nonscientific mineral resource activity, unless there is unanimous agreement during that period to suspend the moratorium. Several countries advocated a permanent ban on mineral resource activities or a ban of at least 50 years that could only be lifted by the unanimous consent of the parties. The United States opposed both of these proposals.

After expiration of the moratorium, a party may propose an amendment to lift the moratorium. To enter into force, such an amendment would require the approval of three-fourths of the Antarctic Treaty consultative parties, or ATCP's, including all of the current ATCP's. The amendment's acceptance is also contingent upon entry into force of a binding legal regime which sets forth agreed means for determining whether, and, if so, under which conditions, any such mineral resource activities would be acceptable. If an amendment does not enter into force within three years of its adoption, a party may announce its withdrawal from the protocol, which would take place 2 years from the date of notification of the depositary.

This provision on minerals is notable also in that, for the first time in the history of the Antarctic Treaty, unanimous approval of the ATCP's has not been required.

The committee held a hearing on the protocol in early May, receiving testimony from the administration and public witnesses. The committee has found no opposition to the protocol and urge my colleagues to support it.

Mr. FORD. Mr. President, I ask for the division on a vote.

The PRESIDING OFFICER. A division vote has been requested. Senators in favor of the resolution of ratification will rise and stand until counted. (After a pause.) Those opposed to the resolution of certification will rise and stand until counted.

On a division, two-thirds of the Senators present having voted in the affirmative, the resolution of ratification is agreed to.

Mr. FORD. Mr. President, I ask unanimous consent that the motion to reconsider the vote be tabled and that the President be notified of the Senate's action and the Senate return to legislative session.

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

The motion to lay on the table was agreed to.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

## THE CALENDAR

Mr. SEYMOUR. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar numbers 555, 556, 629, 708, 709, 718, 723, 724, 726, 733, 750, and 757 en bloc; that the amendment at the desk to the calender 723 and the committee substitute amendments and committee amendments, where appropriate, be agreed to, en bloc; that the several bills each be deemed read a third time, passed; that the motion to reconsider the passage of these items be laid upon the table en bloc; that the amendments to the titles where appropriate be agreed to; that the consideration of each bill be included sepa-

rately in the RECORD; and that statements with respect to the passage of each bill be included in the RECORD where appropriate.

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

## STATUS OF CERTAIN PUBLIC LANDS

The Senate proceeded to consider the bill (H.R. 1514) to resolve the status of certain lands relinquished to the United States under the act of June 4, 1987 (30 Stat. 11, 36), and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment on page 4, line 12, striking the word "conditionally" so as to make the bill read:

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

**SECTION 1. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds the following:

(1) Pursuant to the invitation and requirements contained in the 15th paragraph under the heading "Surveying the Public Lands" in the Act of June 4, 1897 (30 Stat. 11, 36), as amended or supplemented by the Acts of June 6, 1900 (31 Stat. 588, 614), March 4, 1901 (31 Stat. 1010, 1037), and September 22, 1922 (42 Stat. 1067), certain landowners or entrymen within forest reserves acted to transfer their lands to the United States as the basis for an in lieu selection of other Federal lands (hereafter in this Act referred to as "lieu lands") in exchange for such lands within such reserves (hereafter in this Act referred to as "base lands").

(2) By the Act of March 3, 1905 (33 Stat. 1264), Congress repealed the in lieu selection provisions of the Act of June 4, 1897, as amended, and terminated the right to select lieu lands, but expressly preserved the rights of land owners who had valid pending applications for in lieu selections, most of which have subsequently been granted.

(3) Other persons affected by the Acts cited in paragraphs (1) and (2) who acted to transfer base lands, or their successors in interest, have never obtained either (A) a patent to the lieu lands or any other consideration for their relinquishment, or (B) a quitclaim of their base lands, notwithstanding relief legislation enacted in 1922 and 1930.

(4) By the Act of July 6, 1960 (74 Stat. 334), Congress established a procedure to compensate persons affected by the Acts cited in paragraphs (1) and (2) who had not received appropriate relief under prior legislation. However, no payments of such compensation were made under that Act.

(5) Section 4 of the Act of July 6, 1960, further provided that lands with respect to which compensation under that Act were or could have been made, and not previously disposed of by the United States, shall be a part of any national forest, national park, or other area withdrawn from the public domain wherein they are located.

(6) Absent further legislation, lengthy and expensive litigation will be required to resolve existing questions about the title to lands covered by section 4 of the 1960 Act.

(b) PURPOSE.—The purpose of this Act is to resolve the status of the title to base lands affected by the past legislation cited in subsection (a).

**SEC. 2. IDENTIFICATION AND QUITCLAIM OF FEDERAL INTEREST IN BASE LANDS.**

(a) QUITCLAIM.—Except as otherwise provided by this Act, and subject to valid existing rights, but notwithstanding any other provision of law, the United States hereby quitclaims to the listed owner or entryman, his heirs, devisees, successors, and assigns, all right, title, and interest of the United States in and to the base lands described on a final list published pursuant to subsection (d)(1), effective on the date of publication of such list.

(b) PREPARATION OF INITIAL LISTS.—(1) Not later than 6 months after the date of enactment of this Act, the Secretary of the Interior, with respect to lands under such Secretary's jurisdiction, and the Secretary of Agriculture with respect to National Forest System lands, shall each prepare an initial list of all parcels of base lands that were relinquished to the United States pursuant to the Act of June 4, 1897 (as amended), and for which selection or other rights under that Act or supplemental legislation were not realized or exercised.

(2) The initial lists prepared under paragraph (1) shall be based on information in the actual possession of the Secretaries of the Interior and Agriculture on the date of enactment of this Act, including information submitted to Congress pursuant to the directive contained in Senate Report No. 98-578, issued for the Fiscal Year 1985 Interior and Related Agencies Appropriation, as revised and updated. The initial lists shall be published and distributed for public review in accordance with procedures adopted by the Secretary concerned.

(3) For a period of 180 days after publication of a list pursuant to paragraph (2), persons asserting that particular parcels omitted from such a list should have been included may request the Secretary concerned to add such parcels to the appropriate list. The Secretary concerned shall add to the list any such parcels which the Secretary determines meet the conditions specified in paragraph (1).

(c) NATIONALLY SIGNIFICANT LANDS.—(1) During preparation or revision of an initial list under subsection (b), the Secretary concerned shall identify those listed lands which are located wholly or partially within any conservation system unit and all other listed lands which Congress has designated for specific management or which the Secretary concerned decides, in the concerned Secretary's discretion, should be retained in order to meet public, resource protection, or administrative needs. For purposes of this paragraph, the term "conservation system unit" means any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, or National Wilderness Preservation System, a national forest monument, or a national conservation area, a national recreation area, or any lands being studied for possible designation as part of such a system or unit.

(2) The provisions of subsection (a) shall not apply to any lands identified by the Secretary concerned pursuant to paragraph (1). The Secretary concerned shall not include any such lands on any list prepared pursuant to subsection (d). Subject to valid existing rights arising from factors other than those described in subsection (b)(1), any right, title, and interest in and to lands identified pursuant to paragraph (1) and not previously vested in the United States is hereby vested and confirmed in the United States.

(3) In the same manner as the initial list was published and distributed pursuant to subsection (b)(2), the Secretary concerned shall publish and distribute an identification of all lands in which right, title, and interest is vested and confirmed in the United States by paragraph (2).

(d) FINAL LISTS.—(1) As soon as possible after considering any requests made pursuant to subsection (b)(3) and the identification of lands pursuant to subsection (c), the Secretary of the Interior and the Secretary of Agriculture shall each publish a final list, consisting of lands included on each Secretary's initial list not identified pursuant to subsection (c)(1). Unless a Secretary has published a final list on or before the date 18 months after the date of publication, pursuant to subsection (b)(2), of such Secretary's initial list, the initial list prepared by such Secretary shall be deemed on such date to be the final list required to be published by such Secretary, and thereafter no lands included on such initial list shall be excluded from operation of subsection (a).

(2) If a court makes a final decision that a parcel of land was arbitrarily and capriciously excluded from operation of subsection (a), such parcel shall be deemed to have been included on a final list published pursuant to paragraph (1), unless such parcel is located wholly or partially inside a conservation system unit or any other area which Congress has designated for specific management, in which case such parcel shall be subject to the provisions of subsection (c)(2).

(e) ISSUANCE OF INSTRUMENTS.—(1) Except as otherwise provided in this Act, no later than 6 months after the date on which the Secretary concerned publishes a final list of lands pursuant to subsection (d), the Secretary concerned shall issue deeds confirming the quitclaim made by subsection (a) of this section of all right, title, and interest of the United States in and to the lands included on such final list, subject to valid existing rights arising from factors other than a relinquishment to the United States of the type described in subsection (b). Each such confirmatory deed shall operate to estop the United States from making any claim of right, title, or interest of the United States in and to the base lands described in the deed, shall be made in the name of the listed owner or entryman, his heirs, devisees, successors, and assigns, and shall be in a form suitable for recordation and shall be filed and recorded by the United States with the recorder of deeds or other like official of the county or counties within which the lands covered by such confirmatory deed are located so that the title to such lands may be determined in accordance with applicable State law.

(2) The United States shall not adjudicate and, notwithstanding any provision of law to the contrary, does not consent to be sued in any suit instituted to adjudicate the ownership of, or to quiet title to, any base land included in a final list and described in a confirmatory deed.

(3) Neither the Secretary of the Interior nor the Secretary of Agriculture shall be required to inspect any lands included on a final list nor to inform any member of the public regarding the condition of such lands prior to the issuance of the confirmatory deeds required by this subsection, and nothing in this Act shall be construed as affecting any valid rights with respect to lands covered by a confirmatory deed issued pursuant to this subsection that were in existence on the date of issuance of such confirmatory deed.

(f) WAIVER OF CERTAIN CLAIMS AGAINST THE UNITED STATES.—Any person or entity ac-

cepting the benefits of this Act or failing to act to seek such benefits within the time allotted by this Act with respect to any base or other lands shall be deemed to have waived any claims against the United States, its agents or contractors, with respect to such lands, or with respect to any revenues received by the United States from such lands prior to the date of enactment of this Act. All non-Federal, third party rights granted by the United States with respect to base lands shall remain effective subject to the terms and conditions of the authorizing document. The United States may reserve any rights-of-way currently occupied or used for Government purposes.

**SEC. 3. OTHER CLAIMS.**

(a) JURISDICTION AND DEADLINE.—(1) Subject to the requirements and limitations of this section, a party claiming right, title, or interest in or to land vested in the United States by section 2(c)(2) of this Act may file in the United States Claims Court a claim against the United States seeking compensation based on such vesting. Notwithstanding any other provision of law, the Claims Court shall have exclusive jurisdiction over such claim.

(2) A claim described in paragraph (1) shall be barred unless the petition thereon is filed within 1 year after the date of publication of a final list pursuant to section 2(d) of this Act.

(3) Nothing in this Act shall be construed as authorizing any claim to be brought in any court other than a claim brought in the United States Claims Court based upon the vesting of right, title, and interest in and to the United States made by section 2(c)(2) of this Act.

(b) LIMITATIONS, DEFENSES, AND AWARDS.—(1) Nothing in this Act shall be construed as diminishing any existing right, title, or interest of the United States in any lands covered by section 2(c), including but not limited to any such right, title, or interest established by the Act of July 6, 1960 (74 Stat. 334).

(2) Nothing in this Act shall be construed as precluding or limiting any defenses or claims (including but not limited to defenses based on applicable statutes of limitations, affirmative defenses relating to fraud or speculative practices, or claims by the United States based on adverse possession) otherwise available to the United States.

(3) Nothing in this Act shall be construed as entitling any party to compensation from the United States. However, in the event of a final judgment of the United States Claims Court in favor of a party seeking such compensation, or in the event of a negotiated settlement agreement made between such a party and the Attorney General of the United States, the United States shall pay such compensation from the permanent judgment appropriation established pursuant to section 1304 of title 31, United States Code.

(c) SAVINGS CLAUSE.—This Act does not include within its scope selection rights required to be recorded under the Act of August 5, 1955 (69 Stat. 534), regardless of whether compensation authorized by the Act of August 31, 1964 (78 Stat. 751) was or was not received.

**SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

**SEC. 5. TIME EXTENSION.**

Section 103(c) of the Wildfire Disaster Recovery Act of 1989 (16 U.S.C. 551 note) is amended in the first sentence by striking out "1991" and inserting in lieu thereof "1992".

The amendment was agreed to.

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

The title was amended so as to read: "An Act to resolve the status of certain lands relinquished to the United States under the Act of June 4, 1897 (30 Stat. 11, 36), and for other purposes.".

## MINUTE MAN NATIONAL HISTORICAL PARK AMENDMENTS

The bill (H.R. 2896) to authorize the Secretary of the Interior to revise the boundaries of the Minute Man National Historical Park in the State of Massachusetts, and for other purposes was considered, ordered to be engrossed for a third reading, read the third time, and passed.

## ISSUANCE OF SKI PERMITS ON NATIONAL FOREST SYSTEM LANDS

The Senate proceeded to consider the bill (S. 2606) to further clarify authorities and duties of the Secretary of Agriculture in issuing ski permits on National Forest System lands, which had been reported from the Committee on Energy and National Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. FINDINGS AND PURPOSES.**

(a) The Congress finds and declares that—

(1) although ski areas occupy less than one-twentieth of 1 percent of national forest lands nationwide, in many rural areas of the United States, ski areas and investments by ski area permittees on national forest lands form the backbone of the local economy and preponderance of the employment base;

(2) ski area operations and their attendant communities provide revenues to the United States in the form of permit fees, income taxes, and other revenues which are extremely significant in proportion to the limited Federal acreage and Forest Service administration and contractual obligations required to support such operations;

(3) in addition to alpine skiing, many ski area permittees provide multiseason facilities and enhanced access to national forest lands which result in greater public use and enjoyment of such lands than would otherwise occur;

(4) unlike many other private sector users of Federal lands, ski areas in almost all cases finance, construct, maintain, and market all recreational facilities and improvements on such lands;

(5) many ski areas on Federal lands operate in a competitive environment which requires a continuing high level of capital investment to upgrade existing facilities and install new facilities to serve the public, including lifts, trails, snowmaking and trail grooming equipment, restaurants, and day care centers;

(6) despite an outward appearance of economic well-being resulting from an intensive capital infrastructure, many ski area operations are marginally profitable due to the competition and capital investments referenced in subparagraph (5), weather conditions, insurance premiums, the national economy, and other factors beyond their control;

(7) because of the aforementioned contributions of ski areas to the economy and rural communities and to the enhanced use and enjoyment of national forest lands, it is in the public interest for the United States, where consistent with national forest management objectives, to take actions with respect to such ski areas and associated communities as will assist their long-term economic health and stability; and

(8) the National Forest Ski Area Permit Act of 1986 has been of assistance to ski area operations on national forest lands by providing longer term tenure and stability to permittees, but further adjustments and policy direction are warranted to address problems related to permit fees and fee calculations and conflicts with certain mineral activities.

(b) In furtherance of the findings of subsection (a) of this section, it is is the purpose of this Act to—

(1) legislate a ski area permit fee which returns fair market value to the United States and at the same time provides ski area permittees and the United States with a simplified, consistent, predictable, and equitable fee formula which is commensurate with long-term ski area, planning, financing and operation needs and which simplifies bookkeeping and other administrative burdens on ski area permittees and Forest Service personnel; and

(2) prevent future conflicts between ski area operations and mining and mineral leasing programs by withdrawing lands within ski area permit boundaries from the operation of the mining and mineral leasing laws.

**SEC. 2. SKI AREA PERMIT FEE.**

(a) The Secretary shall charge a fee for all ski area permits issued pursuant to the National Forest Ski Area Permit Act of 1986, the Act of March 4, 1915, and the Act of June 4, 1897, on National Forest System lands as set forth in subsection (b) of this section. The Secretary shall require that fees for all existing ski area permits issued pursuant to the Act of March 4, 1915, and the Act of June 4, 1897, be calculated as set forth in subsection (b) of this section.

(b)(1) The ski area permit fee (SAPF) to be charged shall be calculated by adding the permittee's gross revenues from lift ticket/year-round ski area use pass sales plus revenue from ski school operations (LT+SS) and multiplying such total by the slope transport feet percentage (STFP) on National Forest System land. Add to that amount gross year-round revenue from ancillary facilities (GRAF) physically located on national forest land, including all permittee or subpermittee lodging, food service, rental shops, parking and other ancillary operations, to determine the adjusted gross revenue (AGR) subject to the permit fee. Calculate the final fee by multiplying adjusted gross revenue by the following percentages for each revenue bracket and adding the total for each revenue bracket:

(i) 1.5 percent of all adjusted gross revenue below $3,000,000;

(ii) 2.5 percent for adjusted gross revenue between $3,000,000 and $15,000,000;

(iii) 2.75 percent for adjusted gross revenue between $15,000,000 and $50,000,000; and

(iv) 4.0 percent for the amount of adjusted gross revenue that exceeds $50,000,000.

Utilizing the abbreviations indicated in this subsection the ski area permit fee (SAPF) formula can be simply illustrated as:

SAPF = (LT + SS STFP) + GRAF = AGR;
AGR % BRACKETS

(2) In cases where ski areas are only partially located on national forest lands, the

slope transport feet percentage on national forest land referred to in subsection (b) of this section is hereby determined to most accurately reflect the percent of an alpine ski area permittee's total skier service capacity which is located on National Forest System land. It shall be calculated as generally described in the Forest Service Manual in effect as of January 1, 1992. Revenues from nordic ski operations shall be included or excluded from the fee calculation according to the percentage of trails physically located on national forest land.

(3) In order to insure that the fee legislated herein remains fair and equitable to both the United States and ski area permittees, the adjusted gross revenue figures for each revenue bracket in subparagraph (b)(1) (i)-(iv) shall be adjusted annually by the percent increase or decrease in the national Consumer Price Index for the preceding calendar year. No later than five years after the date of enactment of this Act and every ten years thereafter the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Agriculture and Interior and Insular Affairs of the United States House of Representatives a report analyzing whether the ski area permit fee system legislated by this Act is returning a fair market value rental to the United States together with any recommendations the Secretary may have for modifications in the system.

(c) The fee set forth in subsection (b) shall be due on June 1 of each year and shall be paid or pre-paid by the permittee on a monthly, quarterly, annual or other schedule as determined appropriate by the Secretary in consultation with the permittee. It is the intention of Congress that unless mutually agreed otherwise by the Secretary and the permittee, the payment or prepayment schedule shall conform to the permittee's schedule in effect prior to enactment of this Act. To simplify bookkeeping and fee calculation burdens on the permittee and the Forest Service, the Secretary shall each year provide the permittee with a standardized form and worksheets (including annual fee calculation brackets and rates) to be utilized for fee calculation and submitted with the fee payment. Information provided on such forms shall be compiled by the Secretary annually and kept in the Office of the Chief, U.S. Forest Service.

(d) The ski area permit fee legislated herein shall become effective on June 1, 1993, and cover receipts retroactive to June 1, 1992: *Provided, however*, That if a permittee has paid fees for the period June 1, 1992, to June 1, 1993, under the graduated rate fee system formula in effect prior to this Act, such fees shall be credited toward the new fee due on June 1, 1993. In order to insure increasing fee receipt levels to the United States during transition from the Graduated Rate Fee System formula to the formula of this Act, the fee paid by any individual permittee for the 1992–1993 permit year shall be either the fee paid for the preceding 1991–1992 base year or the fee calculated pursuant to this Act, whichever is higher. For the 1993–1994 permit year, the fee paid shall be either the fee paid for the 1991–1992 base year or the fee calculated pursuant to this Act, whichever is higher: *Provided, however*, That in the event an individual permittee's adjusted gross revenue for either the 1992–1993 or 1993–1994 permit years falls more than 10 percent below the 1991–1992 base year, the fee paid shall then be the fee calculated pursuant to this Act.

(e) Under no circumstances shall revenue, or subpermittee revenue (other than lift ticket, area use pass, or ski school sales) obtained from operations physically located on nonnational forest land be included in the ski area permit fee calculation.

(f) To simplify bookkeeping and administrative burdens on ski area permittees and the Forest Service, as used in this section, the terms "revenue" and "sales" shall mean actual income from sales and shall not include sales of operating equipment, refunds, rent paid to the permittee by sublessees, sponsor contributions to special events or any amounts attributable to employee gratuities or employee lift tickets, discounts, or other goods or services (except for bartered goods and complimentary lift tickets) for which the permittee does not receive money.

(g) In cases where an area of national forest land is under a ski area permit but the permittee does not have revenue or sales qualifying for fee payment pursuant to subsection (a) of this section, the permittee shall pay an annual minimum rental fee of $2 for each national forest acre under permit or a percentage of appraised land value, as determined appropriate by the Secretary.

**SEC. 3. WITHDRAWALS.**

SEC. 3. Subject to valid existing rights, all lands located within the boundaries of ski area permits issued prior to, on or after the date of enactment of this Act pursuant to authority of the Act of March 4, 1915, and the Act of June 4, 1897, or the National Forest Ski Area Permit Act of 1986 are hereby and henceforth automatically withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto. Such withdrawal shall continue for the full term of the permit and any modification, reissuance, or renewal thereof. Unless the Secretary requests otherwise of the Secretary of the Interior, such withdrawal shall be canceled automatically upon expiration or other termination of the permit and the land automatically restored to all appropriation not otherwise restricted under the public land laws.

So the bill (S. 2606) was passed.

## REMOVAL OF RESTRICTIONS ON CERTAIN LANDS

The Senate proceeded to consider the bill (S. 1925) to remove a restriction from a parcel of land owned by the city of North Charleston, SC, in order to permit a land exchange, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendment; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

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

**SECTION 1. REMOVAL OF RESTRICTION.**

(a) IN GENERAL.—

(1) IN GENERAL.—Subject to the condition described in paragraph (2), the Secretary of the Interior shall execute such instruments as are necessary to remove the restrictions described in subsection (b) to which the parcel of land described in subsection (c) is subject.

(2) CONDITION.—The condition referred to in paragraph (1) is that the City of North Charleston, South Carolina, exchange the parcel for—

(A) another parcel to be used as a park or recreation area; and

(B) such sums as are necessary to equalize the values of the parcels exchanged.

*(3) Any sums received by the city pursuant to subparagraph (2)(B) shall be used only for park or recreation purposes.*

(b) RESTRICTIONS.—The restrictions referred to in subsection (a) are those reservations, exceptions, restrictions, conditions, and covenants described in the Quitclaim Deed of the United States to the City of North Charleston, South Carolina, dated August 9, 1978 (Deed Books of Charleston County, South Carolina, book 1116, page **[318]**. *318): Provided, however, That the United States shall retain all mineral rights to the parcel described in subsection (c) as provided in such deed.*

(c) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a)(1)—

(1) consists of approximately 21.60 acres;

(2) is located in Charleston County, South Carolina; and

(3) **[**has the legal description given**]** *is described* on page 318 of book 1116 of the Deed Books of Charleston County, South Carolina.

So the bill (S. 1925) was passed.

## THE WENATCHEE NATIONAL FOREST TRANSFER ACT

The Senate proceeded to consider the bill (S. 1990) to authorize the transfer of certain facilities and lands in the Wenatchee National Forest, WA, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. LAND EXCHANGE, WENATCHEE NATIONAL FOREST, WASHINGTON.**

(a) CONVEYANCE.—The Secretary of Agriculture may convey to the Public Utility District No. 1 of Chelan County, Washington (in this section referred to the "District"), all right, title, and interest of the United States in and to—

(1) the sewage collection and treatment system facilities located at the Lake Wenatchee Ranger District, Wenatchee National Forest, Washington; and

(2) a parcel of real property of approximately 60 acres of National Forest System land in the Wenatchee National Forest partially occupied by the existing treatment plant and ponds, as depicted on the map of record entitled "Chelan County Land Exchange 1" and dated June 24, 1992.

(b) CONSIDERATION.—As consideration for the conveyance authorized under subsection (a), the District shall convey to the United States a parcel of real property of approximately 110 acres owned by the District and depicted on the map of record entitled "Chelan County Land Exchange" and dated June 24, 1992.

(c) EQUALIZING THE VALUE OF THE EXCHANGE.—If the value of the real property to be conveyed by the Secretary of Agriculture under subsection (a) does not equal the value of the real property to be conveyed by the District under subsection (b), the value of the properties shall be equalized in the manner provided for in section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

(d) APPRAISALS.—The value of the real property to be exchanged pursuant to this

section shall be determined by appraisals conducted in the manner and within the time frame provided for in section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)).

(e) LEGAL DESCRIPTION AND SURVEY.—The exact acreage and legal description of the property to be exchanged pursuant to this section shall be determined by surveys that are satisfactory to the Secretary of Agriculture. The cost of such surveys shall be shared equally by the Secretary and the District.

(f) OTHER TERMS AND CONDITIONS.—The Secretary of Agriculture may require such other terms and conditions with respect to the conveyance as the Secretary considers appropriate to protect the interests of the United States.

LAKE CUSHMAN, LAKE WENATCHEE AND THE OLYMPIC EXPERIEMENTAL STATE FOREST

Mr. GORTON. Mr. President, today I ask the Senate to pass two bills on unanimous consent. The two bills are H.R. 4489 and S. 1990. The first, H.R. 4489, is identical to a Senate bill—S. 2353—that was reported by the Senate Energy Committee and placed on the Senate calendar Cal. No. 713. This bill will allow the National Park Service to exchange lands with the city of Tacoma, WA and adjust its boundary in order to avoid a trespass dispute with the Olympic National Park over the city's reservoir at Lake Cushman. The second, S. 1990, is a bill that has been reported by the Energy Committee and was placed on the Senate calendar, Cal. No. 709. S. 1990 will allow the Forest Service to transfer an important sewage facility to the Chelan County Public Utility District in order to place the private property owners at Lake Wenatchee on the sewage system.

Lake Wenatchee is a beautiful, glacier-fed lake in the Wenatchee National Forest in the eastern portion of Washington State. More than 300 private individuals own property on the lake and more than 100 make it their summer and winter vacation spot. The beauty of this spot, however, is deceiving. Below the surface lies evidence that these property owners are dumping most of their sewage directly into Lake Wenatchee. The residents of Lake Wenatchee need a sewage treatment system to replace their failing septic system.

The U.S. Forest Service operates a ranger station and campground of Lake Wenatchee. A small sewage treatment system, built in the 1920's, serves these facilities. Although this treatment system is relatively small, it can be expanded to serve the entire Lake Wenatchee area. In fact, Supervisor Sonny O'Neal and his staff have suggested that they are willing to transfer the sewage system and the underlying land to the Chelan County Pubic Utility District No. 1 for expansion and use by all the property owners at Lake Wenatchee. In order to accomplish this, however, Congress must authorize the Secretary of Agriculture to make the transfer. In exchange, the PUD will transfer to the Forest Service up to 110 acres of land.

Supervisor O'Neal has taken steps to mitigate this problem during the short-term. He has issued a special-use permit that allows the PUD to operate the sewage treatment system. A permit does not, however, grant sufficient control to the PUD over the land upon which the treatment facility is situated. He still believes that the 80 acres of land that the facility occupies must be transferred, in fee, to the PUD. This transfer is the only long-term solution to the problem at Lake Wenatchee.

S. 1990 authorizes the Secretary of Agriculture to transfer the sewage treatment facility and the underlying land to the PUD in exchange for up to 110 acres of land. For the sake of the health of Lake Wenatchee and the property owners there, I hope this amendment can be passed into law as soon as possible.

The other bill that I ask be passed by unanimous consent, H.R. 4489, is really two bills in one. It was originally a bill providing for the exchange of lands and the adjustment of a National Park boundary at Lake Cushman in Washington State. This bill is designed to resolve a long-standing dispute between the Olympic National Park and the city of Tacoma over the relicensing of a dam at Lake Cushman. The park contends that a few acres of its land lies beneath the surface of the lake at its normal water level. When Tacoma City Light recently lowered the reservoir to do work on the dam, the Park claimed that the acreage would be inundated if the reservoir were raised and that this would constitute an illegal trespass on park property. Tacoma offered to purchase the small parcel and the park demanded a land exchange instead. This legislation will establish a mechanism for completing that land exchange.

The residents of the Lake Cushman area, as well as the residents of the city who Tacoma who rely on power from the Lake Cushman Dam, have been anxiously awaiting the resolution of this dispute. The level of the reservoir was kept at an unreasonably low level, decreasing the generation of power from the dam and leaving docks high and dry. The park and the city of Tacoma have been negotiating a land exchange and, once those negotiations are completed, the park will adjust its boundaries. The only remaining step is the passage of this legislation.

The Lake Cushman legislation also contains legislation relating to the Olympic Experimental State Forest. This amendment will end 3 years of dispute over the management of State-owned lands on the Olympic Peninsula in Washington State. In 1989, a group of environmentalists, industry leaders, and community representatives came together to form the Commission on Old Growth Alternatives for Washington's Forest Trust Lands. That consensus group recommended, among other things, that a 260,000-acre experimental forest be established on the Olympic Peninsula and that its purpose be to produce a level of timber harvest comparable with contemporary forest practices and simultaneously to provide for ecological values.

The same year, the northern spotted owl was listed as a threatened species and the dream of creating an experimental forest was placed on hold. Today's legislation will free up the Olympic Experimental Forest to be the forest laboratory the Commission intended.

This Olympic Experimental State Forest bill will allow the State of Washington to submit a plan for the management of the forest to the Secretary of the Interior. If this plan is both sufficient to provide for the conservation of the northern spotted owl and is consistent with a final or draft recovery plan for the spotted owl, the Secretary shall approve the plan. If the plan is approved and the State complies with the plan, actions taken pursuant to the plan shall not be considered a prohibited taking under the Endangered Species Act.

The Olympic Experimental Forest is not only an ecological laboratory. It will also be a laboratory for experiments in commercial output. The Washington State Commissioner of Public Lands, Brian Boyle, estimates that under today's legislation the experimental forest will produce 143 million board feet of timber per year. This would provide a significant boost to a forest that produced just 81 million board feet last year as a result of spotted owl restrictions. This legislation will not return the area to pre-spotted owl harvest levels, nor do I advocate such a return. It will, however, allow the forest in that area to produce a reasonably certain level of timber production.

The people of Washington State, and particularly the Olympic Peninsula, have been waiting three years for Congress to solve a timber supply crisis in the Pacific Northwest. Today's legislation will not solve that crisis, but it is one part of the solution.

These various provisions are of great importance to the State of Washington. I ask the Senate to pass both H.R. 4489 and S. 1990 by unanimous consent.

So the bill (S. 1990) was passed.

## USE AND OCCUPANCY OF CERTAIN LANDS IN YOSEMITE NATIONAL PARK

The Senate proceeded to consider the bill (S. 2749) to grant a right of use and occupancy of a certain tract of land in Yosemite National Park to George R. Lange and Lucille F. Lange, and for other purposes, which had been reported from the Committee on Energy

and Natural Resources, with an amendment on page 2, line 16, to strike "reasonable.", and inserting in lieu thereof the following: "reasonable: *Provided*, That the base rental rate as a percentage of the permittee's annual gross income shall not exceed the most recent American Housing Survey median monthly housing cost for renters inclusive of utilities, as a percentage of current income."

So as to make the bill read:

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

**SECTION 1. GRANT OF RIGHT OF USE AND OCCUPANCY IN YOSEMITE NATIONAL PARK.**

(a) IN GENERAL.—Subject to subsection (b), the Secretary of the Interior shall grant George R. Lange and Lucille F. Lange a right of use and occupancy of the tract numbered 16-118 in Foresta, Yosemite National Park, California, for a term ending at the death of George R. Lange or the death of Lucille F. Lange, whichever is later.

(b) TERMS AND CONDITIONS.—The right granted pursuant to subsection (a)—

(1) shall be for such use and occupancy of the property as the Secretary of the Interior determines is reasonable;

(2) shall be subject to such terms and conditions as the Secretary of the Interior determines are necessary to ensure that the right does not unreasonably diminish the scenic, natural, historic, and other values for which Yosemite National Park was established; and

(3) shall be conditioned on the payment by the grantees of an annual fee that the Secretary of the Interior determines is reasonable: *Provided*, That the base rental rate as a percentage of the permittee's annual gross income shall not exceed the most recent American Housing Survey median monthly housing cost for renters inclusive of utilities, as a percentage of current income.

## LIFETIME TENANCY IN YOSEMITE FOR MR. AND MRS. GEORGE LANGE

Mr. SEYMOUR. Mr. President, I rise in support of S. 2749, a bill to prevent the eviction of Mr. and Mrs. George Lange from their home in Yosemite National Park, CA.

Lucille and George Lange are both in their seventies and are the only year-round residents of Foresta, which is located in Yosemite National Park. The Langes bought the property on which they live in 1957. In 1976, they sold their cabin to the National Park Service with the understanding that they would be allowed to live on the property for the rest of their lives. Unfortunately, that agreement, along with the Langes future at Foresta, is in peril.

Following the disastrous 1990 fires in Foresta, when more than 80 homes and 13 units of park ranger housing were destroyed, the Park Service notified the Langes that they would be evicted from their home.

The Park Service claims it needs the Langes' cabin for additional ranger housing. I understand, Mr. President, ranger housing is a very real problem in the National Park System. I fail to see, however, how evicting an elderly couple from their only home—a 600-square-foot A-frame—is going to constructively address Yosemite's housing shortage.

I first became aware of the Langes' plight when they contacted my office late last year and requested my assistance with their problem. We were unsuccessful in attempting to work out a solution with the Park Service, and it became apparent that the Langes would not get relief from their eviction notice without congressional action. I therefore introduced S. 2749 to instruct the Park Service to grant the couple a lifetime tenancy in Yosemite.

When I introduced S. 2749 in May, the Park Service agreed to hold off on eviction proceedings until October to give the Congress time to act on my bill. During hearings on S. 2749 in the Senate Energy Committee, the Park Service testified that it does not oppose my legislation.

I am pleased that the Senate will act to prevent the Langes' eviction from their home, and I urge the House to consider this bill before adjournment.

So the bill (S. 2749) was passed.

## BIG THICKET NATIONAL PRESERVE ADDITION ACT

The Senate proceeded to consider the bill (H.R. 1592) to increase the size of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, the Canyonlands unit, the Sabine River Blue Elbow unit, and addition to the Lower Neches Corridor unit, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Big Thicket National Preserve Addition Act of 1992".

**SEC. 2. ADDITIONS TO THE BIG THICKET NATIONAL PRESERVE.**

(a) ADDITIONS.—Subsection (b) of the first section of the Act entitled "An Act to authorize the establishment of the Big Thicket National Preserve in the State of Texas, and for other purposes", approved October 11, 1974 (16 U.S.C. 698), hereinafter referred to as the "Act", is amended as follows:

(1) Strike out "map entitled 'Big Thicket National Preserve'" and all that follows through "Secretary of the Interior (hereafter referred to as the 'Secretary')" and insert in lieu thereof "map entitled 'Big Thicket National Preserve', dated October 19, 1990 and numbered 20031 C, which shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior, and the offices of the Superintendent of the preserve. After advising 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, in writing, the Secretary of the Interior (hereafter referred to as the 'Secretary') may make minor revisions to the boundaries of the preserve when necessary by publication of a revised drawing or other boundary description in the Federal Register. The Secretary".

(2) Strike out "and" at the end of the penultimate undesignated paragraph relating to Little Pine Island-Pine Island Bayou corridor unit.

(3) Strike out the period in the ultimate undesignated paragraph relating to Lance Rosier unit and insert in lieu thereof ";".

(4) Add at the end thereof the following:

"Village Creek Corridor unit, Hardin County, Texas, comprising approximately four thousand seven hundred and ninety-three acres;

"Big Sandy Corridor unit, Hardin, Polk, and Tyler Counties, Texas, comprising approximately four thousand four hundred and ninety-seven acres; and)

"Canyonlands unit, Tyler County, Texas, comprising approximately one thousand four hundred and seventy-six acres.".

(b) ACQUISITION.—(1) Subsection (c) of the first section of such Act is amended by striking out the first sentence and inserting in lieu thereof the following:

"The Secretary is authorized to acquire by donation, purchase with donated or appropriated funds, transfer from any other Federal agency, or exchange, any lands, waters, or interests therein which are located within the boundaries of the Preserve: *Provided*, That privately owned lands located within the Village Creek Corridor, Big Sandy Corridor and Canyonlands units may be acquired only with the consent of the owner: *Provided further*, That the Secretary may acquire lands owned by commercial timber companies only by donation or exchange: *Provided further*, That any lands owned by the State of Texas, or a political subdivision thereof, may be acquired by donation only.".

(2) Add at the end of the first section of such Act the following new subsections:

"(d) Within sixty days after the date of enactment of this subsection, the Secretary and the Secretary of Agriculture shall identify lands within their jurisdiction located within the vicinity of the preserve which may be suitable for exchange for commercial timber lands within the preserve. In so doing, the Secretary of Agriculture shall seek to identify for exchange National Forest lands that are near or adjacent to private lands that are already owned by the commercial timber companies. Such National Forest lands shall be located in the Sabine National Forest in Sabine County, Texas, in the Davey Crockett National Forest south of Texas State Highway 7, or in other sites deemed mutually agreeable, and within reasonable distance of the timber companies' existing mills. In exercising this exchange authority, the Secretary and the Secretary of Agriculture may utilize any authorities or procedures otherwise available to them in connection with land exchanges, and which are not inconsistent with the purposes of this Act. Land exchanges authorized pursuant to this subsection shall be of equal value, and shall be completed as soon as possible, but no later than two years after date of enactment of this subsection.

"(e) With respect to the thirty-seven acre area owned by the Louisiana-Pacific Corporation or its subsidiary, Kirby Forest Industries, Inc., on Big Sandy Creek in Hardin County, Texas, and now utilized as part of the Indian Springs Youth Camp (H.G. King Abstract 8922), the Secretary shall not acquire such area without the consent of the

owner so long as the area is used exclusively as a youth camp.".

(c) PUBLICATION OF BOUNDARY DESCRIPTION.—Not later than six months after the date of enactment of this subsection, the Secretary shall publish in the Federal Register a detailed description of the boundary of the Village Creek Corridor unit, the Big Sandy Corridor unit, and the Canyonlands unit of the Big Thicket National Preserve.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 6 of such Act is amended by adding at the end thereof the following new sentence: "Effective upon the date of enactment of this sentence, there is authorized to be appropriated such sums as may be necessary to carry out the purposes of subsections (c) and (d) of the first section.".

So, the Bumpers amendment No. 3428 was agreed to, as follows:

On page 7, lines 5 and 6, strike "dated October 19, 1990, and numbered 20031 C," and insert in lieu thereof, "dated October 1992, and numbered 80,0008,".

THE BIG THICKET NATIONAL PRESERVE ADDITION ACT OF 1992

Mr. GRAMM. Mr. President, I rise to support H.R. 1592, the Big Thicket National Preserve Addition Act of 1992, with Senate amendments. On April 9, 1991, I introduced S. 780, the Big Thicket National Preserve Act of 1991. Additionally, Senator BENTSEN introduced separate legislation, S. 1105, the Big Thicket National Preserve Act of 1991. Since that time, Senator BENTSEN and I have worked to improve upon the original legislative proposals and have agreed upon this compromise which is before the Senate today.

Mr. President, I am pleased to report that H.R. 1592, as reported by the Senate Energy and Natural Resources Committee, proposes a logical conclusion to the long standing debate on how to expand the Big Thicket National Preserve in southeast Texas. Because I believe that property ownership is a sacred right, one of my primary goals in this debate has been to ensure the protection of individuals' private property rights. In that regard, it is important to note that no provision in the bill may be used to take privately owned property through condemnation procedures.

Mr. President, this legislation proposes to protect the Village Creek corridor, Big Sandy corridor, and the Canyonlands unit by exchanging U.S. Forest Service lands for 10,766 acres of land in these three units. These areas, which I have visited firsthand, would be added to the existing 86,115-acre Big Thicket National Preserve in the State of Texas. The Big Thicket area is often referred to as a "biological crossroads" due to the unique ecosystem which exists in the preserve. Addition of these three units will enhance the diversity of the preserve and future recreation opportunities. Mr. President, I urge adoption of this measure.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time and passed.

The title was amended so as to read: "An Act to modify the boundaries of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, and the Canyonlands unit.".

## REVERE, MASSACHUSETTS STUDY ACT

The bill (H.R. 2109) to direct the Secretary of the Interior to conduct a study of the feasibility of including Revere Beach, located in the city of Revere, MA, in the National Park System, was considered, ordered to a third reading, read the third time, and passed.

## CUYAHOGA NATIONAL RECREATION AREA LAND EXCHANGE ACT

The bill (H.R. 2181) to permit the Secretary of the Interior to acquire by exchange lands in the Cuyahoga National Recreation Area that are owned by the State of Ohio, was considered, ordered to a third reading, read the third time, and passed.

## ALASKA MARITIME NATIONAL WILDLIFE REFUGE AMENDMENT ACT

The bill (H.R. 3638) making technical amendments to the law which authorizes modification of the boundaries of the Alaska Maritime National Wildlife Refuge, was considered, ordered to a third reading, read the third time, and passed.

## FOX-WISCONSIN RIVER NATIONAL HERITAGE CORRIDOR STUDY ACT OF 1992

The Senate proceeded to consider the bill (S. 2006) to establish the Fox River National Heritage corridor in Wisconsin, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Fox-Wisconsin River National Heritage Corridor Study Act of 1992."

**SEC. 2. FINDINGS.**

The Congress finds that—

(1) the Fox-Wisconsin waterway is famous as the discovery route of Marquette and Joliet;

(2) as the connecting route between the Great Lakes and the Mississippi River, the waterway was critical to the opening of the Northwest Territory, and served as a major artery in bringing commerce to the interior of the United States and providing a vital communication link for early explorers, missionaries, and fur traders;

(3) within the Fox and Lower Wisconsin River corridor are an abundance of historic and archeological sites and structures representing early Native Americans, European exploration, and 19th-century transportation and settlement; and

(4) the unique aspects of the waterway, from the heavily developed portions of the Fox River to the pristine expanses of the Lower Wisconsin River, should be studied to determine the waterway's suitability and feasibility for designation as a National Heritage Corridor.

**SEC. 3. STUDY OF FOX-WISCONSIN RIVER CORRIDOR.**

(a) IN GENERAL.—Within 2 years after the date funds are made available for the purposes of this section, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall prepare a study on the suitability and feasibility of designating the Fox and Lower Wisconsin River Corridors in the State of Wisconsin as a National Heritage Corridor.

(b) REPORT TO CONGRESS.—Upon completion of the study referred to in subsection (a), the Secretary shall submit such study to 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.

**SEC. 4. FOX-WISCONSIN RIVER STUDY ADVISORY COMMISSION.**

(a) IN GENERAL.—There is established the Fox-Wisconsin River Study Advisory Commission (hereinafter referred to as the "Commission") to advise the Secretary in the preparation of the study referred to in section 2.

(b) MEMBERSHIP.—The Commission shall consist of 16 members, appointed by the Secretary as follows—

(1) four members from recommendations submitted by the Governor of the State of Wisconsin, to represent affected State agencies;

(2) four members representing local governments from affected communities along the Fox and lower Wisconsin river corridor; and

(3) eight members from the general public, who shall have knowledge and experience in appropriate fields of interest relating to the preservation, use and interpretation of the Fox and lower Wisconsin river corridor, of whom—

(i) four members shall be residents of the Fox River region; and

(ii) four members shall be residents of the lower Wisconsin region.

(c) CHAIRPERSON.—The members of the Commission shall elect a chairperson from among its members.

(d) VACANCIES.—Vacancies on the Commission shall be filled in the same manner in which the original appointment was made.

(e) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(f) COMPENSATION.—Members of the Commission shall receive no compensation on account of their service on the Commission. While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(g) WAIVER.—The provisions of section 14(b) of the Act of October 6, 1972 (86 Stat. 776) are hereby waived with respect to this Commission.

(h) ANNUAL REPORTS.—The Commission shall publish and submit to the Secretary and the Governor of the State of Wisconsin

an annual report concerning the Commission' activities.

(i) TERMINATION.—The Commission shall terminate upon the completion of the study referred to in section 3(a).

**SEC. 5. AUTHORIZATIN OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to direct the Secretary of the Interior to conduct a study to determine the suitability and feasibility of designating the Fox and Lower Wisconsin River corridor in the State of Wisconsin as a national heritage corridor, and for other purposes.".

## GREAT EGG HARBOR RIVER ACT OF 1992

The bill (H.R. 5853) to designate segments of the Great Egg Harbor River and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers System, was considered, ordered to a third reading, read the third time, and passed.

## THE GREAT EGG HARBOR RIVER DESIGNATION AS PART OF THE WILD AND SCENIC RIVER SYSTEM

Mr. BRADLEY. Mr. President, I am pleased that today the Senate has passed H.R. 5853, which designates the Great Egg Harbor River as part of the Nation's Wild and Scenic River System. With this Senate action, we can now forward this legislation to the President. In the very near term, I am confident, this legislation will become public law.

This legislation represents the final state in a process initiated long ago. The late Warren Fox spent many years of his long and productive life championing the unique qualities of the Great Egg. Six years ago, Congress called for a Federal study of this river.

Every river community has played a role. Literally hundreds of citizens have taken part in public hearings and in the development of a river management plan which is crucial to this process. Each of the affected communities—Winslow, Corbin City, Hammonton, Buena Vista, Weymouth, Estell Manor, Egg Harbor, Somers Point, Monroe, Folsom, and Hamilton Townships—cooperated fully.

Unlike many of the western rivers that make up the bulk of those in the National Wild and Scenic River Systems, the Great Egg River flows through no Federal land. Without a solid commitment to preservation by the grassroots, this effort be doomed. But such a commitment does exist. Those who live along the river deserve our highest compliments for their vision, their sense of history and willingness to maintain the natural beauty that they've inherited for the generations to come.

The Great Egg Harbor River is located in a largely undeveloped area of southern New Jersey. A large portion of the river is within the Pinelands National Reserve. The main stem of the river is 60 miles in length. It rises in urbanized Camden County and flows through Gloucester and Atlantic Counties before it empties into the Atlantic Ocean behind the barrier island of Ocean City.

The Great Egg Harbor River is one of New Jersey's greatest and most beautiful natural resources. Those who live in south Jersey would like to ensure that the river's water quality and recreational opportunities are maintained through sound planning and management.

The Wild and Scenic Rivers Act has been successful in preserving a number of our Nation's free-flowing rivers. The Great Egg Harbor River is an ideal candidate for inclusion with these natural wonders as the Park Service clearly stated during the study process.

We're at a crossroad: Our actions will determine what this river will look like in the future. The natural qualities I've described have always been here. But they will only continue to be here if the citizens of this area decide positively that they commit themselves to a pristine future for the river.

This legislation is geared to provide environmental protection within the river communities and by the surrounding communities. Government has got to be willing to lend a hand to many citizens who wrestle everyday with creating a future beauty, health and opportunity. With our action today, we indicate our intentions to help those on the Great Egg River. I am proud that the Senate has acted today and commend my colleagues, especially Senators BUMPERS and his staff and Congressman BILL HUGHES for their support.

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar numbers 567, 710, 711, 715, 728, 730, 731, 736, and 737 en bloc; that the committee substitute amendments and the committee amendments, where appropriate, be agreed to, en bloc; that the several bills and joint resolution each be deemed read a third time, passed; that the preamble where appropriate be agreed to; that the motion to reconsider the passage of these items be laid upon the table en bloc; that the title amendments where appropriate be agreed to; that the consideration of each bill be included separately in the RECORD; and that statements with respect to the passage of each bill be included in the RECORD where appropriate.

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

## CAVE CREEK CANYON PROTECTION ACT

The Senate proceeded to consider the bill (H.R. 2790) to withdraw certain lands located in the Coronado National Forest from the mining and mineral leasing laws of the United States, and for other purposes, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

*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 "Cave Creek Canyon Protection Act of 1992".

**SEC. 2. WITHDRAWAL OF LANDS WITHIN CAVE CREEK CANYON DRAINAGE.**

(a) WITHDRAWAL.—Subject to valid existing rights, after the date of enactment of this Act lands within the Cave Creek Canyon Drainage are withdrawn from location under the general mining laws, the operation of the mineral and geothermal leasing laws and the mineral material disposal laws.

(b) DEFINITION.—For the purposes of this Act, the term "Cave Creek Canyon Drainage" means lands and interest in lands owned by the United States within the area depicted on the map of record entitled "Cave Creek Mineral Withdrawal", dated November 1, 1991. The map shall be on file and available for public inspection in the offices of the Forest Service, Department of Agriculture.

So the bill (H.R. 2790) was passed.

## RIO GRANDE DESIGNATION ACT OF 1992

The Senate proceeded to consider the bill (S. 2021) to amend the Wild and Scenic Rivers Act by designating a segment of the Rio Grande in New Mexico as a compoment of the National Wild and Scenic Rivers System, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. SHORT TITLE**

This Act may be cited as the "Rio Grande Designation Act of 1992".

**SEC. 2. DESIGNATION OF SCENIC RIVER**

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end the following new paragraph:

"( ) RIO GRANDE, NEW MEXICO.—The main stem from the southern boundary of the segment of the Rio Grande designated pursuant to paragraph (4), downstream approximately 12 miles to the west section line of Section 15, Township 23 North, Range 10 East, to be administered by the Secretary of the Interior as a scenic river.".

**SEC. 3. DESIGNATION OF STUDY RIVER.**

(a) STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding at the end the following new paragraph:

"( ) RIO GRANDE, NEW MEXICO.—The segment from the west section line of Section 15, Township 23 North, Range 10 East, downstream approximately 8 miles to the southern line of the northwest quarter of Section 34, Township 23 North, Range 9 East.".

(b) STUDY REQUIREMENTS.—Section 5(b) of the Wild and Scenic Rivers Act (16. U.S.C. 1276(b)) is amended by adding at the end the following new paragraph:

"( ) The study of the Rio Grande in New Mexico shall be completed and the report submitted not later than 3 years after the date of enactment of this paragraph.".

**SEC. 4. RIO GRANDE CITIZENS ADVISORY BOARD.**

Not later than 90 days after the date of enactment of this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall establish the Rio Grande Citizens Oversight Review Board (hereinafter referred to as the "Board") to advise the Secretary on matters pertaining to the development and implementation of a management plan for the segment of the Rio Grande designated as a component of the Wild and Scenic Rivers System pursuant to section 2, and the preparation of the study pursuant to section 3. The Board shall consist of 11 members, appointed by the Secretary, ten of whom are property owners along the segments of the Rio Grande designated and studied pursuant to this Act, and one member to represent the village of Pilar.

**SEC. 5. WITHDRAWAL OF ORILLA VERDE RECREATION AREA.**

(A) IN GENERAL.—Subject to valid existing rights, the lands described in subsection (b) are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the mining laws; and from disposition under all laws pertaining to mineral and geogthermal leasing, and all amendments thereto.

(b) LANDS.—(1) The lands referred to in subsection (a), comprise an area known as the "Orilla Verde Recreation Area", totaling approximately 1,349 acres, which were conveyed by the State of New Mexico to the United States on July 23, 1980, April 20, 1990, and July 17, 1990, as generally depicted on the map entitled "Proposed Recreation Addition to Rio Grande Wild and Scenic River" and dated September, 1992.

(2) The map referred to in paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

So the bill (S. 2021) was passed.

## CASAS GRANDES CULTURE STUDY ACT

The Senate proceeded to consider the bill (S. 2045) to authorize a study of the prehistoric Casas Grandes Culture in the State of New Mexico, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

*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 "Casas Grandes Culture Study Act of **[**1991**]** *1992*".

**SEC. 2. FINDINGS.**

Congress finds that—

(1) about A.D. 1150, a prehistoric culture spread northward into what is now northwestern Chihuahua, Mexico, southwestern New Mexico, and southeastern Arizona;

(2) this culture was a regional version of the Mesoamerican civilization known as the "Casas Grandes Culture";

(3) while this culture was centered around the major town site of Casas Grandes, Chihuahua, Mexico, hundreds of other sites developed along regional drainages;

(4) the core area of this great culture extends into the United States, primarily into southern Hidalgo County, New Mexico;

(5) for more than 200 years, until at least A.D. 1400, the Casas Grandes Culture was situated at the connecting point between the rest of Mesoamerica to the south and the Anasazi and other puebloan cultures to the north;

(6) this culture represents a key aspect of understanding the relationships between the cultures of the American Southwest and of Mesoamerica;

(7) there are more than 25 known Casas Grandes sites in Hidalgo County, New Mexico, which are in varying condition; and

(8) these sites contain extraordinary polychrome pottery, detailed metal work, including rare copper bells, and many other types of artifacts that bring a high market value when sites are vandalized.

**SEC. 3. AUTHORIZATION OF STUDY.**

(a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the National Park Service, **[**may**]** *shall* conduct a study of the Casas Grandes Culture in southwestern New Mexico to determine its significance in illustrating and commemorating the prehistory of the Southwest.

(b) CONTENTS.—

(1) IN GENERAL.—The study shall examine—

(A) the geographic extent of the Casas Grandes Culture;

(B) the significance of the Casas Grandes Culture and remaining Casas Grandes sites in the context of Southwestern prehistory;

(C) the integrity of Casas Grandes sites;

(D) the relationships between the Casas Grandes Culture and the Mogollon Culture; and

(E) potential interpretive opportunities.

(2) RECOMMENDATIONS.—The study shall include recommendations with respect to—

(A) measures for the preservation of cultural resources associated with the Casas Grandes Culture located in and around Hidalgo County, New Mexico;

(B) a broad range of interpretive opportunities involving the National Park Service, other Federal and State agencies, the Mexican government, and **[**The Nature Conservancy;**]** *other public and private entities;* and

(C) general facility **[**needs (including general location and anticipated costs), including**]** *needs, including the nature, location, and anticipated costs thereof, as well as* road improvements that would be required for public enjoyment and interpretive use of Casas Grandes sites.

(c) COOPERATION WITH MEXICO.—

(1) PARTICIPATION.—Representatives of the State of Chihuahua, Mexico, shall be invited to participate in the study process.

(2) COOPERATIVE RELATIONSHIPS.—The study shall recommend potential cooperative relationships with Mexico for interpretation and visitor use.

**[**(d) COMPLETION OF STUDY.—The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate not later than 2 years after the date on which funds are appropriated for the study.**]**

*(d) COMPLETION OF STUDY.—The study shall be completed and transmitted to 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 no later than 2 complete fiscal years after the date of enactment of this Act.*

**SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this Act.

So the bill (S. 2045) was passed.

## COLONIAL NEW MEXICO COMMEMORATIVE ACT

The Senate proceeded to consider the bill (S. 2544) to establish in the Department of the Interior the Colonial New Mexico Preservation Commission, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

*S. 2544*

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Colonial New Mexico Commemorative Act".*

***SEC. 2. FINDINGS AND PURPOSE.***

*(a) FINDINGS.—Congress finds that—*

*(1) in 1598, almost a decade before the first permanent English settlement was established at Jamestown, Spanish colonists entered New Mexico, beginning more than 2 centuries of colonization that would indelibly mark the character of the American Southwest;*

*(2) because of the flow of history, New Mexico has remained a unique area of the Spanish borderlands;*

*(3) as a result of its remoteness, New Mexico changed more slowly than other settlements and has retained many significant remnants of colonial customs, language, and attitudes; and*

*(4) the interaction of the American Indian and Hispanic colonial heritages resulted in customs, architecture, and many other manifestations that are unique to today's American culture.*

*(b) PURPOSE.—In order to enhance the preservation, interpretation, and public understanding of various aspects of colonial New Mexico, the purpose of this Act is to authorize the Secretary of the Interior to formulate a program for the research, interpretation, and preservation of various aspects of colonial New Mexico history.*

***SEC. 3. DEFINITIONS.***

*As used in this Act:*

*(1) COMMITTEE.—The term "Committee" means the Colonial New Mexico Preservation Advisory Committee established by section 6.*

*(2) PLAN.—The term "plan" means the comprehensive management plan described in section 5.*

*(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.*

***SEC. 4. DUTIES OF SECRETARY.***

*(a) PLAN.—*

*(1) PREPARATION.—The Secretary shall prepare the comprehensive management plan in accordance with section 5.*

*(2) IMPLEMENTATION.—In close consultation with the Office of Cultural Affairs of the State of New Mexico and the Committee, the Secretary shall—*

*(A) coordinate the activities of Federal, State, and local governments, and private businesses and organizations, to carry out the plan and the purpose of this Act; and*

*(B) consistent with standards established by the Secretary for the preservation of historic properties and for educational programs, and consistent with the National Historic Preservation Act (16 U.S.C. 470 et seq.), prepare guidelines and standards for projects, as identified in the plan, that will further public understanding of colonial New Mexican history.*

*(b) GRANTS.—*

*(1) IN GENERAL.—From funds appropriated, donated, or otherwise made available to the Secretary, the Secretary shall award grants to tribal, governmental, and nongovernmental entities to conserve and protect structures, objects, and sites, and help support cultural events, that have outstanding significance in the commemoration of colonial New Mexico, except that the Federal share shall not exceed 50 percent of the cost of each project.*

*(2) NON-FEDERAL SHARE.—The non-Federal share may be in the form of cash or services, including donation of labor for project implementation.*

*(c) SURVEYS AND ARCHAEOLOGICAL INVESTIGATIONS.—The Secretary shall contract for surveys and archaeological and historical investigations of sites relating to colonial New Mexico, including the preparation of reports and maps, and the curation of artifacts.*

*(d) PUBLICATIONS.—The Secretary shall publish study reports and educational materials.*

*(e) NOMINATIONS TO NATIONAL REGISTER OF HISTORIC PLACES.—The Secretary shall prepare thematic nominations to the National Register of Historic Places of colonial sites and resources in New Mexico.*

*(f) STAFF OF OTHER AGENCIES.—On a reimbursable basis, the Secretary may procure the services of personnel detailed from the State of New Mexico or other Federal agencies.*

*(g) DONATIONS.—The Secretary may seek and accept donations of funds or services from public and private entities to carry out this Act.*

***SEC. 5. COMPREHENSIVE MANAGEMENT PLAN.***

*(a) IN GENERAL.—Not later than 2 years after funds are made available for purposes of this Act, the Secretary, in consultation with the Committee, the State of New Mexico, units of local government, and private groups, shall prepare a comprehensive management plan to provide direction for commemorative actions and projects.*

*(b) CONTENTS.—The plan shall—*

*(1) establish a process and procedures for undertaking research relating to colonial New Mexico and a program for regular publication of research materials and findings;*

*(2) develop a survey program to further evaluate known resources and identify sites and features that require additional study;*

*(3) identify a core system of interpretive sites and features that would provide a comprehensive overview of the colonial New Mexico story;*

*(4) prepare interpretive materials to address the colonial New Mexico story and identify locations where this material will be available to the public;*

*(5) evaluate and recommend high priority sites and resources that need protection and assistance;*

*(6) with the assistance of site owners, prepare options for the protection and management of high priority colonial New Mexico resources;*

*(7) evaluate and recommend highway routes, in existence on the date of the plan, that could be designated by the State of New Mexico as colonial New Mexico tour routes; and*

*(8) evaluate the feasibility of and need for developing commemorative centers in New Mexico in accordance with section 7(a).*

***SEC. 6. ESTABLISHMENT OF ADVISORY COMMITTEE.***

*(a) IN GENERAL.—There is established in the Department of the Interior the Colonial New Mexico Preservation Advisory Committee to advise the Secretary with respect to the administration of this Act.*

*(b) MEMBERSHIP.—*

*(1) COMPOSITION.—The Committee shall be composed of 15 members who have knowledge of New Mexico colonial history and culture and who shall be appointed by the Secretary, of whom—*

*(A) three members shall be appointed from recommendations submitted by the Governor of New Mexico, of whom one member shall represent the Office of Cultural Affairs of the State of New Mexico;*

*(B) one member shall be appointed from recommendations submitted by the All Indian Pueblo Council;*

*(C) one member—*

*(i) shall be from the general public; and*

*(ii) shall have knowledge of colonial history in New Mexico;*

*(D) four members—*

*(i) shall be appointed from recommendations submitted by local governments in New Mexico; and*

*(ii) shall represent Hispanic communities;*

*(E) one member shall be appointed from recommendations submitted by the President of the University of New Mexico;*

*(F) one member shall be appointed from recommendations submitted by the President of New Mexico State University;*

*(G) one member shall be appointed from recommendations jointly submitted by the Navajo and Apache tribal governments;*

*(H) one member shall have professional expertise in the colonial history of New Mexico;*

*(I) one member shall have professional expertise in architectural history; and*

*(J) one member shall be the Secretary or the Secretary's designee and shall serve in an ex-officio capacity.*

*(2) CHAIRPERSON.—*

*(A) IN GENERAL.—The Committee shall elect a chairperson from among its members.*

*(B) TERM.—The chairperson shall serve for a term of 2 years.*

*(3) VACANCIES.—A vacancy in the Committee shall be filled in the manner in which the original appointment was made.*

*(4) TERMS.—*

*(A) IN GENERAL.—Each member of the Committee shall be appointed for a term of 5 years.*

*(B) MEMBERS FILLING VACANCIES.—A member appointed to fill a vacancy shall serve for the remainder of the term for which the member's predecessor was appointed.*

*(C) EXTENDED SERVICE.—A member of the Committee may serve after the expiration of the member's term until a successor is appointed.*

*(5) COMPENSATION.—Members of the Committee shall serve without compensation.*

*(6) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.*

*(c) MEETINGS.—*

*(1) IN GENERAL.—The Committee shall meet at least twice annually or at the call of the chairperson or a majority of the members of the Committee.*

*(2) QUORUM.—A simple majority of members of the Committee shall constitute a quorum.*

*(d) HEARINGS.—To carry out this section, the Committee may hold public hearings, take testimony, and record the views of the public regarding the plan and implementation of the plan.*

*(e) TERMINATION.—The Committee shall terminate 10 years after completion of the appointment of the first group of members.*

***SEC. 7. COMMEMORATIVE CENTERS.***

*(a) IN GENERAL.—*

*(1) IN GENERAL.—The Secretary may develop commemorative centers, operate educational programs, provide technical assistance, conduct cultural events, and prepare media materials, except that the Federal share of a project shall not exceed 50 percent of the total cost of development.*

*(2) NON-FEDERAL SHARE.—The non-Federal share may be in the form of cash or services.*

*(b) ESPAÑOLA PLAZA CENTER.—*

*(1) IN GENERAL.—In consultation with the Committee, the Secretary may pay to the city of Española, New Mexico, the Federal share of planning, developing, and operating a commemorative center as an element of the Spanish Commemorative Plaza.*

*(2) FEDERAL SHARE.—The Federal share may not exceed 50 percent of the total cost of the Española Plaza project.*

*(3) NON-FEDERAL SHARE.—The non-Federal share may be in the form of cash or services.*

***SEC. 8. GALISTEO BASIN STUDY.***

*In accordance with the National Park Service document entitled "Alternative Concepts for Commemorating Spanish Colonization" and dated February 1991, the Secretary shall undertake a special resource study of the major prehistoric and historic sites in the Galisteo Basin relating to colonial New Mexico. The study shall include evaluations of significance, site integrity, threats, and protection and management options.*

***SEC. 9. ANNUAL REPORTS.***

*(a) IN GENERAL.—The Secretary shall submit an annual report to Congress that lists with respect to this Act—*

*(1) actions taken by the Secretary;*

*(2) entities to which any grants were made during the fiscal year and any recipients of technical assistance; and*

*(3) actions taken to protect and interpret significant sites, structures, and objects relating to colonial New Mexico.*

*(b) COST ESTIMATES.—The report shall include detailed cost estimates of projects that are proposed to be funded under this Act during the next fiscal year.*

***SEC. 10. AUTHORIZATION OF APPROPRIATIONS.***

*There are authorized to be appropriated to the Department of the Interior $5,000,000 to carry out this Act, to remain available until expended.*

***SEC. 11. PUEBLO TRAIL.***

*(a) The Masau Trail, as designated by Title II of the Act of December 31, 1987 (101 Stat. 1540), is hereby redesignated as the Pueblo Trail.*

*(b) Any reference in any record, map, or other document of the United States of America to the Masau Trail shall hereafter be deemed to be a reference to the Pueblo Trail.*

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time and passed.

The title was amended so as to read: "A bill to authorize the Secretary of the Interior to formulate a program for the research, interpretation, and preservation of various aspects of colonial New Mexico history, and for other purposes."

## GEORGE WASHINGTON BIRTHPLACE NATIONAL MONUMENT BOUNDARIES REVISION ACT

The Senate proceeded to consider the bill (H.R. 2444) to revise the boundaries

of the George Washington Birthplace National Monument, which had been reported from the Committee on Energy and Natural Resources, with an amendment on page 2, beginning on line 8, to strike "numbered NPS 332/80011, and dated May 1991", and insert in lieu thereof "numbered NPS 332/80011A, and dated September 1992".

So as to make the bill read:

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

**SECTION 1. BOUNDARIES OF GEORGE WASHINGTON BIRTHPLACE NATIONAL MONUMENT.**

The boundaries of the George Washington Birthplace National Monument are hereby modified to include the area comprising approximately 125 acres as generally depicted as "National Monument Boundary" on the map entitled "George Washington Birthplace National Monument Boundary May", *Numbered NPS 332/800011A, and dated September 1991*, which shall be on file and available for public inspection in the Office of the Director of the National Park Service, Department of the Interior.

**SEC. 2. ACQUISITION OF LANDS.**

The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") may acquire land or interests in land within the boundaries of the George Washington Birthplace National Mounument by donation, purchase with donated or appropriated funds, or exchange.

**SEC. 3. ADMINISTRATION OF NATIONAL MONUMENT.**

In administering the George Washington Birthplace National Monument, the Secretary shall take such action as is necessary to preserve and interpret the history and resources associated with George Washington, the generations of the Washington family who lived in the vicinity and their contemporaries, as well as 18th century plantation life and society.

So the bill (H.R. 2444) was passed.

## LYNN, MA, HISTORICAL STUDY ACT

The bill (H.R. 2859) to direct the Secretary of the Interior to conduct a study of the historical and cultural resources in the vicinity of the city of Lynn, MA, and make recommendations on the appropriate role of the Federal Government in preserving and interpreting such historical and cultural resources, was considered, ordered to a third reading, read the third time, and passed.

## NATIONAL TRAILS SYSTEM ACT AMENDMENTS

The Senate proceeded to consider the bill (H.R. 3011) to amend the National Trails System Act to designate the American Discovery Trail for study to determine the feasibility and desirability of its designation as a national trail, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. DESIGNATION OF AMERICAN DISCOVERY TRAIL AS A STUDY TRAIL.**

Section 5(c) of the National Trails System Act (18 U.S.C. 1244(c)) is amended by adding at the end the following new paragraph:

"(34) American Discovery Trail, extending from Pt. Reyes, California, across the United States through Nevada, Utah, Colorado, Kansas, Nebraska, Missouri, Iowa, Illinois, Indiana, Ohio, West Virginia, Maryland, and the District of Columbia, to Cape Henlopen State Park, Delaware; to include in the central United States a northern route through Colorado, Nebraska, Iowa, Illinois, and Indiana and a southern route through Colorado, Kansas, Missouri, Illinois, and Indiana.".

**SEC. 2. DESIGNATION OF ALA KAHAKAI TRAIL AS A STUDY TRAIL.**

Section 5(c) of the National Trails System Act (16 U.S.C. 1244(c)) is amended by adding at the end the following new paragraph:

"(35) Ala Kahakai Trail in the State of Hawaii, an ancient Hawaiian trail on the Island of Hawaii extending from the northern tip of the Island of Hawaii approximately 175 miles along the western and southern coasts to the northern boundary of Hawaii Volcanoes National Park.".

## TO DESIGNATE THE AMERICAN DISCOVERY TRAIL STUDY

Mr. BROWN. Mr. President, today I would like to rise in support of legislation to authorize the study of our Nation's first coast-to-coast hiking trail, the American Discovery Trail. While the Appalachian, Continental Divide, and Pacific Crest Trails each provide hiking opportunities traversing the United States from north to south, we lack an east-west backbone with which to link up these trails. The ADT would serve as this backbone, totaling nearly 5,500 miles in length.

The American Discovery Trail will give the American people greater access to some of our country's most beautiful scenic vistas. People all across this country would be able to hike, bike, horseback, or simply walk along such historic trails as the Pony Express route and Santa Fe National Trail which played an important part in America's history.

The trail begins at Point Reyes National Seashore near San Francisco, and travels eastward through Nevada, Utah, Colorado, Kansas, Missouri, Illinois, Indiana, Ohio, West Virginia, and Maryland, ending at Cape Henlopen State Park in Delaware. By linking over 17 existing scenic and historic trails, the ADT will form a national network of trails encompassing 27 States and over 30,000 trail miles.

In Colorado, the American Discovery Trail is routed through some of the State's most beautiful and historic areas. On the west slope, hikers would pass through the Colorado National Monument and cross the Grand Mesa and Gunnison National Forests. Heading north, the route would scale the Collegiate Peaks and then hitchup with the Colorado Trail. Once the trail descends from the Rockies into the suburban areas of Denver, it follows along the foothills of the front range through Cripple Creek to Canon City and then heads west to hook up with the Santa Fe Trail.

Support for such a comprehensive system of trails has been spectacular. In fact, members of the Nebraska delegation contacted me to specifically request that a northern leg of the trail following the South Platte River through Nebraska and Iowa be studied for possible inclusion in the ADT. This has been included in the bill reported by the Energy and Natural Resources Committee.

Thanks to the efforts of the American Hiking Society, Backpacker magazine, as well as many other State and local trails organizations, a three-person team successfully led a scouting expedition in June of 1990 from California to Delaware in order to determine a feasible route for the ADT. Nearly 2 years later, this expedition completed much of the groundwork for the ADT utilizing existing trails wherever possible.

In addition, committees in each State participated to make sure that local interest existed for such a trail and that potential conflicts were avoided.

Because of this groundwork, the cost of studying the proposed route for designation will be small. Within 3 years, the National Park Service must conduct the study and provide its recommendations to Congress. At that time, additional legislation will provide for the actual designation of the trail.

Because the ADT has been purposefully routed in and around major metropolitan areas to link up with urban greenways and rail-to-trail conversions, the ADT also helps achieve the goal set forth by the President's Commission on Americans Outdoors—that everyone live within 15 minutes of a trail. This same commission found that walking for pleasure is the No. 1 activity for Americans. In addition, the presence of trails has been shown to positively impact real estate property value, small business revenues, and tourism.

Mr. President, I was happy to sponsor this legislation. In these times of physical awareness and fiscal restraint, the American Discovery Trail provides healthy, inexpensive entertainment opportunities for all age groups.

It is my hope that the trail also will foster increased appreciation of and responsibility for our public lands, as well as heightened awareness of our cultural heritage.

So the bill (H.R. 3011) was passed.

## PENNSYLVANIA AVENUE DEVELOPMENT ACT

The bill (H.R. 4999) to authorize additional appropriations for implementation of the development plan for Penn-

sylvania Avenue between the Capitol and the White House, was considered, ordered to a third reading, read the third time, and passed.

## JAPANESE-AMERICANS PATRIOTISM MEMORIAL

The joint resolution (H. J. Res. 271) authorizing the Go For Broke National Veterans Association Foundation to establish a memorial in the District of Columbia or its environs to honor Japanese-American patriotism in World War II, was considered, ordered to a third reading, read the third time, and passed.

## ADAMHA REORGANIZATION TECHNICAL AMENDMENTS ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 3366, a bill introduced earlier today by Senators KENNEDY and HATCH, the ADAMHA Reorganization Technical Amendments Act of 1992; that the bill be read a third time and passed; the motion to reconsider be laid upon the table, and any statements thereon appear in the RECORD at the appropriate place as though read.

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

## THE ADAMHA TECHNICAL AMENDMENTS ACT OF 1992

Mr. KENNEDY. Mr. President, the bill we have just passed consists of minor and technical amendments to the ADAMHA Reorganization Act (Public Law 102-321), which was enacted into law on July 10 of this year. An earlier set of technical amendments, primarily concerning the new block grant formula, was included in Public Law 102-352.

I ask unanimous consent that a section-by-section analysis of these additional technical amendments be included in the RECORD at this point.

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

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

Section 2(a)(1). Exempts protection and advocacy grants from the requirement of state review. The state review requirement was inluded in the Reorganization Act to facilitate coordination and state involvement in federal treatment and prevention funding. That goal is inapplicable to the protection and advocacy program because of the unique nature of protection and advocacy activities.

Section 2(a)(2). Makes clear that the Substance Abuse and Mental Health Services Administration (SAMHSA) will maintain separate clearinghouses for substance abuse and mental health.

Section 2(a)(3). Provides for the appointment of an Associate Administrator for AIDS Policy and Programs within SAMHSA.

Section 2(b). Eliminates an unnecessary limitation on members of the general public who may sit on advisory councils.

Section 2(c). Eliminates references to the promulgation of regulations in regard to the peer review process of the Substance Abuse and Mental Health Services Administration. This section also exempts from the peer review requirement protection and advocacy grants because of their unique nature.

Section 2(d). Provides that states may receive demonstration grants under section 506 of the Public Health Service Act so that they may in turn provide grants to political subdivisions and non-profit entities within the state.

Section 2(e). Provides that grantees under section 508 may provide treatment services to women with dependent children who are neither pregnant nor post-partum. The primary purpose of section 508 is to provide comprehensive services to pregnant and post-partum substance abusers. This focus exists because of the immediate physiological danger to the fetuses and infants of substance abusers. Nonetheless, the incidental expenditure of funds for women with dependent children who are neither pregnant or post-partum is not prohibited.

Section 2(f). Specifies that violation of the confidentiality requirement set forth in section 543 is a class A misdemeanor.

Section 2(g). Revises the amount of money that must be spent on technical assistance under the childhood mental health program.

Section 3(a). Conforming amendment.

Section 3(b). Clarifies the definition of "pharmacotherapeutics" within the medications development program and revises a study deadline.

Section 4. Expands the scope of certain CDC grant-making authority in light of the fact that there are certain geographic regions in which non-profit mammography screening units may not exist.

Section 5(a). Conforming amendment.

Section 5(b). Clarifies that the cost of services index in the block grant formula is to be recalculated for fiscal year 1995 and every three years thereafter.

Section 5(c). Revises the section requiring certain coordinated drug treatment and HIV services so that the latter may be provided off-site.

Section 5(d). Corrects an incorrect statutory reference.

Section 5(e). Corrects an incorrect statutory term.

Section 5(f). Permits capacity expansion funds to be used for inpatient hospital treatment to the same extent as under the substance abuse block grant.

Section 6(a). Extends the deadline for obligation of FY92 block grant funds.

Section 6(b). Requires additional consultation on a study.

Section 6(c). Repeals an unnecessary provision of law.

So the bill (S. 3366) was passed as follows:

S. 3366

*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 "ADAMHA Reorganization Technical Amendments Act of 1992".

**SEC. 2. AMENDMENTS TO TITLE V.**

(a) ORGANIZATION AND ADMINISTRATION.—Section 501 of the Public Health Service Act (42 U.S.C. 290aa) is amended

(1) in subsection (d)—

(A) by inserting "(except for grants under the Protection and Advocacy for Mentally Ill Individuals Act)" after "this title" in paragraph (13); and

(B) by striking out "substance abuse and mental health" and inserting in lieu thereof "substance abuse information and a clearinghouse for mental health" in paragraph (16);

(2) by redesignating subsections (g) through (m) as subsections (h) through (n), respectively; and

(3) by inserting after subsection (f), the following new subsection:

"(g) ASSOCIATE ADMINISTRATOR FOR AIDS POLICY AND PROGRAMS.—The Administrator, with the approval of the Secretary, shall appoint an Associate Administrator for AIDS Policy and Programs (who shall not hold any other position within the Administration). The Associate Administrator shall be responsible for promoting, monitoring and evaluating activities of the Administration that relate to the transmission of the human immunodeficiency virus, including AIDS outreach and training activities.".

(b) ADVISORY COUNCILS.—Section 502(b)(3)(B) of such Act (42 U.S.C. 290aa-1(b)(3)(B)) is amended by striking out "and shall include" and all that follows through "management".

(c) PEER REVIEW.—Section 504 of such Act (42 U.S.C. 290aa-3) is amended—

(1) in subsection (a), by inserting after "contract" the following: "(excluding contracts for program resources)";

(2) in subsection (b)—

(A) by striking out "under regulations" in the first sentence; and

(B) by striking out "established under such regulation" in the second sentence;

(3) in subsection (c), by striking out "Regulations promulgated" and inserting in lieu thereof "Procedures developed"; and

(4) in subsection (d)—

(A) by striking out "by regulations" each place that such term appears; and

(B) in paragraph (2), by inserting ", except for grants under the Protection and Advocacy for Mentally Ill Individuals Act" after "subsection (a)".

(d) GRANTS FOR THE BENEFITS OF THE HOMELESS.—Section 506(a) of such Act (42 U.S.C. 290aa-5(a)) is amended—

(1) by inserting "States or" before "community-based"; and

(2) by inserting the following new sentence at the end thereof: "Grants to States under this section shall be expended solely to make grants to political subdivisions of the State and to private nonprofit entities.".

(e) RESIDENTIAL TREATMENT.—Section 508 of such Act (42 U.S.C. 290bb-1) is amended by adding at the end thereof the following new subsection:

"(s) CONSTRUCTION.—Funds expended under this section may be used to provide services to women with dependent children who are neither pregnant nor post-partum.".

(f) CONFIDENTIALITY OF RECORDS.—Subsection (f) of section 543 of such Act (42 U.S.C. 290dd-2(f)) is amended to read as follows:

"(f) PENALTIES.—A violation of any provision of this section or any regulation issued pursuant to this section shall constitute a class A misdemeanor and any person found guilty of such violation shall be fined in accordance with title 18, United States Code.".

(g) GENERAL PROVISIONS.—Paragraph 2 of section 565(f) of such Act (42 U.S.C. 290ff-4(f)(2)) is amended to read as follows:

"(2) TECHNICAL ASSISTANCE.—Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available not less than 10 percent and not more than $3,000,000 for the purposes of carrying out subsection (b).".

**SEC. 3. AMENDMENTS TO TITLE IV.**

(a) NATIONAL ALCOHOL RESEARCH CENTER.—Section 464J(a) of the Public Health Service Act (42 U.S.C. 285n-2(a)) is amended by striking out "The Secretary acting through" and inserting in lieu thereof "The Director of"

(b) MEDICATION DEVELOPMENT PROGRAM.—Section 464P of such Act (42 U.S.C. 285o-4) is amended—

(1) in subsection (c)(1), by striking out "December 31, 1992" and inserting in lieu thereof "June 30, 1993"; and

(2) in subsection (d)—

(A) by inserting "or reduce" after "block" in paragraph (1);

(B) by inserting "or use of" after "for" in paragraph (2);

(C) by inserting ", reduce" after "block" in paragraph (4); and

(D) by inserting "or reduce" after "prevent" in paragraph (5).

**SEC. 4. AMENDMENTS TO TITLE XV.**

(a) GRANTS.—Section 1501(b) of the Public Health Service Act (42 U.S.C. 300k(b)) is amended by striking out "nonprofit".

(b) INTENDED USES.—Section 1505(3) of such Act (42 U.S.C. 300n-1(3)) is amended by striking out "nonprivate" and inserting in lieu thereof "private".

**SEC. 5. AMENDMENTS TO TITLE XIX.**

(a) APPLICATION FOR GRANT.—Section 1917(a)(1) of the Public Health Service Act (42 U.S.C. 300x-6(a)(1)) is amended by striking out "as being the date" and all that follows through "date)".

(b) DETERMINATION OF AMOUNT OF ALLOTMENT.—Section 1918(a)(8)(D)(i) of such Act (42 U.S.C. 300x-7(a)(8)(D)(i)) is amended by inserting after "recalculated" the following "for fiscal year 1995 and".

(c) TUBERCULOSIS AND HIV.—Section 1924(b)(1)(A) of such Act (42 U.S.C. 300x-24(b)(1)(A)) is amended by striking out "the sites at" and inserting in lieu thereof "the program site, or in coordination with the program in".

(d) FUNDING.—Section 1935(b)(2) of such Act (42 U.S.C. 300x-35(b)(2)) is amended by striking out "section 1949(a)" and inserting in lieu thereof "section 1948(a)".

(e) AVAILABILITY TO STATE OF GRANT PAYMENTS.—Section 1952(b) of such Act (42 U.S.C. 300x-62(b)) is amended in the matter preceding paragraph (1)—

(1) by striking out "financial assistance" and inserting in lieu thereof "funding"; and

(2) by striking out "assistance" each place that such term appears and inserting in lieu thereof "funding".

(f) CATEGORICAL GRANTS.—Section 1971(h)(1) of such Act (42 U.S.C. 300y(h)(1)) is amended by inserting before the semicolon the following: "except under the circumstances set forth in section 1931(b)".

**SEC. 6. OTHER AMENDMENTS.**

(a) ADAMHA REORGANIZATION ACT.—Section 205 of the ADAMHA Reorganization Act (42 U.S.C. 300x note) is amended by adding at the end thereof the following new subsection:

"(e) AVAILABILITY OF APPROPRIATIONS.—Notwithstanding section 1952(a) of the Public Health Service Act and section 205(a)(2) of this Act, amounts appropriated for fiscal year 1992 shall be available for obligation until December 31, 1992.".

(b) STUDY OF BARRIERS TO INSURANCE COVERAGE.—Section 704(a) of the ADAMHA Reorganization Act (42 U.S.C. 285p(a)) is amended by inserting "and the Administrator of the Substance Abuse and Mental Health Services Administration" after "Administration".

(c) STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT.—Section 612 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 290aa-3 note) is repealed.

## THE 100TH HAWAII ANNIVERSARY AND APOLOGY

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 804, Senate Joint Resolution 335, a joint resolution acknowledging the 100th anniversary of the overthrow of the Kingdom of Hawaii; that the resolution be read for a third time and passed; that the preamble be agreed to; that the motion to reconsider be laid upon the table; and that any statements be placed in the appropriate place in the RECORD.

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

So the Senate proceeded to consider the joint resolution (S.J. Res. 335) to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii, which had been reported from the Select Committee on Indian Affairs with amendments.

The amendment were agreed to.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, as amended, and the preamble are as follows:

S.J. RES. 335

Whereas, prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion;

Whereas a unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii;

Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

Whereas the Congregational Church (now known as the United Church of Christ), through its American Board of Commissioners for Foreign Missions, sponsored and sent more than 100 missionaries to the Kingdom of Hawaii between 1820 and 1850;

Whereas, on January 14, 1893, John L. Stevens (hereafter referred to in this Resolution as the "United States Minister"), the United States Minister assigned to the sovereign and independent Kingdom of Hawaii conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States to overthrow the indigenous and lawful Government of Hawaii;

Whereas, in pursuance of the conspiracy to overthrow the Government of Hawaii, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government;

Whereas, on the afternoon of January 17, 1893, a Committee of Safety that represented the American and European sugar planters, descendents of missionaries, and financiers deposed the Hawaiian monarchy and proclaimed the establishment of a Provisional Government;

Whereas the United States Minister thereupon extended diplomatic recognition to the Provisional Government that was formed by the conspirators without the consent of the Native Hawaiian people or the lawful Government of Hawaii and in violation of treaties between the two nations and of international law;

Whereas, soon thereafter, when informed of the risk of bloodshed with resistance, Queen Liliuokalani issued the following statement yielding her authority to the United States Government rather than to the Provisional Government:

"I Liliuokalani, by the Grace of God and under the Constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the Constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom.

"That I yield to the superior force of the United States of America whose Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the Provisional Government.

"Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the Constitutional Sovereign of the Hawaiian Islands.".

Done at Honolulu this 17th day of January, A.D. 1893.;

Whereas, without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Liliuokalani would have failed for lack of popular support and insufficient arms;

Whereas, on February 1, 1893, the United States Minister raised the American flag and proclaimed Hawaii to be a protectorate of the United States;

Whereas the report of a Presidentially established investigation conducted by former Congressman James Blount into the events surrounding the insurrection and overthrow of January 17, 1893, concluded that the United States diplomatic and military representatives had abused their authority and were responsible for the change in government;

Whereas, as a result of this investigation, the United States Minister to Hawaii was recalled from his diplomatic post and the military commander of the United States armed forces stationed in Hawaii was disciplined and forced to resign his commission;

Whereas, in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators, described such acts as an "act of war, committed with the participation of a diplomatic representative of the United States and without the authority of Congress", and acknowledged that by such acts the government of a peaceful and friendly people was overthrown;

Whereas President Cleveland further concluded that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the

injured people requires that we should endeavor to repair" and called for the restoration of the Hawaiian monarchy;

Whereas the Provisional Government protested President Cleveland's call for the restoration of the monarchy and continued to hold state power and pursue annexation to the United States;

Whereas the Provisional Government successfully lobbied the Committee on Foreign Relations of the Senate (hereafter referred to in this Resolution as the "Committee") to conduct a new investigation into the events surrounding the overthrow of the monarchy.

Whereas the Committee and its chairman, Senator John Morgan, conducted hearings in Washington, D.C., from December 27, 1893, through February 26, 1894, in which members of the Provisional Government justified and condoned the actions of the United States Minister and recommended annexation of Hawaii;

Whereas, although the Provisional Government was able to obscure the role of the United States in the illegal overthrow of the Hawaiian monarchy, it was unable to rally the support from two-thirds of the Senate needed to ratify a treaty of annexation;

Whereas, on July 4, 1894, the Provisional Government declared itself to be the Republic of Hawaii;

Whereas, on January 24, 1895, while imprisoned in Iolani Palace, Queen Liliuokalani was forced by representatives of the Republic of Hawaii to officially abdicate her throne;

Whereas, in the 1896 United States Presidential election, William McKinley replaced Grover Cleveland;

Whereas, on July 7, 1898, as a consequence of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii;

Whereas, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States;

Whereas the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;

Whereas the Congress, through the Newlands Resolution, ratified the cession, annexed Hawaii as part of the United States, and vested title to the lands in Hawaii in the United States;

Whereas the Newlands Resolution also specified that treaties existing between Hawaii and foreign nations were to immediately cease and be replaced by United States treaties with such nations;

Whereas the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States Government;

Whereas the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;

Whereas, on April 30, 1900, President McKinley signed the Organic Act that provided a government for the territory of Hawaii and defined the political structure and powers of the newly established Territorial Government and its relationship to the United States;

Whereas, on August 21, 1959, Hawaii became the 50th State of the United States;

Whereas the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land;

Whereas the long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people;

Whereas, the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions;

Whereas, in order to promote racial harmony and cultural understanding, the Legislature of the State of Hawaii has determined that the year 1993 should serve Hawaii as a year of special reflection on the rights and dignities of the Native Hawaiians in the Hawaiian and the American societies;

Whereas the Eighteenth General Synod of the United Church of Christ in recognition of the denomination's historical complicity in the illegal overthrow of the Kingdom of Hawaii in 1893 directed the Office of the President of the United Church of Christ to offer a public apology to the Native Hawaiian people and to initiate the process of reconciliation between the United Church of Christ and the Native Hawaiians; and

Whereas it is proper and timely for the Congress on the occasion of the impending one hundredth anniversary of the event, to acknowledge the historic significance of the illegal overthrow of the Kingdom of Hawaii, to express its deep regret to the Native Hawaiian people, and to support the reconciliation efforts of the State of Hawaii and the United Church of Christ with Native Hawaiians: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. ACKNOWLEDGEMENT AND APOLOGY.**

The Congress—

(1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawaii on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people;

(2) recognizes and commends efforts of reconciliation initiated by the State of Hawaii and the United Church of Christ with Native Hawaiians;

(3) apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination;

(4) expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and

(5) urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and the Native Hawaiian people.

**SEC. 2. DEFINITIONS.**

As used in this Joint Resolution, the term "Native Hawaiian" means any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes of the State of Hawaii.

**SEC. 3. DISCLAIMER.**

Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.

Mr. AKAKA. Mr. President, I rise today to support Senate Joint Resolution 335, a joint resolution I introduced with Senators INOUYE and SIMON which would acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii and offer an apology to Native Hawaiians on behalf of the United States for its complicity in this event.

While Senate Joint Resolution 335 seeks to educate Congress and the American public on the events surrounding the 1893 overthrow and the impact that this action has had on the destiny of the Native Hawaiian people, the resolution would also provide the proper foundation for reconciliation between the United States and native Hawaiians.

As the 100th anniversary of the overthrow approaches, many individuals and organizations are reevaluating the events of 1893. A good example of this is the action taken by the Church of Christ in June 1991, during its 18th General Synod. As many of you know, the United Church of Christ, which now has 110 churches in the State of Hawaii, through its American Board of Commissioners for Foreign Missions, sent the first 100 missionaries to the Kingdom of Hawaii between 1820 and 1850. In recognition of the denomination's historical complicity in the 1893 overthrow of Queen Liliuokalani, the 18th General Synod directed the office of the president of the United Church to offer a public apology to the Native Hawaiian people and to initiate the process of reconciliation between the United Church of Christ and native Hawaiians. This action was a significant gesture by the United Church of Christ and has had a profound impact upon the United Church of Christ churches in Hawaii and native Hawaiians.

Mr. President, our Nation must also begin the healing process. The 100th anniversary of the January 17, 1893 overthrow of Queen Liliuokalani provides the proper occasion for a U.S. apology for its complicity in this event. Because of this episode in U.S. history, the political relationship between Native Hawaiians and the United States remains unresolved.

Not until our Nation understands the significance of the events surrounding the 1893 overthrow of the Kingdom of Hawaii will the American people appreciate the meaning of the native Hawaiian rights movement which grows stronger every day.

Nearly a century ago, President Grover Cleveland, in a message to Congress on December 18, 1893, courageously acknowledged U.S. complicity in the overthrow of the Kingdom of Hawaii and stated, "A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair." Mr. President, January 17 of next year will mark

the 100th anniversary of that substantial wrong, yet no official apology has ever been made by the United States to the native Hawaiian people nor has there ever been an attempt by the United States to develop a Federal policy addressing their rights.

Support of Senate Joint Resolution 335 would be the first step toward Federal reconciliation with the native Hawaiian people. I ask my colleagues to support this important gesture of good faith and contribute to the healing process.

## CANCER REGISTRIES AMENDMENT ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 3312.

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

*Resolved*, That the bill from the Senate (S. 3312) entitled "An Act entitled the "Cancer Registries Amendment Act," do pass with the following amendment:

Page 14, line 6, strike [there are authorized to be appropriated] and insert in lieu thereof "the Secretary may use"; and

Page 14, line 8, strike [appropriated] and insert in lieu thereof "used".

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Cancer Registries Amendment Act".

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds that—

(1) cancer control efforts, including prevention and early detection, are best addressed locally by State health departments that can identify unique needs;

(2) cancer control programs and existing statewide population-based cancer registries have identified cancer incidence and cancer mortality rates that indicate the burden of cancer for Americans is substantial and varies widely by geographic location and by ethnicity;

(3) statewide cancer incidence and cancer mortality data, can be used to identify cancer trends, patterns, and variation for directing cancer control intervention;

(4) the American Association of Central Cancer Registries (AACCR) cites that of the 50 States, approximately 38 have established cancer registries, many are not statewide and 10 have no cancer registry; and

(5) AACCR also cites that of the 50 States, 39 collect data on less than 100 percent of their population, and less than half have adequate resources for insuring minimum standards for quality and for completeness of case information.

(b) PURPOSE.—It is the purpose of this Act to establish a national program of cancer registries.

**SEC. 3. NATIONAL PROGRAM OF CANCER REGISTRIES.**

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following new part:

"PART M—NATIONAL PROGRAM OF CANCER REGISTRIES

**"SEC. 399H. NATIONAL PROGRAM OF CANCER REGISTRIES.**

"(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control, may make grants to States, or may make grants or enter into contracts with academic or nonprofit organizations designated by the State to operate the State's cancer registry in lieu of making a grant directly to the State, to support the operation of population-based, statewide cancer registries in order to collect, for each form of in-situ and invasive cancer (with the exception of basal cell and squamous cell carcinoma of the skin), data concerning—

"(1) demographic information about each case of cancer;

"(2) information on the industrial or occupational history of the individuals with the cancers, to the extent such information is available from the same record;

"(3) administrative information, including date of diagnosis and source of information;

"(4) pathological data characterizing the cancer, including the cancer site, stage of disease (pursuant to Staging Guide), incidence, and type of treatment; and

"(5) other elements determined appropriate by the Secretary.

"(b) MATCHING FUNDS.—

"(1) IN GENERAL.—The Secretary may make a grant under subsection (a) only if the State, or the academic or nonprofit private organization designated by the State to operate the cancer registry of the State, involved agrees, with respect to the costs of the program, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 25 percent of such costs or $1 for every $3 of Federal funds provided in the grant.

"(2) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION; MAINTENANCE OF EFFORT.—

"(A) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

"(B) With respect to a State in which the purpose described in subsection (a) is to be carried out, the Secretary, in making a determination of the amount of non-Federal contributions provided under paragraph (1), may include only such contributions as are in excess of the amount of such contributions made by the State toward the collection of data on cancer for the fiscal year preceding the first year for which a grant under subsection (a) is made with respect to the State. The Secretary may decrease the amount of non-Federal contributions that otherwise would have been required by this subsection in those cases in which the State can demonstrate that decreasing such amount is appropriate because of financial hardship.

"(c) ELIGIBILITY FOR GRANTS.—

"(1) IN GENERAL.—No grant shall be made by the Secretary under subsection (a) unless an application has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such a manner, and be accompanied by such information, as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and in accordance with the requirements of this section, that the application will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under subsection (a) of this section, and that the applicant will comply with the peer review requirements under sections 491 and 492.

"(2) ASSURANCES.—Each applicant, prior to receiving Federal funds under subsection (a), shall provide assurances satisfactory to the Secretary that the applicant will—

"(A) provide for the establishment of a registry in accordance with subsection (a);

"(B) comply with appropriate standards of completeness, timeliness, and quality of population-based cancer registry data;

"(C) provide for the annual publication of reports of cancer data under subsection (a); and

"(D) provide for the authorization under State law of the statewide cancer registry, including promulgation of regulations providing—

"(i) a means to assure complete reporting of cancer cases (as described in subsection (a)) to the statewide cancer registry by hospitals or other facilities providing screening, diagnostic or therapeutic services to patients with respect to cancer;

"(ii) a means to assure the complete reporting of cancer cases (as defined in subsection (a)) to the statewide cancer registry by physicians, surgeons, and all other health care practitioners diagnosing or providing treatment for cancer patients, except for cases directly referred to or previously admitted to a hospital or other facility providing screening, diagnostic or therapeutic services to patients in that State and reported by those facilities;

"(iii) a means for the statewide cancer registry to access all records of physicians and surgeons, hospitals, outpatient clinics, nursing homes, and all other facilities, individuals, or agencies providing such services to patients which would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or medical status of any identified patient;

"(iv) for the reporting of cancer case data to the statewide cancer registry in such a format, with such data elements, and in accordance with such standards of quality timeliness and completeness, as may be established by the Secretary;

"(v) for the protection of the confidentiality of all cancer case data reported to the statewide cancer registry, including a prohibition on disclosure to any person of information reported to the statewide cancer registry that identifies, or could lead to the identification of, an individual cancer patient, except for disclosure to other State cancer registries and local and State health officers;

"(vi) for a means by which confidential case data may in accordance with State law be disclosed to cancer researchers for the purposes of cancer prevention, control and research;

"(vii) for the authorization or the conduct, by the statewide cancer registry or other persons and organizations, of studies utilizing statewide cancer registry data, including studies of the sources and causes of cancer, evaluations of the cost, quality, efficacy, and appropriateness of diagnostic, therapeutic, rehabilitative, and preventative services and programs relating to cancer, and any other clinical, epidemiological, or other cancer research; and

"(viii) for protection for individuals complying with the law, including provisions specifying that no person shall be held liable in any civil action with respect to a cancer case report provided to the statewide cancer registry, or with respect to access to cancer

case information provided to the statewide cancer registry.

"(d) RELATIONSHIP TO CERTAIN PROGRAMS.—

"(1) IN GENERAL.—This section may not be construed to act as a replacement for or diminishment of the program carried out by the Director of the National Cancer Institute and designated by such Director as the Surveillance, Epidemiology, and End Results Program (SEER).

"(2) SUPPLANTING OF ACTIVITIES.—In areas where both such programs exist, the Secretary shall ensure that SEER support is not supplanted and that any additional activities are consistent with the guidelines provided for in subsection (c)(2)(C) and (D) and are appropriately coordinated with the existing SEER program.

"(3) TRANSFER OF RESPONSIBILITY.—The Secretary may not transfer administration responsibility for such SEER program from such Director.

"(4) COORDINATION.—To encourage the greatest possible efficiency and effectiveness of Federally supported efforts with respect to the activities described in this subsection, the Secretary shall take steps to assure the appropriate coordination of programs supported under this part with existing Federally supported cancer registry programs.

"(e) REQUIREMENT REGARDING CERTAIN STUDY ON BREAST CANCER.—In the case of a grant under subsection (a) to any State specified in section 399K(b), the Secretary may establish such conditions regarding the receipt of the grant as the Secretary determines are necessary to facilitate the collection of data for the study carried out under section 399C.

**"SEC. 399I. PLANNING GRANTS REGARDING REGISTRIES.**

"(a) IN GENERAL.—

"(1) STATES.—The Secretary, acting through the Director of the Centers for Disease Control, may make grants to States for the purpose of developing plans that meet the assurances required by the Secretary under section 399B(c)(2).

"(2) OTHER ENTITIES.—For the purpose described in paragraph (1), the Secretary may make grants to public entities other than States and to nonprofit private entities. Such a grant may be made to an entity only if the State in which the purpose is to be carried out has certified that the State approves the entity as qualified to carry out the purpose.

"(b) APPLICATION.—The Secretary may make a grant under subsection (a) only if an application for the grant is submitted to the Secretary, the application contains the certification required in subsection (a)(2) (if the application is for a grant under such subsection), and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

**"SEC. 399J. TECHNICAL ASSISTANCE IN OPERATIONS OF STATEWIDE CANCER REGISTRIES.**

"The Secretary, acting through the Director of the Centers for Disease Control, may, directly or through grants and contracts, or both, provide technical assistance to the States in the establishment and operation of statewide registries, including assistance in the development of model legislation for statewide cancer registries and assistance in establishing a computerized reporting and data processing system.

**"SEC. 399K. STUDY IN CERTAIN STATES TO DETERMINE THE FACTORS CONTRIBUTING TO THE ELEVATED BREAST CANCER MORTALITY RATES.**

"(a) IN GENERAL.—Subject to subsections (c) and (d), the Secretary, acting through the Director of the National Cancer Institute, shall conduct a study for the purpose of determining the factors contributing to the fact that breast cancer mortality rates in the States specified in subsection (b) are elevated compared to rates in other States.

"(b) RELEVANT STATES.—The States referred to in subsection (a) are Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and the District of Columbia.

"(c) COOPERATION OF STATE.—The Secretary may conduct the study required in subsection (a) in a State only if the State agrees to cooperate with the Secretary in the conduct of the study, including providing information from any registry operated by the State pursuant to section 399H(a).

"(d) PLANNING, COMMENCEMENT, AND DURATION.—The Secretary shall, during each of the fiscal years 1993 and 1994, develop a plan for conducting the study required in subsection (a). The study shall be initiated by the Secretary not later than fiscal year 1994, and the collection of data under the study may continue through fiscal year 1998.

"(e) REPORT.—Not later than September 30, 1999, the Secretary shall complete the study required in subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings and recommendations made as a result of the study.

**"SEC. 399L. AUTHORIZATION OF APPROPRIATIONS.**

"(a) REGISTRIES.—For the purpose of carrying out this part, there are authorized to be appropriated $30,000,000 for each of the fiscal years 1993 through 1997. Out of any amounts appropriated for any such fiscal year, the Secretary may obligate not more than 25 percent for carrying out section 399I, and not more than 10 percent may be expended for assessing the accuracy, completeness and quality of data collected, and not more than 10 percent of which is to be expended under subsection 399J.

"(b) BREAST CANCER STUDY.—Of the amounts appropriated for the National Cancer Institute under subpart 1 of part C of title IV for any fiscal year in which the study required in section 399K is being carried out, the Secretary shall expend not less than $1,000,000 for the study.".

Mr. FORD. Mr. President, I move the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

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## ALZHEIMER'S DISEASE RESEARCH, TRAINING, AND EDUCATION AMENDMENTS

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1577.

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

*Resolved*, That the bill from the Senate (S. 1577) entitled "An Act to amend the Alzheimer's Disease and Related Dementias Services Research Act of 1986 to reauthorize the Act, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause and insert:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Alzheimer's Disease Research, Training, and Education Amendments of 1992".

**SEC. 2. SHORT TITLE OF ACT.**

(a) IN GENERAL.—Section 901 of the Alzheimer's Disease and Related Dementias Services Research Act of 1986 (42 U.S.C. 11201 note) is amended by striking "Services Research Act of 1986" and inserting "Research Act of 1992".

(b) CONFORMING AMENDMENT.—The Alzheimer's Disease and Related Dementias Research Act of 1992 (42 U.S.C. 12201 et seq.) is amended in the heading for title IX by striking "SERVICES".

**SEC. 3. REFERENCES.**

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Alzheimer's Disease and Related Dementias Research Act of 1992 (42 U.S.C. 11201 et seq.).

**SEC. 4. FINDINGS.**

Section 902 (42 U.S.C. 11201) is amended—

(1) by redesignating paragraphs (7) through (12) as paragraphs (9) through (14);

(2) by striking paragraphs (4), (5), and (6); and

(3) by inserting after paragraph (3) the following new paragraphs:

"(4) the cost of caring for individuals with Alzheimer's disease and related dementias is great, and conservative estimates range between $38,000,000,000 and $42,000,000,000 per year solely for direct costs;

"(5) progress in the neurosciences and behavioral sciences has demonstrated the interdependence and mutual reinforcement of basic science, clinical research, and services research for Alzheimer's disease and related dementias;

"(6) programs initiated as part of the Decade of the Brain are likely to provide significant progress in understanding the fundamental mechanisms underlying the causes of, and treatments for, Alzheimer's disease and related dementias;

"(7) although substantial progress has been made in recent years in identifying possible leads to the causes of Alzheimer's disease and related dementias, and more progress can be expected in the near future, there is little likelihood of a breakthrough in the immediate future that would eliminate or substantially reduce—

"(A) the number of individuals with the disease and dementias; or

"(B) the difficulties of caring for the individuals;

"(8) the responsibility for care of individuals with Alzheimer's desease and related dementias falls primarily on their families, and the care is financially and emotionally devastating;".

**SEC. 5. COUNCIL ON ALZHEIMER'S DISEASE.**

(a) ESTABLISHMENT.—Section 911 (42 U.S.C. 11211) is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking "Surgeon General of the United States" and inserting

"Surgeon General of the Public Health Service";

(B) in paragraph (6), by striking "and Communicative Diseases" and inserting "Disorders";

(C) by striking paragraphs (10), (11), and (12); and

(D) by adding at the end the following new paragraphs:

"(10) the Administrator of the Agency for Health Care Policy and Research;

"(11) the Administrator of the Health Resources and Services Administration;

"(12) the Director of the National Center for Nursing Research;

"(13) the Chief Medical Director of the Department of Veterans Affairs;

"(14) the Director of the National Center for Health Statistics; and

"(15) such additional members as the Secretary of Health and Human Services (hereinafter referred to as the 'Secretary') considers appropriate.";

(2) by striking subsection (b) and inserting the following new subsection:

"(b) The Assistant Secretary for Health shall serve as the Chairman of the Council."; and

(3) in subsection (d), by striking "twice" and inserting "once".

(b) FUNCTIONS.—Section 912 (42 U.S.C. 11212) is amended—

(1) in subsection (a)—

(A) by adding "and" at the end of paragraph (3);

(B) by striking "; and" at the end of paragraph (4) and inserting a period; and

(C) by striking paragraph (5); and

(2) by striking subsection (b) and inserting the following new subsection:

"(b)(1) The Chairman of the Council shall submit to the committees listed in paragraph (2) an annual report containing information on—

"(A) progress made by research, sponsored by the Federal Government, on Alzheimer's disease and related dementias; and

"(B) new directions that the Council considers potentially important in research on Alzheimer's disease and related dementias.

"(2) The Chairman of the Council shall submit the reported described in paragraph (1) to—

"(A) the Committee on Energy and Commerce of the House of Representatives;

"(B) the Committee on Ways and Means of the House of Representatives;

"(C) the Committee on Veterans' Affairs of the House of Representatives;

"(D) the Committee on Appropriations of the House of Representatives;

"(E) the Committee on Labor and Human Resources of the Senate;

"(F) the Committee on Finance of the Senate;

"(G) the Committee on Veterans' Affairs of the Senate; and

"(H) the Committee on Appropriations of the Senate.".

**SEC. 6. ADVISORY PANEL ON ALZHEIMER'S DISEASE.**

"(a) ESTABLISHMENT.—Section 921 (42 U.S.C. 11221) is amended—

(1) in subsection (a)(2), by striking "the Director of the National Center for Health Services Research and Health Care Technology Assessment" and inserting "the Administrator of the Agency for Health Care Policy and Research";

(2) in subsection (d), to read as follows:

"(d)(1)(A) Except as provided in subparagraph (B), members of the Panel appointed under subsection (a)(1) shall each serve for a term of 3 years.

"(B) Of the members appointed under subsection (a)(1) that are serving on the Panel on the day before the date of the enactment of this subsection—

"(i) five shall serve for a term that expires on such date;

"(ii) five shall serve for a term that expires 1 year after such date; and

"(iii) five shall serve for a term that expires 2 years after such date.

"(2) A vacancy on the Panel shall be filed in the same manner as the original appointment was made, and not later than 90 days after the date on which the vacancy first arises. A vacancy on the Panel shall not affect the powers of the Panel.";

(3) in subsection (f), by striking "twice" and inserting "once";

(4) in subsection (h), by striking "of $100 per day" and inserting "at the daily equivalent of the maximum rate specified for GS–15 of the General Schedule under section 5332 of title 5, United States Code,"; and

(5) by adding at the end the following new subsection:

"(i) Notwithstanding section 14 of the Federal Advisory Committee Act (5 U.S.C. App.), on September 30, 1996, the Panel shall be abolished and all programs established under this part shall terminate.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 923 (42 U.S.C. 11223) is amended to read as follows:

**"SEC. 923. AUTHORIZATION OF APPROPRIATIONS.**

"There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal year 1992 through 1996.".

**SEC. 7. RESEARCH RELATING TO SERVICES FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE AND RELATED DEMENTIAS AND FAMILIES OF THE INDIVIDUALS.**

(a) RESPONSIBILITIES OF THE NATIONAL INSTITUTE OF MENTAL HEALTH.—

(1) GRANTS.—Section 931 (42 U.S.C. 11251) is amended—

(A) by striking subsections (b)(2) and (c);

(B) in subsection (a), by inserting "and specialized care" after "services"; and

(C) in subsection (b)(1)—

(i) by striking "Within 6 months" and all that follows through "plan shall" and inserting "The Director of the National Institute of Mental Health shall";

(ii) in subparagraph (A)—

(I) by striking "provide for" and inserting "ensure that the research conducted under subsection (a) includes";

(II) by striking clause (iii) and inserting the following new clause:

"(iii) the optional range, types, and cost-effectiveness of services and specialized care for individuals with Alzheimer's disease and related dementias and for their families, in community and residential settings (including home care, day care, and respite care), and in institutional settings, particularly with respect to—

"(I) the design of the services and care;

"(II) appropriate staffing for the provision of the services and care;

"(III) the timing of the services and care during the progression of the disease or dementias; and

"(IV) the appropriate mix and coordination of the services and specialized care;"

(III) in clause (iv), by inserting "the evaluation of best practices for the development of" before "appropriate"; and

(IV) in clauses (v) and (vii), by striking "and nursing home services" and inserting "nursing home services, and other residential services and care"; and

(iii) in subparagraph (B), by striking "research carried out under the plan" and inserting "the research".

(2) CONFORMING AMENDMENTS.—Section 931(b) (42 U.S.C. 11251(b)) is amended—

(A) by striking "(1)";

(B) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively;

(C) in paragraph (1) (as redesignated by subparagraph (B) of this paragraph), by redesignating clauses (i) through (vii) as subparagraphs (A) through (G), respectively; and

(D) in paragraph (1)(C) (as so redesignated, and as amended by paragraph (1)(C)(ii)(II) of this subsection), by redesignating subclauses (I) through (IV) as clauses (i) through (iv), respectively.

(3) AUTHORIZATION OF APPROPRIATIONS.—Section 933 (42 U.S.C. 11253) is amended to read as follows:

**"SEC. 933. AUTHORIZATION OF APPROPRIATIONS.**

"There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 1992 through 1996.".

(b) RESPONSIBILITIES OF THE AGENCY FOR HEALTH CARE POLICY AND RESEARCH.—

(1) RESEARCH PROGRAM AND PLAN.—Subpart 2 of part D (42 U.S.C. 11261 et seq.) is amended—

(A) in the heading for the subpart, by striking "National Center" and all that follows and inserting the following: "Agency for Health Care Policy and Research"; and

(B) by striking section 934 and inserting the following new section:

**"SEC. 934. RESEARCH PROGRAM.**

"(a) GRANTS FOR RESEARCH.—The Administrator of the Agency for Health Care Policy and Research shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and for their families.

"(b) RESEARCH SUBJECTS.—The Administrator of the Agency for Health Care Policy and Research shall ensure that research conducted under subsection (a) shall include research—

"(1) concerning improving the organization, delivery, and financing of services for individuals with Alzheimer's disease and related dementias and for their families, including research on—

"(A) the design, staffing, and operation of special care units for the individuals in institutional settings, as well as individuals in home care, day care, and respite care; and

"(B) the exploration and enhancement of services such as home care, day care, and respite care that provide alternatives to institutional care;

"(2) concerning the costs incurred by individuals with Alzheimer's disease and related dementias and by their families in obtaining services, particularly services that are essential to the individuals and that are not generally required by other patients under long-term care programs;

"(3) concerning the costs, cost-effectiveness, and effectiveness of various interventions to provide services for individuals with Alzheimer's disease and related dementias and for their families;

"(4) conducted in consultation with the Director of the National Institute on Aging and the Commissioner of the Administration on Aging, concerning the role of physicians in caring for persons with Alzheimer's disease and related dementias and for their families, including the role of a physician in connecting such persons with appropriate health care and supportive services, including those supported through State and area agencies on aging designated under section 305(a) (1) and (2)(A) of the Older Americans Act of 1965 (42 U.S.C. 3025(a)(1) and (2)(A)); and

"(5) conducted in consultation with the Director of the National Institute on Aging and the Commissioner of the Administration on Aging, concerning legal and ethical issues, including issues associated with special care units, facing individuals with Alzheimer's disease and related dementias and facing their families.".

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 936 (42 U.S.C. 11263) is amended to read as follows:

**"SEC. 936. AUTHORIZATION OF APPROPRIATIONS.**

"There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 1992 through 1996.".

**SEC. 8. TRAINING AND EDUCATIONAL ACTIVITIES.**

(a) ACTIVITIES.—Section 962 (42 U.S.C. 11292) is amended to read as follows:

**"SEC. 962. EDUCATION OF THE PUBLIC, INDIVIDUALS WITH ALZHEIMER'S DISEASE AND THEIR FAMILIES, AND HEALTH AND LONG-TERM CARE PROVIDERS.**

"(a) TRAINING MODELS GRANTS.—

"(1) GRANTS.—The Director of the National Institute on Aging may award grants to eligible entities to assist the entities in developing and evaluating model training programs—

"(A) for—

"(i) health care professionals, including mental health professionals;

"(ii) health care paraprofessionals;

"(iii) personnel, including information and referral, case management, and in-home services personnel (including personnel receiving support under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.)), providing supportive services to the elderly and the families of the elderly;

"(iv) family caregivers providing care and treatment for individuals with Alzheimer's disease and related disorders; and

"(v) personnel of local organizations (including community groups, business and labor groups, and religious, educational, and charitable organizations) that have traditionally not been involved in planning and developing long-term care services; and "(B) with attention to such variables as—

"(i) curricula development for training and continuing education programs;

"(ii) care setting; and

"(iii) intervention technique.

"(2) ELIGIBLE ENTITY.—To be eligible to receive grants under this subsection, an entity shall be—

"(A) an educational institution providing training and education in medicine, psychology, nursing, social work, gerontology, or health care administration.

"(B) an educational institution providing preparatory training and education of personnel for nursing homes, hospitals, and home or community settings; or

"(C) an Alzheimer's Disease Research Center described in section 445(a) of the Public Health Service Act.

"(b) EDUCATIONAL GRANTS.—The Director of the National Institute on Aging is authorized to make grants to public and nonprofit private entities to assist such entities in establishing programs, for educating health care providers and the families of individuals with Alzheimer's disease or related disorders, regarding—

"(1) caring for individuals with such diseases or disorders; and

"(2) the availability in the community of public and private sources of assistance, including financial assistance, for caring for such individuals.

"(c) AWARD OF GRANTS.—In awarding grants under this section, the Director of the National Institute on Aging shall—

"(1) award the grants on the basis of merit;

"(2) award the grants in a manner that will ensure access to the programs described in subsections (a) and (b) by rural, minority, and underserved populations throughout the country; and

"(3) ensure that the grants are distributed among the principal geographic regions of the United States.

"(d) APPLICATION.—To be eligible to receive a grant under this section, an entity shall submit an application to the Director of the National Institute on Aging at such time, in such manner, and containing or accompanied by such information, as the Director may reasonably require, including, at a minimum, an assurance that the entity will coordinate programs provided under this section with the State agency designated under section 305(a)(1) of the Older Americans Act of 1965, in the State in which the entity will provide such programs.

"(e) COORDINATION.—The Director of the National Institute on Aging shall coordinate the award of grants under this section with the heads of other appropriate agencies, including the Commissioner of the Administration on Aging.".

"(b) AUTHORIZATION OF APPROPRIATIONS.—Section 964 of such Act (42 U.S.C. 11294) is amended—

(1) by inserting "(a)" after "964.";

(2) in subsection (a), as designated by paragraph (1) of this section, by striking "this part" and inserting "sections 961 and 963"; and

(3) by adding at the end the following new subsection:

"(b) There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992 through 1996, to carry out section 962.".

**SEC. 9. GRANTS FOR PROMOTING INDEPENDENCE AND PREVENTING SECONDARY DISABILITIES IN PERSONS WITH ALZHEIMER'S DISEASE.**

Section 445C of the Public Health Service Act (42 U.S.C. 285e-5) is amended by adding at the end the following new subsection:

"(d) The director of the Institute may develop, or make grants to develop—

"(1) model techniques to—

"(A) promote greater independence, including enhanced independence in performing activities of daily living and instrumental activities of daily living, for persons with Alzheimer's disease and related disorders; and

"(B) prevent or reduce the severity of secondary disabilities, including confusional episodes, falls, bladder and bowel incontinence, and adverse effects of prescription and over-the-counter medications, in such persons; and

"(2) model curricula for health care professionals, health care paraprofessionals, and family caregivers, for training and application in the use of such techniques.".

Mr. COATS. Mr. President, Alzheimer's disease is something that touches the lives of many Americans—many Hoosiers in my home State of Indiana. Alzheimer's is not just an elderly disease; it strikes people in their twenties, thirties, and forties as well. It's a diseases that places a tremendous burden on both the patient and the family.

We must expand and improve services to help relieve the emotional strain and to enable families to continue giving love and support for victims of Alzheimer's disease. For this reason, I am pleased to support H.R. 3082, the Alzheimer's Disease Research, Training, and Education Amendments of 1991. H.R. 3082 makes a positive step by authorizing needed funding for fiscal year 1993 for concentrated efforts in education, training, and research for individuals, and professionals who provide services for those with Alzheimer's disease and related dementias.

Presently, there are nearly 56,000 individuals in Indiana afflicted with Alzheimers disease—nearly 4 million nationwide. By the year 2050, this number will more than triple. Statistics show us that one out of every five people will be affected nationwide by Alazheimer's by the year 2050.

I believe Federal and local governments must work together to effectively help those in need of research, training, and education about Alzheimer's. The current estimates of the cost of providing care for people inflicted with Alzheimer's disease is $80 billion annually. Our changing demographics—an ever increasing elderly population—will require increased funding for Alzheimer's patients. This problem will be particularly acute when the baby boomers become elderly. Only through cooperative efforts between the Federal Government, universities, the medical community, companies, and the patient will we be able to effectively improve the lives of the many Americans who suffer from Alzheimer's.

A disease so severe and widespread must be addressed by each and every one of us. Today, I join my colleagues in support of an effort to help those who are unable to help themselves.

Mr. FORD. Mr. President, I move the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

## READY TO LEARN ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 3134.

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

*Resolved*, That the bill from the Senate (S. 3134) entitled "An Act to expand the production and distribution of educational and instructional video programming and supporting educational materials for preschool and elementary school children as a tool to improve school readiness, to develop and distribute educational and instructional video programming and support materials for parents, child care providers, and educators of young children, to expand services provided

by Head Start programs, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause, and insert:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Ready to Learn Act".

**SEC. 2. PURPOSE.**

It is the purpose of this Act to—

(1) expand the availability of educational and instructional video programming and supporting educational resources for preschool and elementary school children and their parents as a tool to improve school readiness and literacy; and

(2) to develop and distribute educational and instructional video programming and support materials for parents, child care providers, and educators of young children.

**SEC. 3. READY TO LEARN PROGRAMS.**

The Elementary and Secondary Education Act of 1965 is amended by adding after part F of title IV the following:

**"PART G—READY TO LEARN TELEVISION**

**"SEC. 4701. READY TO LEARN.**

"(a) IN GENERAL.—The Secretary is authorized to enter into contracts, cooperative agreements, or grants with entities described in section 4702(b) to develop, produce, and distribute educational and instructional video programming for preschool and elementary school children and their parents in order to facilitate the achievement of the national education goals.

"(b) AVAILABILITY.—In making such contracts, cooperative agreements, or grants, the Secretary shall ensure that recipients make programming widely available with support materials as appropriate to young children, their parents, child care workers, and Head Start providers to increase the effective use of such programming.

**"SEC. 4702. EDUCATIONAL PROGRAMMING.**

"(a) AWARDS.—The Secretary shall award contracts, cooperative agreements, or grants to eligible entities to—

"(1) facilitate the development directly or through contracts with producers of children and family educational television programming, educational programming for preschool and elementary school children, and accompanying support materials and services that promote the effective use of such programming; and

"(2) contract with entities (such as public broadcasting entities and those funded under the Star Schools Assistance Act) in order that programs developed under this section are disseminated and distributed to the widest possible audience appropriate to be served by the programming by the most appropriate distribution technologies.

"(b) ELIGIBLE ENTITIES.—To be eligible to receive a contract, cooperative agreement, or grant under subsection (a), an entity shall be—

"(1) a nonprofit, nongovernmental entity able to demonstrate a capacity for the development and distribution of educational and instructional television programming of high quality for preschool and elementary school children; and

"(2) able to demonstrate a capacity to contract with the producers of children's television programming for the purpose of developing educational television programming of high quality for preschool and elementary school children.

"(c) CULTURAL EXPERIENCES.—Programming developed under this section shall reflect the recognition of diverse cultural experiences and the needs and experiences of both boys and girls in engaging and preparing young children for schooling.

**"SEC. 4703. DUTIES OF SECRETARY.**

"The Secretary is authorized—

"(1) to establish and administer a Special Projects of National Significance program to award contracts, cooperative agreements, or grants to public and nonprofit private entities, or local public television stations or such public television stations that are part of a consortium with one or more State educational agencies, local educational agencies, local schools, institutions of higher education, or community-based organizations of demonstrated effectiveness, for the purpose of—

"(A) addressing the learning needs of young children in limited English proficient households, and developing appropriate educational and instructional television programming to foster the school readiness of such children;

"(B) developing programming and support materials to increase family literacy skills among parents to assist parents in teaching their children and utilizing educational television programming to promote school readiness; and

"(C) identifying, supporting, and enhancing the effective use and outreach of innovative programs that promote school readiness;

"(2) to establish within the Department a clearinghouse to compile and provide information, referrals and model program materials and programming obtained or developed under this part to parents, child care providers, and other appropriate individuals or entities to assist such individuals and entities in accessing programs and projects under this part; and

"(3) to develop and disseminate training materials, including—

"(A) interactive programs and programs adaptable to distance learning technologies that are designed to enhance knowledge of children's social and cognitive skill development and positive adult-child interactions; and

"(B) support materials to promote the effective use of materials developed under paragraph (2);

among parents, Head Start providers, in-home and center based day care providers, early childhood development personnel, and elementary school teachers, public libraries, and after school program personnel caring for preschool and elementary school children;

"(4) coordinate activities with the Secretary of Health and Human Services in order to—

"(A) maximize the utilization of quality educational programming by preschool and elementary school children, and make such programming widely available to federally funded programs serving such populations; and

"(B) provide information to grantees of Federal programs that have major training components for early childhood development, including Head Start, Even Start, and State training activities funded under the Child Care Development Block Grant Act of 1990 regarding the availability and utilization of materials developed under paragraph (3) to enhance parent and child care provider skills in early childhood development and education.

**"SEC. 4704. APPLICATIONS.**

"Each eligible entity desiring a contract, cooperative agreement, or grant under section 4701 or 4703 shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

**"SEC. 4705. REPORTS AND EVALUATION.**

"(a) ANNUAL REPORT TO SECRETARY.—An entity receiving funds under section 4701 shall prepare and submit to the Secretary an annual report which contains such information as the Secretary may require. At a minimum, the report shall describe the program activities undertaken with funds received under this section, including—

"(1) the programming that has been developed directly or indirectly by the entity, and the target population of the programs developed;

"(2) the support materials that have been developed to accompany the programming, and the method by which such materials are distributed to consumers and users of the programming;

"(3) the means by which programming developed under this section has been distributed, including the distance learning technologies that have been utilized to make programming available and the geographic distribution achieved through such technologies; and

"(4) the initiatives undertaken by the entity to develop public-private partnerships to secure non-Federal support for the development and distribution and broadcast of educational and instructional programming.

"(b) REPORT TO CONGRESS.—The Secretary shall prepare and submit to the relevant committees of Congress a biannual report which includes—

"(1) a summary of the information made available under section 4702(a);

"(2) a description of the training materials made available under section 4703(3), the manner in which outreach has been conducted to inform parents and child care providers of the availability of such materials, and the manner in which such materials have been distributed in accordance with such section.

**"SEC. 4706. AUTHORIZATION OF APPROPRIATIONS**

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this part, $25,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994. Not less than 60 percent of the amounts appropriated under this subsection for each fiscal year shall be used to carry out section 4702.

"(b) SPECIAL PROJECTS.—Of the amount appropriated under subsection (1) for each fiscal year, at least 10 percent of such amount shall be utilized in each such fiscal year for activities under section 4703(1)(C).

**"SEC. 4707. ADMINISTRATIVE COSTS.**

"With respect to the implementation of section 4702, entities receiving a contract, cooperative agreement, or grant from the Secretary may use up to 5 percent of the amounts received under such section for the normal and customary expenses of administering the contract, cooperative agreement, or grant.

**"SEC. 4708. DEFINITION.**

"For the purposes of this part, the term 'distance learning' means the transmission of educational or instructional programming to geographically dispersed individuals and groups via telecommunications.".

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

## MINORITY BIOMEDICAL RESEARCH CONSTRUCTION ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Labor Committee be discharged from further consideration of S. 3256, a bill to authorize grants for construction of certain historically black colleges and universities for biomedical research; that the Senate proceed to its immediate consideration; that the bill be deemed read the third time and passed; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place.

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

So the bill (S. 3256) was deemed read the third time and passed as follows:

(The text of S. 3256, as passed will appear in a future edition of the RECORD.)

Mr. HATCH. Mr. President, I rise today in strong support of this legislation. There are over 200 medical, dental, and veterinary schools in this country, 50 of which are minority institutions—including historically black colleges and universities [HCBS's]. These institutions have trained a large portion of health care professionals who serve in minority communities, and I commend them for their tremendous efforts in this area. But because these schools tend to devote their resources to training health care practitioners rather than research personnel, minority researchers remain markedly under-represented.

The National Institutes of Health [NIH] has, for many years, managed research programs targeted to disadvantaged and minority students to encourage them to obtain higher degrees in the biomedical sciences and to introduce them to biomedical research—the Minority Biomedical Research Support [MBRS] and the Minority Access to Research Careers [MARC] Programs, for example. Still, in order to expand the universe of research scientists, we must first provide the facilities, the capability to conduct quality research projects. Facility construction is critical in order for institutions to conduct and keep up with state-of-the-art biomedical research.

A 1990 report by the NIH titled, "The Status of Biomedical Research Facilities," shows that only 29 percent of research facilities at HCBU's were considered "suitable for the most highly developed and scientifically sophisticated research." Less than half were considered effective for "most purposes."

This bill will give institutions the resource they need to develop a strong infrastructure, to prepare a top notch environment for attracting more researchers, and, ultimately, to help these schools become strong centers for research—particularly on diseases that disproportionately affect minority populations.

S. 3256 is a priority of Secretary Sullivan and of great importance to these institutions which rely so heavily on public support. I hope that you will realize the sound benefits of this legislation, and vote "yes."

## COMPETITIVENESS POLICY COUNCIL ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of S. 2936, the Competitiveness Council reauthorization, and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2936) to amend the Competitiveness Policy Council Act to provide for reauthorization, to rename the Council, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3429

(Purpose: To amend the bill in the nature of a substitute.)

Mr. FORD. Mr. President, I send a substitute amendment on behalf of Senator BINGAMAN to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. BINGAMAN, for himself, and Mr. RIEGLE, proposes an amendment numbered 3429.

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

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

The amendment is as follows:

Strike all after the enacting clause, and insert in lieu thereof the following:

**SECTION 1. REAUTHORIZATION.**

Section 5209 of the Competitiveness Policy Council Act (15 U.S.C. 4808) is amended—

(1) by striking "1991 and 1992" and inserting "1993 and 1994"; and

(2) by striking "$5,000,000" and inserting "$2,500,000".

**SEC. 2. RENAMING OF COUNCIL.**

The "Competitiveness Policy Council Act (15 U.S.C. 4801 et seq.) is amended as follows:

(1) In the subtitle heading—

(A) insert "National" before "Competitiveness"; and

(B) strike "Council" and insert "Commission".

(2) In section 5201—

(A) insert "National" before "Competitiveness"; and

(B) strike "Council" and insert "Commission".

(3) In section 5202(b)(2)—

(A) insert "National" before "Competitiveness"; and

(B) strike "Council" and insert "Commission".

(4) In section 5203—

(A) in the section caption, strike "COUNCIL" and insert "COMMISSION";

(B) insert "National" before "Competitiveness"; and

(C) strike "Council" each place it appears and insert "Commission".

(5) In section 5204—

(A) in the section caption, strike "COUNCIL" and insert "COMMISSION";

(B) strike "Council" and insert "Commission".

(6) In sections 5205 through 5208, strike "Council" each place such term appears and insert "Commission".

(7) In section 5207, in the section caption, strike "COUNCIL" and insert "COMMISSION".

(8) In section 5210—

(A) in paragraph (1)—

(i) insert "National" before "Competitiveness"; and

(ii) strike "Council" each place it appears and insert "Commission"; and

(B) in paragraph (2)—

(i) insert "National" before "Competitiveness"; and

(ii) strike "Council" and insert "Commission".

**SEC. 3. DUTIES OF THE COMMISSION.**

Section 5204 of the National Competitiveness Policy Commission Act (15 U.S.C. 4803) is amended by striking paragraphs (11) and (12) and inserting the following:

"(11) prepare, publish, and distribute reports that—

"(A) contain the analysis and recommendations of the Commission; and

"(B) comment on the overall competitiveness of the American economy, including the report described in section 5208; and

"(12) submit an annual report to the President and to the Congress on the activities of the Commission.".

**SEC. 4. EXECUTIVE DIRECTOR AND STAFF OF COMMISSION.**

Section 5206 of the National Competitiveness Policy Commission Act (15 U.S.C. 4805) is amended—

(1) in subsection (a)(1), by striking "GS-18 of the General Schedule" and inserting "the highest level allowed under section 5376 of title 5, United States Code";

(2) in subsection (b)—

(A) by striking paragraph (1);

(B) by redesignating paragraph (2) as paragraph (4); and

(C) by inserting before paragraph (4), as redesignated, the following:

"(1) FULL-TIME STAFF.—The Executive Director may appoint such officers and employees as may be necessary to carry out the functions of the Commission in accordance with the federal civil service and classification laws, and fix compensation in accordance with the provisions of title 5, United States Code.

"(2) SENIOR EXECUTIVE SERVICE.—The Commission may establish positions in the Senior Executive Service in accordance with the provisions of subchapter II of chapter 31 of title 5, United States Code.

"(3) TEMPORARY STAFF.—The Executive Director may appoint such employees as may be necessary to carry out the functions of

the Commission for a period of not more than 1 year, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, at rates not to exceed the maximum rate payable under section 5376 of title 5, United States Code."; and

(3) in subsection (c), strike "GS-16 of the General Schedule" and insert "the maximum rate payable under section 5376 of title 5, United States Code.".

**SEC. 5. POWERS OF THE COMMISSION.**

Section 5207 of the National Competitiveness Policy Commission Act (15 U.S.C. 4806) is amended—

(1) by inserting before the period at the end of subsection (b)(1)(B) ", except that such information may be provided to members and staff of the Council subject to existing national security laws and regulations";

(2) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(3) by inserting after subsection (f) the following:

"(g) CONTRACTING AUTHORITY.—Within the limitation of appropriations to the Commission, the Commission may enter into contracts with State agencies, private firms, institutions, and individuals for the purpose of carrying out its duties under this subtitle.".

**SEC. 6. REPORTING REQUIREMENTS.**

Section 5208 of the National Competitiveness Policy Commission Act (15 U.S.C. 4807) is amended—

(1) by striking the caption and inserting the following:

**"SEC. 5208. ANNUAL PUBLICATION OF ANALYSIS AND RECOMMENDATIONS.";**

(2) in subsection (a)—

(A) by striking the subsection heading and inserting "(a) PUBLICATION OF ANALYSIS AND RECOMMENDATIONS.—"; and

(B) by striking "on" and inserting "not later than"; and

(3) by adding at the end the following:

"(d) PERIODICAL REPORTS.—The Commission may submit to the President and the Congress such other reports containing analysis and recommendations as the Commission deems necessary.".

Mr. BINGAMAN. Mr. President, the substitute amendment I have offered with Senator RIEGLE to S. 2936 reflects the agreement reached with the Office of Management and Budget on this matter. I would like to thank Senator HOLLINGS and Senator DANFORTH for their support and assistance. The amendment is identical to language that has passed both the House and Senate attached to various other measures. It reauthorizes and renames the Competitiveness Policy Council, which was established in the 1988 Trade Act. The new name, the National Competitiveness Policy Commission, is designed to avoid confusion with either the White House Council on Competitiveness or the private-sector, nonprofit organization also called the Council on Competitiveness. This amendment also makes various technical changes including designating the Commission as an agency within the meaning of section 3132(a)(1) of title 5, United States Code.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3429) was agreed to.

Mr. CONRAD. Mr. President, it is my pleasure to present to the Senate the Agricultural Credit Improvement Act of 1992. This bill incorporates much of my bill, S. 3310, entitled the Agricultural Credit Amendment Act of 1992, which was designed to provide credit to beginning farmers and ranchers, as well as H.R. 4906, a similar bill in the House.

The bill before the Senate today establishes a downpayment loan program under the Farmers Home Administration [FmHA]. Under this proposal, a beginning farmer or rancher who wishes to purchase land may receive a 10-year, low-interest FmHA loan for 30 percent of the value of that land if the beginning farmer provides a 10-percent downpayment, and a commercial cooperative or other lender makes a loan for the remaining 60 percent. When the beginning farmer or rancher has repaid the FmHA loan at the end of 10 years, he or she will have at least 40 percent equity in the land, which should provide an adequate asset base on which to obtain future private credit and operate a successful farm operation.

This bill also establishes a beginning farmer operating loan program which ensures a borrower a reliable source of FmHA-assisted operating credit for up to 10 years if the borrower develops and meets a long-term operating plan.

Mr. President, I would like to explain the intent of a number of provisions in this bill to guide the administration, in particular, the Department of Agriculture, in their interpretation of the provisions contained in the bill.

Federal-State beginning farmer partnership: Section 5 establishes a new partnership between the Farmers Home Administration [FmHA] and beginning farmer programs in the States. It is the intent of the committee that FmHA notify States of this new partnership as soon as possible after enactment. It is further the intent of the committee that FmHA respond quickly and positively to requests from a State beginning farmer program for assistance, including but not limited to downpayment loans to be used in conjunction with State financing of the remainder of the loan and Federal guarantees of State aggie bond and other types of State beginning farm loans. The committee hopes that this change in policy will spur many additional States to revive or establish beginning Farmer programs. With respect to the Advisory Committee on Beginning Farmers and Ranchers, the committee encourages the Secretary to establish this group as quickly as possible, at no cost to the Government if necessary, so that it can assist in developing the program and program regulations.

Downpayment Loan Program: Section 7 establishes the time period for downpayment loans at 10 years, or less at the option of the borrower. It is the intent of the committee that, should the need arise, the downpayment borrowers will be subject to the same loan servicing the debt restructuring options as any other farm ownership borrower.

Special assistance to qualified beginning farmers and ranchers: Section 8 establishes a special assistance option for beginning farmer and ranchers that requires FmHA to provide assistance for a 10 year commitment period. Beginning farmers and ranchers may apply as regular operating loan borrowers, if they so choose.

This section also requires the applicant to submit a plan of farm operation. It is the intent of the committee that the Secretary in coordinating this program with borrower training, loan assessment, supervised credit, and market placement, devise a single planning instrument to eliminate unnecessary paperwork.

This section also provides that the farm plan contain specific goals that the applicant projects to meet in order to progress toward graduation as expeditiously as possible. It is the intent of the committee that such goals are to be guidelines for each individual borrower, with assistance from the Secretary, to progress toward graduation. The goal during the commitment period, is to move the borrower thoughout the continuum of assistance, ranging from reduced interest rate direct loans, regular interest rate direct loans, subsidized guaranteed loans, and unsubsidized guaranteed loans, and ultimately graduation to private credit. Depending on the applicant's particular circumstances and farm plan, one or more of these options may be used during the commitment period. It is the intent of the committee that this process take place in conjunction with the loan assessment program established by the Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624). Section 8 limits beginning farmers and ranchers who choose to participate in the special operating loans assistance program to not more than 8 years of direct loans within the 10 year commitment period. It is the intent of the committee that this limit does not preclude the borrower from receiving another 2 years of direct loans, if necessary, under the regular operating loan program, consistent with the overall graduation requirement in Section 9.

This section also provides that the Secretary "shall revoke any commitment for assistance made to an applicant under this section if the operation of the applicant fails, for 2 consecutive years, to meet the goals specified in the plan, unless the failure is due to circumstances beyond the control of the applicant and has not materially reduced the likelihood of the operation becoming financially viable." It is the

intent of the committee that "goals specified in the plan" refers to the general financial and farm income goals identified in the plan, but does not include the details of the plan such as projections concerning crop selection, yields, production methods and practices, conservation measures, equipment, specific income and expense figures, specific credit needs, and farm sites. It is not the intent of the committee that production choices are locked in by the plan nor is it the intent of the committee that income and credit projections will be used as an absolute measure of success.

Definition of qualified beginning farmer or rancher: Section 19 changes the current majority of labor and management test to "substantial day-to-day labor and management of the State or county in which the farm or ranch is located." This change is intended to apply only to beginning farmers and ranchers. The committee does not intend this change to apply to other applicants and does not intend to signal that any application of this change beyond this specific instance would be acceptable.

This section also establishes the definition of qualified beginning farmer or rancher to be applied to all farmer loan and inventory sale and lease programs. These requirements are in addition to, and do not supersede, existing eligibility requirements for each program. The committee intends that a farmer or rancher who previously farmed or ranched and is restarting in agriculture shall be considered a beginning farmer or rancher if they otherwise satisfy the terms of the definition.

This section applies the definition of qualified beginning farmer or rancher to all farm loan and inventory sale and lease programs. These requirements are in addition to, and do not supersede, existing eligibility requirements for each program. The committee intends that a farmer or rancher who previously farmed or ranched and is restarting in agriculture shall be considered a beginning farmer or rancher if they otherwise satisfy the terms of the definition.

Equal access to FmHA assistance by gender: The intention of Section 21 is to take all feasible steps to ensure that there is no discrimination or perception of discrimination by gender in administering FmHA's farm loan programs.

It is the intention that this section will increase the number of farm ownership and operating loans made to female farmers. To meet current and future needs for credit, the managers expect that the Secretary will determine the current number of female farmers in each State and add to that number an estimated number reflecting the trend towards increased numbers of female farmers in the State, instead of setting the loan participation rates by gender at a static level.

This targeted rate of loanmaking by gender could be further adjusted as research data on the credit needs of female farmers, as well as recordkeeping on female farmer applicants by gender, becomes available.

I urge my colleagues to support passage of this bill.

Mr. GRASSLEY. Mr. President, I speak today to alert my colleagues to a growing problem not only in Iowa, but in the rest of the Nation, and I urge my colleagues to move quickly to enact legislation that would stem an alarming new threat to the family farm and and America's rural communities.

Mr. President, the House of Representatives recently passed the Beginning Farmer and Rancher Credit Act. This bill would assist young people interested in farming by creating a new downpayment loan option for farm ownership loans. This provision is designed to leverage private financing with limited Farmers Home Administration funds. As I will detail in a moment, with the average age of the farming community continuing to rise at an alarming rate, we desperately need legislation not only to aid the struggling beginning farmer and rancher, but also to encourage our young People to enter the profession. I submit that the transfer of productive agricultural assets with the resulting changing demographics of our rural communities, may be the single most important agriculture issue we will face in the coming years.

I have long been concerned about this trend and have been active in providing incentives that would encourage young people to take up farming. Most notably, I worked hard to get tax-exempt status for State-issued bonds designed to assist beginning farmers to acquire agricultural property.

This has helped thousands, but we need to do more.

And that is why I, in concert with Congressman TIM PENNY, have introduced the Beginning Farmer and Rancher Credit Act. With time running out for the American farmer, I sincerely hope that, during these waning days of the 102d Congress, this Chamber support this measure.

That quick action is needed is demonstrated by 1990 census data and a recent survey conducted by Iowa State University. In Iowa alone, the number of farms dropped by 15,000 between 1980 and 1990, and in fact 32,000 farmers either left the land or found a different primary source of income. During that same time period, the farm population of Iowa declined by 135,000. Many economists believe that steeper declines are expected in the future.

Yet these numbers don't tell the whole story. Census data suggests that the relatively rapid decline in the number of farms during the 1980's was to a large degree due to the dramatic drop in new, beginning farmers. While the numbers of farmers who leave the land have remained relatively stable year-in and year-out, those who enter farming as a career have dropped off precipitously during the past two decades. The economic research service of the Department of Agriculture confirms this, finding that there has been a 50-percent reduction in the number of farmers under the age of 25, and a 30-percent reduction in the total number of farmers between the ages of 25 and 34. Indeed, the only age group that increased was that of farmers 65 and older. And since most of these farmers are expected to retire in the near future, it is critical to move quickly to encourage young people to get into farming.

To be sure, young people interested in farming face many obstacles: the cost of equipment, seed, livestock and other inputs means that help with annual operating loans is a necessity. Furthermore, the costs of renting or purchasing farmland has escalated in recent years, and the reduced availability of credit, and cautious lenders, are making it more and more difficult to obtain much-needed credit. Much of the available credit from public and private sources is redirected to existing financially strapped farmers, leaving even less assistance for beginning farmers.

But with the average age of the farmer at 55 years, with many planning to retire in the next 4 years, it is clear that the very foundation of the family farm is being threatened by the barriers to entry that make farming too risky, or too expensive, for young people interested in the profession.

Mr. President, one in five Iowa farmers will retire in the next 5 years. I have to believe that the numbers for the Nation are comparable. Mr. President, I ask who will take their place? Unless credit is made available for the next generation of farmers, I am afraid that more and more of our agricultural production will be placed in fewer and fewer hands.

A country can ill afford to ignore its food production, and this chamber must not miss this opportunity to address the changing face of the American farm. In the past, we have all worked hard to stabilize the farm economy and raise the standard of living of our farmers and ranchers. But to a certain extent our efforts have been primarily "reactive." We need the vision to pass this pro-active piece of legislation now. We need to ensure that retiring farmers are replaced by aspiring farmers.

Mr. President, I urge my colleagues to put aside any differences that might hinder the enactment of this legislation. Our action during the 102d Congress is crucial not only the viability of America's family farmers, but also the future of all of rural America.

Mr. SIMPSON. Mr. President, I appreciate the interest shown by the Sen-

ator from North Dakota in closely investigating the issue of program participation criteria at the Rural Electrification Administration. He understands the importance of looking at participation criteria at the REA to determine whether a priority system needs to be established in order to best distribute funds to the most needy and deserving borrowers.

In my view, smaller cooperatives that need low-interest loans in order to maintain services to rural customers are often left to "stand in line" behind large cooperatives with big loan requests which drain the annual loan fund. I also believe that the lending system currently employed at the REA does little to improve the debt load of the U.S. Government, nor does it offer real assistance to those borrowers who need it most.

I am concerned that in this time of great need, a first-come-first-served loan policy may severely restrict the flow of Government funds to the truly needy. I believe the development and future implementation of eligibility criteria would go farther than any other approach to improve the integrity and efficiency of the Rural Electrification Administration.

I know that my colleague from North Dakota understands my position on this issue. I, in turn, appreciate the Senator's view that "cash on hand" should not be used as the sole criteria for participation.

I would like to inquire whether the Senator would consider working closely with me in the future—regardless of the outcome of the activities on November 3—with regard to the restructuring of the REA in order to better address rural America's needs. I would also inquire about whether the Senator from North Dakota can speak as to the senate Agriculture Committee's willingness to address this issue as soon as possible after the next Congress convenes.

Mr. CONRAD. We are willing to do that. Regardless of election year activities, I agree to work with the Senator on this important matter. I also appreciate his understanding of my position that general funds is not an appropriate sole criteria for REA Program participation. Within my abilities, I will encourage the Senate Agriculture Committee to hold hearings next year on the issue of program participation criteria for REA borrowers. In fairness, I will also encourage other Senate committees with the appropriate jurisdictions to hold hearings on the issue of program participation criteria for the Federal assistance that is given to the other electric utilities in this country. I shall look forward to arranging a public forum in order to examine further this important issue.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as amended, as follows:

(The text of S. 2936, as passed by the Senate, will be printed in a future edition of the RECORD.)

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

## AGRICULTURAL CREDIT IMPROVEMENT ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 4906, the Agricultural Credit Improvement Act of 1992, and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4906) to amend the Consolidated Farm and Rural Development Act to establish a program to aid beginning farmers and ranchers and to improve the operation of the Farmers Home Administration, and to amend the Farm Credit Act of 1971 and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3430

(Purpose: To provide a complete substitute)

Mr. FORD. Mr. President, on behalf of Senators CONRAD, GRASSLEY and others, I send to the desk a substitute amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. CONRAD, for himself, Mr. GRASSLEY, Mr. BUMPERS, Mr. DURENBERGER, Mr. DASCHLE, Mr. WELLSTONE, Mr. HARKIN, Mr. BAUCUS, and Mr. LEAHY, proposes an amendment numbered 3430.

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

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

(The text of the amendment appears in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3430) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as amended.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

## JOHN F. KENNEDY CENTER ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6164, the John F. Kennedy Center reauthorization now at the desk; that the bill be deemed read the third time and passed; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

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

So the bill (H.R. 6164) was deemed read the third time and passed.

## AMENDING FOREIGN ASSISTANCE ACT OF 1961

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6187, a bill concerning international narcotics control programs now at the desk; that the bill be deemed read the third time and passed; that the motion to reconsider be laid upon the table; and that any statement thereon appear in the RECORD at the appropriate place as though read.

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

So the bill (H.R. 6187) was deemed read the third time and passed.

## PENSION BENEFIT GUARANTY CORPORATION LEASE SETTLEMENTS ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3367, a bill introduced earlier today by Senator JEFFORDS, providing for the treatment of settlement agreements reached with the Pension Benefit Guaranty Corporation; that the bill be deemed read the third time and passed; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

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

So the bill (S. 3367) was deemed read the third time and passed, as follows:

S. 3367

*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 "Pension Benefit Guaranty Corporation Lease Settlements Act of 1992".

**SEC. 2. TREATMENT OF SETTLEMENT LEASES WITH THE PENSION BENEFIT GUARANTY CORPORATION.**

Section 4062 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

"(f) TREATMENT OF LEASES.—In the case of any settlement for liability under title IV of this Act entered into by the corporation and one or more other parties, if—

"(1) such settlement was entered into before the date of the enactment of the Pension Benefit Guaranty Corporation Lease Settlements Act of 1992,

"(2) one party to such settlement was a debtor under title 11, United States Code, and

"(3) the corporation is a party-in-interest to an agreement being entered into as part of such settlement, which agreement provided that it is to be treated as a lease,

then, for purposes of such title 11, such agreement shall be treated as a lease for purposes of section 1110 of such title 11.".

Mr. JEFFORDS. Mr. President, I rise to offer a bill to amend the Employee Retirement Income Security Act. It will solidify a recent settlement made by the Government Agency that insures defined benefit pension plans, the Pension Benefit Guaranty Corporation [PBGC], and Eastern Airlines. Since October 1990, Eastern Airlines has owed the PBGC nearly $700 million in unpaid pension plan contributions. Recently, the PBGC and Eastern Airlines have come to a settlement of PBGC's claim on Eastern's pension liabilities. The agreement has been approved by the court and Eastern's other creditors are not opposed to it.

The settlement will bolster the retirement security of over 60,000 Eastern Airlines pensioners. It will also protect the PBGC, the agency that insures defined benefit pensions, from further financial ruin.

However, due to the novelty of the arrangement, some legal questions remain outstanding. My bill would resolve this issue by specifically permitting in law, what has already been agreed to by the parties involved. It clarifies that the PBGC, which obtained 15 planes in the settlement, can lease back these planes to Eastern Airline's parent company, Continental Airlines.

This will enable the PBGC to obtain the maximum amount it can from Continental Airlines. The more money the PBGC can obtain for Eastern's pension debt, the less money that will have to be obtained through raising the PBGC premiums paid by other plan sponsors. PBGC premiums have already risen 700 percent over the last 10 years. Therefore, I urge my colleagues to support this bill.

## ESTABLISHMENT OF BROWN VERSUS BOARD OF EDUCATION HISTORIC SITE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3368, a bill relating to the Brown versus Board of Education Historic Site, the bill be deemed read a third time, passed; that the motion to reconsider be laid upon the table; that any statements relative to the passage of this item appear at the appropriate place in the RECORD.

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

The bill (S. 3368), which was deemed to have been read three times and passed, is as follows:

S. 3368

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

### TITLE I—BROWN V. BOARD OF EDUCATION NATIONAL HISTORIC SITE

**SEC. 101. DEFINITIONS.**

As used in this title—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "historic site" means the Brown v. Board of Education National Historic Site as established in section 103.

**SEC. 102. FINDINGS AND PURPOSES.**

(a) FINDINGS.—The Congress finds as follows:

(1) The Supreme Court, in 1954, ruled that the earlier 1896 Supreme Court decision in Plessy v. Ferguson that permitted segregation of races in elementary schools violated the fourteenth amendment to the United States Constitution, which guarantees all citizens equal protection under the law.

(2) In the 1954 proceedings, Oliver Brown and twelve other plaintiffs successfully challenged an 1879 Kansas law that had been patterned after the law in question in Plessy v. Ferguson after the Topeka, Kansas, Board of Education refused to enroll Mr. Brown's daughter, Linda.

(3) Sumner Elementary, the all-white school that refused to enroll Linda Brown, and Monroe Elementary, the segregated school she was forced to attend, have subsequently been designated National Historic Landmarks in recognition of their national significance.

(4) Sumner Elementary, an active school, is administered by the Topeka Board of Education; Monroe Elementary, closed in 1975 due to declining enrollment, is privately owned and stands vacant.

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

(1) to preserve, protect, and interpret for the benefit and enjoyment of present and future generations, the places that contributed materially to the landmark United States Supreme Court decision that brought an end to segregation in public education; and

(2) to interpret the integral role of the Brown v. Board of Education case in the civil rights movement.

(3) to assist in the preservation and interpretation of related resources within the city of Topeka that further the understanding of the civil rights movement.

**SEC. 103. ESTABLISHMENT OF THE CIVIL RIGHTS IN EDUCATION: BROWN V. BOARD OF EDUCATION NATIONAL HISTORIC SITE.**

(a) IN GENERAL.—There is hereby established as a unit of the National Park System the Brown v. Board of Education National Historic Site in the State of Kansas.

(b) DESCRIPTION.—The historic site shall consist of the Monroe Elementary School site in the city of Topeka, Shawnee County, Kansas, as generally depicted on a map entitled "Brown v. Board of Education National Historic Site," numbered Appendix A and dated June 1992. Such map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

**SEC. 104. PROPERTY ACQUISITION.**

The Secretary is authorized to acquire by donation, exchange, or purchase with donated or appropriated funds the real property described in section 103(b). Any property owned by the State of Kansas or any political subdivision thereof may be acquired only by donation. The Secretary may also acquire by the same methods personal property associated with, and appropriate for, the interpretation of the historic site: *Provided, however,* That the Secretary may not acquire such personal property without the consent of the owner.

**SEC. 105. ADMINISTRATION OF HISTORIC SITE.**

(a) IN GENERAL.—The Secretary shall administer the historic site in accordance with this title and the laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (39 Stat. 535), and the Act of August 21, 1935 (49 Stat. 666).

(b) COOPERATIVE AGREEMENTS.—The Secretary is authorized to enter into cooperative agreements with private as well as public agencies, organizations, and institutions in furtherance of the purposes of this title.

(c) GENERAL MANAGEMENT PLAN.—Within two complete fiscal years after funds are made available, the Secretary shall prepare and submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a general management plan for the historic site.

**SEC. 106. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated $1,250,000 to carry out the purposes of this title including land acquisition and initial development.

### TITLE II—DRY TORTUGAS NATIONAL PARK

**SEC. 201. ESTABLISHMENT OF DRY TORTUGAS NATIONAL PARK.**

(a) IN GENERAL.—In order to preserve and protect for the education, inspiration, and enjoyment of present and future generations nationally significant natural, historic, scenic, marine, and scientific values in South Florida, there is hereby established the Dry Tortugas National Park (hereinafter in this title referred to as the "park").

(b) AREA INCLUDED.—The park shall consist of the lands, waters, and interests therein generally depicted on the map entitled "Boundary Map, Fort Jefferson National Monument", numbered 364-90,0001, and dated April 1980 (which is the map referenced by section 201 of Public Law 96-287). The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

(c) ABOLITION OF MONUMENT.—The Fort Jefferson National Monument is hereby abolished.

**SEC. 202. ADMINISTRATION.**

(a) IN GENERAL.—The Secretary shall administer the park in accordance with this title and with the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2, 3, and 4).

(b) MANAGEMENT PURPOSES.—The park shall be managed for the following purposes, among others:

(1) To protect and interpret a pristine subtropical marine ecosystem, including an intact coral reef community.

(2) To protect populations of fish and wildlife, including (but not limited to) loggerhead and green sea turtles, sooty terns, frigate birds, and numerous migratory bird species.

(3) To protect the pristine natural environment of the Dry Tortugas group of islands.

(4) To protect, stabilize, restore, and interpret Fort Jefferson, an outstanding example of nineteenth century masonry fortification.

(5) To preserve and protect submerged cultural resources.

(6) In a manner consistent with paragraphs (1) through (5), to provide opportunities for scientific research.

**SEC. 203. LAND ACQUISITION AND TRANSFER OF PROPERTY.**

(a) IN GENERAL.—Within the boundaries of the park the Secretary may acquire lands and interests in land by donation or exchange. For the purposes of acquiring property by exchange with the State of Florida, the Secretary may, notwithstanding any other provision of law, exchange those Federal lands which were deleted from the park by the boundary modifications enacted by section 201 of the Act of June 28, 1980 ( Public Law 96-287), and which are directly adjacent to lands owned by the State of Florida outside of the park, for lands owned by the State of Florida within the park boundary.

(b) UNITED STATES COAST GUARD LANDS.—When all or any substantial portion of lands under the administration of the United States Coast Guard located within the park boundaries, including Loggerhead Key, have been determined by the United States Coast Guard to be excess to its needs, such lands shall be transferred directly to the jurisdiction of the Secretary for the purposes of this title. The United States Coast Guard may reserve the right in such transfer to maintain and utilize the existing lighthouse on Loggerhead Key in a manner consistent with the purposes of the United States Coast Guard and the purposes of this title.

(c) ADMINISTRATIVE SITE.—The Secretary is authorized to lease or to acquire, by purchase, donation, or exchange, and to operate incidental administrative and support facilities in Key West, Florida, for park administration and to further the purposes of this title.

**SEC. 204. AUTHORIZATION OF APPROPRIATIONS.**

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this title. Any funds available for the purposes of the monument shall be available for the purposes of the park, and authorizations of funds for the monument shall be available for the park.

## ELWHA RIVER

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4844 regarding Elwha River just received from the House; that the bill be deemed read a third time, passed; that the motion to reconsider be laid upon the table, and that any statements relative to the passage of this item appear at the appropriate place in the RECORD.

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

The bill (H.R. 4844) was deemed to have been read three times and passed.

## RELIEF OF FLORENCE ADEBOYEKU

Mr. FORD. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 3336, a bill for the relief of Florence Adeboyeku; that the Senate proceed to its immediate consideration, that the bill be deemed read three times, passed and the motion to reconsider be laid upon the table.

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

The bill (H.R. 3336) was deemed to have been read three times and passed.

## AUTHORIZATION TO THE STATE OF ARIZONA

Mr. FORD. Mr. President, I ask unanimous consent that the Senate turn to the immediate consideration of S. 3369, a bill to allow certain political subdivisions of the State of Arizona continued access to FBI identification records for a period of 180 days, pending restoration of statutory authorization by the legislature of the State of Arizona introduced earlier today by Senator DECONCINI, that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table.

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

The bill (S. 3369), which is deemed to have been read three times and passed, is as follows:

S. 3369

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

**SECTION 1. ACCESS TO FBI IDENTIFICATION RECORDS BY CERTAIN POLITICAL SUBDIVISIONS OF THE STATE OF ARIZONA.**

Notwithstanding the repeal, on June 17, 1992, of authorization in section 41-1750 of the Arizona Revised Statutes as in effect prior to that date, a political subdivision of the State of Arizona that was authorized by that section prior to that date to exchange identification records with the Federal Bureau of Investigation under section 201 of the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (28 U.S.C. 534 note), shall be permitted to continue to exchange records until the date that is 180 days after the date of enactment of this Act, for the same purposes and under the same conditions as prior to June 17, 1992.

## CLARIFICATION OF FAIR USE DOCTRINE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4412, a bill to clarify the application of the fair use doctrine to unpublished copyrighted materials received from the House, that the bill be deemed read three times, passed and the motion to reconsider be laid upon the table; that a statement jointly signed by Senators SIMON, LEAHY, KENNEDY, GRASSLEY, METZENBAUM, and KOHL be insert in the RECORD.

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

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

STATEMENT BY SENATORS SIMON, LEAHY, KENNEDY, GRASSLEY, METZENBAUM, AND KOHL

Last September, the Senate approved S. 1035, a bill introduced by Senator Leahy and Senator Simon, that clarified the application of the fair use doctrine to unpublished, copyrighted, materials. In August of this year, the House approved a similar bill, H.R. 4412, which is before us now for consideration.

We endorse the House bill. H.R. 4412 serves the same goals and achieves the same objectives as S. 1035. While the House version contains slightly different language, the effects of the two bills are identical. Thus, the Senate Report interpreting the objectives of S. 1035 and discussing the history of fair use can be applied in all respects to H.R. 4412, as well.

In order to remove any question about the scope of the bill, a few additional comments may be helpful. As Senators Leahy and Simon noted when they introduced the Senate version in May of 1991, the fair use bill was triggered by two Second Circuit decisions, *Salinger* v. *Random House*, 811 F.2d 90 (2d Cir.), cert. denied, 484 U.S. 890 (1987), and *New Era* v. *Henry Holt*, 873 F.2d 576 (2d Cir.), reh'g denied, 884 F.2d 659 (2d Cir. 1989), cert. denied, 110 S.Ct. 1168 (1990), that severely narrowed the scope of the fair use doctrine as applied to unpublished works. These cases threatened to establish a virtual per se rule against the fair use of any unpublished materials, such as letters or diaries. As the court said in New Era, unpublished works "normally enjoy complete protection" against copying.

Since the vast majority of publishing and magazine companies are based in the Second Circuit's jurisdiction, the effect of the Salinger and New Era decisions has been profound, resulting in chilling uncertainty and serious apprehension in the publishing community regarding fair use of unpublished works. We think it no exaggeration to say that if the trend were to continue, it could severely damage the ability of journalists and scholars to use unpublished primary materials. This would be a crippling blow to accurate scholarship and reporting.

H.R. 4412, like its Senate counterpart, is thus designed to undo the harm caused by the overly restrictive standards adopted in Salinger and New Era, and to clearly and indisputably reject the view that the unpublished nature of the work triggers a virtual per se ruling against a finding of fair use. While the fact that a work is unpublished is "an important element which tends to weigh against a finding of fair use," the unpublished nature of the copyrighted material is not necessarily determinative of whether or not a particular use is considered a fair use.

By rejecting the per se approach, this bill serves to reaffirm the general principles regarding fair use of unpublished works as set forth in the Supreme Court's landmark decision *Harper & Row* v. *Nation Enterprises*, 471 U.S. 539 (1985). That decision makes clear that, rather than considering only one factor, a finding of fair use must be made upon

a full consideration of all the factors under section 107 of the copyright laws. The review of these factors must be complete and meaningful. A more detailed discussion of Harper is set forth in the Senate report.

To some observers, one Second Circuit decision handed down after the Senate's passage of S. 1035, *Wright* v. *Warner Books*, 953 F. 2d 731 (2d. Cir. 1991), seems to portend a more reasonable approach by the Second Circuit. However, since the *Wright* decision did not explicitly disavow the narrow formulation of the fair use doctrine espoused in Salinger and New Era, the pall that the latter two cases cast over the publishing world remains. Moreover, as the Senate noted in its report: "[S. 1035] is intended to overrule the overly restrictive language of Salinger and New Era with respect to the use of unpublished materials and to return to the law of fair use as it was expressed in Harper & Row." S. Rep. 102-141, 102nd Cong., 1st Sess., at 5. Consequently, the bill rejects dicta in Wright to the extent that such dicta is premised upon the disapproved language of Salinger and New Era. The bill requires the courts to make a carefully reasoned and complete consideration of each of the fair use factors set forth in Section 107 of the Copyright Act.

Finally, as the Senate Report makes clear, this legislation does nothing to broaden the fair use of unpublished computer programs. Nor does it reduce the protection afforded to secure tests. And, the legislation is effective on the date of enactment. It applies to uses of letters, diaries and other unpublished copyrighted works created before, on or after that date. It governs all lawsuits filed on or after that date, whether the conduct at issue occurred before, on or after that date.

The bill (H.R. 4412) was deemed to have been read three times and passed.

## BANKRUPTCY AMENDMENTS OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1985.

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

*Resolved*, That the bill from the Senate (S. 1985) entitled "An Act to establish a commission to review the Bankruptcy Code, to amend the Bankruptcy Code in certain aspects of its application to cases involving commerce and credit and individual debtors and add a temporary chapter to govern reorganization of small businesses, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Bankruptcy Amendments of 1992".*

### *TITLE I—IMPROVED BANKRUPTCY ADMINISTRATION*

***SEC. 101. EXPEDITED HEARING ON AUTOMATIC STAY.***

*The last sentence of section 362(e) of title 11, United States Code, is amended—*

*(1) by striking "commenced" and inserting "concluded", and*

*(2) by inserting before the period at the end the following:*

*", unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances".*

***SEC. 102. EXPEDITED FILING OF PLANS UNDER CHAPTER 11.***

*Section 1121(d) of title 11, United States Code, is amended—*

*(1) by striking "On" and inserting "(1) Subject to paragraph (2), on", and*

*(2) by adding at the end the following:*

*"(2) Under paragraph (1)—*

*"(A) such 120-day period may not be increased beyond the 1-year period beginning on the date of the order for relief under this chapter; and*

*"(B) such 180-day period may not be increased beyond the 425-day period beginning on the date of the order for relief under this chapter;*

*unless the need for such an increase is attributable to circumstances for which the debtor should not justly be held accountable.".*

***SEC. 103. EXPEDITED FILING OF PLANS UNDER CHAPTER 12.***

*(a) FILING OF PLAN.—Section 1221 of title 11, United States Code, is amended by striking "an extension is substantially justified" and inserting "the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable".*

*(b) DELAY OF REPEAL.—Section 302(f) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554; 100 Stat. 3124; 11 U.S.C. 1201 note) is amended by striking "October 1, 1993" and inserting "October 1, 1995".*

***SEC. 104. EXPEDITED PROCEDURE FOR REAFFIRMATION OF DEBTS.***

*(a) REAFFIRMATION.—Section 524(c) of title 11, United States Code, is amended—*

*(1) in paragraph (2)—*

*(A) by inserting "(A)" after "(2)",*

*(B) by adding "and" at the end, and*

*(C) by inserting after subparagraph (A), as so designated, the following:*

*"(B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection;", and*

*(2) in paragraph (3)—*

*(A) in the matter preceding subparagraph (A) by striking "such agreement" the last place it appears,*

*(B) in subparagraph (A)—*

*(i) by inserting "such agreement" after "(A)", and*

*(ii) by striking "and" at the end,*

*(C) in subparagraph (B) by inserting "such agreement" after "(B)", and*

*(3) by adding at the end the following:*

*"(C) the attorney fully advised the debtor of the legal effect and consequences of—*

*"(i) an agreement of the kind specified in this subsection; and*

*"(ii) any default under such an agreement;".*

*(b) EFFECT OF DISCHARGE.—The third sentence of section 524(d) of title 11, United States Code, is amended in the matter preceding paragraph (1) by inserting "and was not represented by an attorney during the course of negotiating such agreement" after "this section".*

***SEC. 105. POWERS OF BANKRUPTCY COURTS.***

*(a) STATUS CONFERENCES.—Section 105 of title 11, United States Code, is amended by adding at the end the following:*

*"(d) The court, on its own motion or on the motion of any party in interest, may—*

*"(1) hold a status conference regarding any case under this title after notice to the parties in interest; and*

*"(2) unless inconsistent with another provision of this title, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically.".*

*(b) ABSTENTION.—The second sentence of section 1334(c)(2) of title 28, United States Code, is amended by striking "or not to abstain".*

*(c) ESTABLISHMENT, OPERATION, AND TERMINATION OF BANKRUPTCY APPELLATE SERVICE.—Section 158(b) of title 28, United States Code, is amended—*

*(1) by striking paragraphs (3) and (4),*

*(2) by redesignating paragraph (2) as paragraph (4),*

*(3) by striking paragraph (1) and inserting the following:*

*"(1) The judicial council of a circuit shall establish a bankruptcy appellate service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—*

*"(A) there are insufficient judicial resources available in the circuit; or*

*"(B) it is not likely that creation of such service would improve the administration of justice.*

*Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference a report containing the factual basis of such finding.*

*"(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).*

*"(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraphs exists.*

*"(C) On its own motion, after the expiration of the 3-year period beginning on the date an bankruptcy appellate service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraphs exists.*

*"(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.*

*"(3) Bankruptcy judges appointed under paragraph (1) shall be appointed for a term of 2 years and may be reappointed under such paragraph.", and*

*(4) by inserting after paragraph (4), as so redesignated, the following:*

*"(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.*

*"(6) An appeal may not be heard under this subsection by a panel of the bankruptcy appellate service unless the district judges for the district in which the appeal occurs, by majority vote, have authorized such service to hear and determine appeals originating in such district.".*

*(d) APPEALS TO BE HEARD BY BANKRUPTCY APPELLATE SERVICE.—Section 158 of title 28, United States Code, is amended—*

*(1) in subsection (c) by striking "(c)" and inserting "(2)", and*

*(2) by inserting after subsection (b) the following:*

*"(c)(1) Subject to subsection (b), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate service established under subsection (b)(1) unless—*

*"(A) the appellant elects at the time of filing the appeal; or*

"(B) any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the district court.".

(e) RULES OF PROCEDURE AND EVIDENCE; METHOD OF PRESCRIBING.—Section 2073 of title 28, United States Code, is amended—

(1) in subsection (a)(2) by striking "section 2072" and inserting "sections 2072 and 2075", and

(2) in subsections (d) and (e) by inserting "or 2075" after "2072" each place it appears.

(f) EFFECTIVE DATE OF BANKRUPTCY RULES.—Section 2075 of title 28, United States Code, is amended by striking "ninety days" and inserting "180 days".

**SEC. 106. PARTICIPATION BY BANKRUPTCY ADMINISTRATOR AT MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.**

(a) PRESIDING OFFICER.—A bankruptcy administrator appointed under section 302(d)(3)(I) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554; 100 Stat. 3123), as amended by section 317(a) of the Federal Courts Study Committee Implementation Act of 1990 (Public Law 101-650; 104 Stat. 5115), or the bankruptcy administrator's designee may preside at the meeting of creditors convened under section 341(a) of title 11, United States Code. The bankruptcy administrator or the bankruptcy administrator's designee may preside at any meeting of equity security holders convened under section 341(b) of title 11, United States Code.

(b) EXAMINATION OF THE DEBTOR.—The bankruptcy administrator or the bankruptcy administrator's designee may examine the debtor at the meeting of creditors and may administer the oath required under section 343 of title 11, United States Code.

**SEC. 107. DEFINITION RELATING TO ELIGIBILITY TO SERVE ON CHAPTER 11 COMMITTEES.**

Section 101(41) of title 11, United States Code, is amended to read as follows:

"(41) 'person' includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

"(A) acquires an asset from a person—

"(i) as a result of the operation of a loan guarantee agreement; or

"(ii) as receiver or liquidating agent of a person;

"(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

"(C) is the legal or beneficial owner of an asset of—

"(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

"(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit;".

**SEC. 108. INCREASED INCENTIVE COMPENSATION FOR TRUSTEES.**

Section 326(a) of title 11, United States Code, is amended by striking "fifteen" and all that follows through "$3,000" the last place it appears, and inserting the following:

"25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000".

**SEC. 109. DOLLAR ADJUSTMENTS.**

(a) WHO MAY BE A DEBTOR UNDER CHAPTER 13.—Section 109(e) of title 11, United States Code, is amended—

(1) by striking "unsecured debts of less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000" and inserting "debts of less than $1,000,000", and

(2) by striking "unsecured debts that aggregate less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000" and inserting "debts in the aggregate of less than $1,000,000".

(b) INVOLUNTARY CASES.—Section 303(b) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$5,000" and inserting "$10,000", and

(2) in paragraph (2) by striking "$5,000" and inserting "$10,000".

(c) PRIORITIES.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3)(B) by striking "$2,000" and inserting "$4,000",

(2) in paragraph (4)(B)(i) by striking "$2,000" and inserting "$4,000",

(3) in paragraph (5) by striking "$2,000" and inserting "$4,000", and

(4) in paragraph (6) by striking "$900" and inserting "$1,800".

(d) EXEMPTIONS.—Section 522(d) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$7,500" and inserting "$15,000",

(2) in paragraph (2) by striking "$1,200" and inserting "$2,400",

(3) in paragraph (3)—

(A) by striking "$200" and inserting "$400", and

(B) by striking "$4,000" and inserting "$8,000",

(4) in paragraph (4) by striking "$500" and inserting "$1,000",

(5) in paragraph (5)—

(A) by striking "$400" and inserting "$800", and

(B) by striking "$3,750" and inserting "$7,500",

(6) in paragraph (6) by striking "$750" and inserting "$1,500",

(7) in paragraph (8) by striking "$4,000" and inserting "$8,000", and

(8) in paragraph (11)(D) by striking "$7,500" and inserting "$15,000".

(e) APPOINTMENT OF EXAMINER IN CERTAIN CIRCUMSTANCES.—Section 1104(b)(2) of title 11, United States Code, is amended by striking "$5,000,000" and inserting "$10,000,000".

**SEC. 110. BANKRUPTCY FEES.**

(a) EFFECTIVE DATE OF BANKRUPTCY FEES PRESCRIBED BY THE JUDICIAL CONFERENCE.—Section 1930(b) of title 28, United States Code, is amended by adding at the end the following:

"Such fees shall not take effect until they have been reported to the Congress by the Judicial Conference at or after the beginning of a regular session thereof, but not later than the first day of February, and until the expiration of 180 days after they have been thus reported.".

(b) REPORT REGARDING ENACTMENT OF IN FORMA PAUPERIS PROCEDURE.—Not later than 1 year after the date of the enactment of this Act, the Judicial Conference shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate—

(1) estimating the loss of receipts to the United States and to trustees that would result from enacting a procedure authorizing the court to waive the payment of fees and costs in effect under section 1930 of title 28, United States Code, by an individual debtor who files a voluntary case under title 11 and makes affidavit that the debtor is unable to pay such fees and costs, and

(2) suggesting alternatives for offsetting such loss.

**SEC. 111. EXTENDED PERIOD FOR TRUSTEE AVOIDANCE OF FRAUDULENT TRANSFERS.**

Section 548(a) of title 11, United States Code, is amended in the matter preceding paragraph

(1) by striking "one year" and inserting "2 years".

**SEC. 112. PREMERGER NOTIFICATION.**

Subparagraphs (A) and (B) of section 363(b)(2) of title 11, United States Code, are amended to read as follows:

"(A) notwithstanding subsection (a) of such section, the notification required to be given by the debtor shall be given by the trustee; and

"(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the tenth day after the date of receipt of the notification, unless the waiting period is extended—

"(i) pursuant to subsection (e)(2) or (g)(2) of such section; or

"(ii) by the court, after notice and a hearing.".

**SEC. 113. ALLOWANCE OF CREDITOR COMMITTEE EXPENSES.**

Section 503(b) of title 11, United States Code, is amended—

(1) by striking "and" at the end of paragraph (5),

(2) by striking the period at the end of paragraph (6) and inserting "; and", and

(3) by adding at the end the following new paragraph:

"(7) the actual, necessary expenses incurred by a member of a committee appointed under section 1102 in the performance of the duties of such committee, other than claims for compensation for services rendered as a member of such committee.".

## TITLE II—CONSUMER BANKRUPTCY ISSUES

**SEC. 201. PERIOD FOR CURING DEFAULT RELATING TO PRINCIPAL RESIDENCE.**

Section 1322 of title 11, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d), and

(2) by inserting after subsection (b) the following:

"(c) A default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b), notwithstanding applicable nonbankruptcy law, until such residence is sold under such lien and in accordance with applicable nonbankruptcy law.".

**SEC. 202. PRESERVATION OF HOME MORTGAGE LIENS.**

Section 1322(b)(2) of title 11, United States Code, is amended—

(1) by striking ", other than a claim secured only by a security interest in real property that is the debtor's principal residence,", and

(2) by inserting before the semicolon at the end the following:

", except that the rights of the holder of a claim secured only by the most senior security interest in real property that is the debtor's principal residence may not be modified to reduce the secured claim to a value that is less than the value, as of the date the security interest arose, of the creditor's interest in the estate's interest in such property".

**SEC. 203. NONDISCHARGEABILITY OF FINE UNDER CHAPTER 13.**

Section 1328(a)(3) of title 11, United States Code, is amended by inserting ", or a fine, " after "restitution".

**SEC. 204. PROTECTION OF CHILD SUPPORT AND ALIMONY.**

(a) RELIEF FROM AUTOMATIC STAY.—Section 362(b)(2) of title 11, United States Code, is amended to read as follows:

"(2) under subsection (a) of this section—

"(A) of the commencement or continuation of an action or proceeding for—

"(i) the establishment of paternity; or

"(ii) the establishment or modification of an order for alimony, maintenance, or support; or

"(B) of the collection of alimony, maintenance, or support from property that is not property of the estate;".

(b) PRIORITY OF CLAIMS.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (8) by striking "(8) Eighth" and inserting "(9) Ninth",

(2) in paragraph (7) by striking "(7) Seventh" and inserting "(8) Eighth", and

(3) by inserting after paragraph (6) the following:

"(7) Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

"(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

"(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.".

(c) PROTECTION OF LIENS.—Section 522(f)(1) of title 11, United States Code, is amended by inserting after "lien" the following:

", other than a judicial a lien that secures a debt—

"(A) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

"(B) to the extent that such debt—

"(i) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

"(ii) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.".

(d) PROTECTION AGAINST TRUSTEE AVOIDANCE.—Section 547(c) of title 11, United States Code, is amended—

(1) in paragraph (6) by striking "or" at the end,

(2) by redesignating paragraph (7) as paragraph (8), and

(3) by inserting after paragraph (6) the following:

"(7) to the extent such transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

"(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

"(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.".

(e) APPEARANCE BEFORE COURT.—Child support creditors or their representatives shall be permitted to appear and intervene without charge, and without meeting any special local court rule requirement for attorney appearances, in any bankruptcy proceeding in any bankruptcy court or district court of the United States if such representatives file a form in such court that contains information detailing the child support debt, its status, and other characteristics.

(f) CONFORMING AMENDMENTS—Title 11 of the United States Code is amended—

(1) in section 502(i) by striking "507(a)(7)" and inserting "507(a)(8)",

(2) in section 503(b)(1)(B)(i) by striking "507(a)(7)" and inserting "507(a)(8)",

(3) in section 523(a)(1)(A) by striking "507(a)(7)" and inserting "507(a)(8)",

(4) in section 724(b)(2) by striking "or 507(a)(6)" and inserting "507(a)(6), or 507(a)(7)",

(5) in section 726(b) by striking "or (7)" and inserting ", (7), or (8)",

(6) in section 1123(a)(1) by striking "507(a)(7)" and inserting "507(a)(8)",

(7) in section 1129(a)(9)—

(i) in subparagraph (B) by striking "or 507(a)(6)" and inserting ", 507(a)(6), or 507(a)(7)", and

(ii) in subparagraph (C) by striking "507(a)(7)" and inserting "507(a)(8)".

## TITLE III—COMMERCIAL BANKRUPTCY ISSUES

### SEC. 301. LIMITATION ON LIABILITY OF NON-INSIDER TRANSFEREE FOR AVOIDED TRANSFER.

Section 550 of title 11, United States Code, is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and

(2) by inserting after subsection (b) the following:

"(c) If a transfer made between ninety days and one year before the filing of the petition—

"(1) is avoided under section 547(b) of this title; and

"(2) was made for the benefit of a creditor that at the time of such transfer was an insider;

the trustee may not recover under subsection (a) from a transferee that is not an insider.".

### SEC. 302. PERFECTION OF PURCHASE-MONEY SECURITY INTEREST.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking "10" and inserting "20".

### SEC. 303. PROTECTION OF SECURITY INTEREST IN POST-PETITION RENTS.

Section 552(b) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(b)",

(2) by striking "rents," each place it appears, and

(2) by adding at the end the following:

"(2) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to rents of such property, then such security interest extends to such rents acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.".

### SEC. 304. TREATMENT OF FARMOUT AGREEMENTS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (21) the following:

"(21A) 'farmout agreement' means written agreement in which—

"(A) the owner of a right to drill, produce, or operate liquid or gaseous hydrocarbons on property agrees or has agreed to transfer or assign all or a part of such right to another entity; and

"(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property;".

(b) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (2) by striking "or" at the end,

(2) in paragraph (3) by striking the period at the end and inserting "; or", and

(3) by adding at the end the following:

"(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—

"(A) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

"(B) but for the operation of this paragraph, the estate could include such interest only by virtue of section 365 or 544(a)(3) of this title.

Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.".

### SEC. 305. SELLER'S RIGHT TO RECLAIM GOODS.

Section 546(c)(1) of title 11, United States Code, is amended by striking "ten" and inserting "30".

### SEC. 306. EXCEPTION TO DISCHARGE.

Section 523(a)(2) of title 11, United States Code, is amended by striking "forty" and inserting "60".

### SEC. 307. AIRCRAFT EQUIPMENT AND VESSELS.

Section 1110(a) of title 11, United States Code, is amended by striking "an air carrier operating under a certificate of convenience and necessity issued by the Civil Aeronautics Board" and inserting the following:

"a citizen of the United States, as defined in section 101 of the Federal Aviation Act of 1958, holding an operating certificate issued by the Secretary of Transportation pursuant to section 604 the Federal Aviation Act for aircraft capable of carrying 10 or more individuals".

## TITLE IV—GOVERNMENTAL BANKRUPTCY ISSUES

### SEC. 401. EXCEPTION FROM AUTOMATIC STAY FOR POST-PETITION PROPERTY TAXES.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (16) the following:

"(18) under subsection (a) of this section, of the creation, perfection, or enforcement of a statutory lien for an ad valorem property tax imposed by the District of Columbia, or a political subdivision of a State, if such tax comes due after the filing of the petition.".

### SEC. 402. MUNICIPAL BANKRUPTCY.

Section 109(c)(2) of title 11, United States Code, is amended by striking "generally authorized" and inserting "specifically authorized, in its capacity as a municipality or by name,".

## TITLE V—TECHNICAL CORRECTIONS

### SEC. 501. AMENDMENTS TO BANKRUPTCY DEFINITIONS, NECESSITATED BY ENACTMENT OF PUBLIC LAW 101-647.

(a) ALPHABETIZING AND REDESIGNATING DEFINITIONS.—Section 101 of title 11 of the United States Code, as amended by section 304(a), is amended—

(1) by redesignating paragraph (3) as paragraph (21),

(2) by redesignating paragraph (4) and subsequent paragraphs through paragraph (21A) as such paragraph (21A) is added by section 304(a) of this Act, as paragraphs (3) through (20A), respectively,

(3) by transferring paragraph (21), as so redesignated by paragraph (1), so as to insert such paragraph after paragraph (20A),

(4) by redesignating paragraphs (54) through (57), as in effect immediately before the enactment of Public Law 101-647, as paragraphs (60), (61), (36), and (40), respectively,

*(5) in paragraph (60), as so redesignated by paragraph (4), by inserting "and" after the semicolon at the end,*

*(6) in paragraph (61), as so redesignated by paragraph (4), by striking the semicolon at the end and inserting a period,*

*(7) in paragraph (36), as so redesignated by paragraph (4), by striking "and" at the end,*

*(8) in paragraph (40), as so redesignated by paragraph (4), by striking the period at the end and inserting a semicolon,*

*(9) by redesignating paragraphs (52) through (57), as so redesignated by section 2522(e) of Public Law 101-647, as paragraphs (54) through (59), respectively,*

*(10) by transferring paragraph (39) so as to insert such paragraph before paragraph (54), as so redesignated by paragraph (9) of this subsection,*

*(11) by redesignating paragraph (39) as paragraph (53),*

*(12) by redesignating successively numbered paragraphs (40) through (51) as paragraphs (41) through (52), respectively,*

*(13) by transferring paragraph (40), as so redesignated by paragraph (4) of this subsection, so as to insert such paragraph before paragraph (41), as so redesignated by paragraph (12) this subsection,*

*(14) by redesignating paragraph (36) and subsequent paragraphs through paragraph (38) as paragraphs (37) through (39), respectively, and*

*(15) by transferring paragraph (36), as so redesignated by paragraph (4) of this subsection, so as to insert such paragraph after paragraph (35).*

*(b) CONFORMING AND RELATED AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE, BASED ON REDESIGNATED DEFINITIONS.—(1) Section 101 of title 11 of the United States Code is amended—*

*(A) in paragraph (5), as so redesignated by subsection (a), by striking "section 761(9)" and inserting "section 761",*

*(B) in paragraph (22) by striking "section 741(7)" and inserting "section 741",*

*(C) in paragraph (35)(B) by striking "paragraphs (3)" and inserting "paragraphs (21)",*

*(D) in paragraph (50)(B)(ii), as so redesignated by subsection (a), by striking "section 761(13)" and inserting "section 761", and*

*(E) in paragraph (56)(A), as so redesignated by subsection (a), by striking "section 741(2)" and inserting "section 741".*

*(2) Section 362(b) of title 11, United States Code, is amended—*

*(A) in paragraph (6)—*

*(i) by striking "section 761(4)" and inserting "section 761",*

*(ii) by striking "section 741(7)" and inserting "section 741",*

*(iii) by striking "section 101(34), 741(5), or 761(15)" and inserting "section 101, 741, or 761", and*

*(iv) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and*

*(B) in paragraph (7)—*

*(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and*

*(ii) by striking "section 741(8)" and inserting "section 741".*

*(3) Section 507(a)(5) of title 11, United States Code, is amended—*

*(A) by striking "section 557(b)(1)" and inserting "section 557(b)", and*

*(B) by striking "section 557(b)(2)" and inserting "section 557(b)".*

*(4) Section 546 of title 11, United States Code, is amended—*

*(A) in subsection (e)—*

*(i) by striking "section 101(34), 741(5), or 761(15)" and inserting "section 101, 741, or 761", and*

*(ii) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and*

*(B) in subsection (f)—*

*(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and*

*(ii) by striking "section 741(8)" and inserting "section 741".*

*(5) Section 548(d)(2) of title 11, United States Code, is amended—*

*(A) in subparagraph (B)—*

*(i) by striking "section 101(34), 741(5) or 761(15)" and inserting "section 101, 741, or 761", and*

*(ii) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and*

*(B) in subparagraph (C)—*

*(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and*

*(ii) by striking "section 741(8)" and inserting "section 741".*

*(6) Section 555 of title 11, United States Code, is amended by striking "section 741(7)" and inserting "section 741 of this title".*

*(7) Section 556 of title 11, United States Code, is amended by striking "section 761(4)" and inserting "section 761 of this title".*

*(c) CONFORMING AMENDMENTS TO OTHER LAWS BASED ON REDESIGNATED DEFINITIONS.—(1) Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended—*

*(A) in clause (ii)(I) by striking "section 741(7)" and inserting "section 741",*

*(B) in clause (iii) by striking "section 101(24)" and inserting "section 101",*

*(C) in clause (iv)(I) by striking "section 101(41)" and inserting "section 101", and*

*(D) in clause (v) by striking "section 101(50)" and inserting "section 101".*

*(2) Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—*

*(A) in clause (ii)(I) by striking "section 741(7)" and inserting "section 741",*

*(B) in clause (iii) by striking "section 761(4)" and inserting "section 761",*

*(C) in clause (iv) by striking "section 101(24)" and inserting "section 101",*

*(D) in clause (v)(I) by striking "section 101(41)" and inserting "section 101", and*

*(E) in clause (viii) by striking "section 101(50)" and inserting "section 101".*

*(d) OTHER TECHNICAL AMENDMENTS.—Title 11 of the United States Code is amended—*

*(1) in section 101—*

*(A) in paragraph (33)—*

*(i) in subparagraph (A) by striking "(12 U.S.C. 1813(u))", and*

*(ii) in subparagraph (B) by striking "(12 U.S.C. 1786(r))",*

*(B) in paragraph (34) by striking "(12 U.S.C. 1752(7))",*

*(C) in paragraph (35)(A) by striking "(12 U.S.C. 1813(c)(2))",*

*(D) in paragraph (49), as so redesignated by subsection (a)—*

*(i) by striking "(15 U.S.C. 78q-1)", and*

*(ii) by striking "(15 U.S.C. 78c(12))",*

*(E) in paragraph (50), as so redesignated by subsection (a)—*

*(i) in subparagraph (A)(xii)—*

*(I) by striking "(15 U.S.C. 77a et seq.)", and*

*(II) by striking "(15 U.S.C. 77c(b))", and*

*(ii) in subparagraph (B)(vi) by striking "(15 U.S.C. 77c(b))", and*

*(F) in paragraph (59), as so redesignated by subsection (a), by striking the period at the end and inserting a semicolon,*

*(2) in section 109(b)(2) by striking "(12 U.S.C. 1813(h))",*

*(3) in section 322(a) by striking "1302, or 1202" and inserting "1202, or 1302",*

*(4) in section 346—*

*(A) in subsection (a) by striking "Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)" and inserting "Internal Revenue Code of 1986", and*

*(B) in subsection (g)(1)(C) by striking "Internal Revenue Code of 1954 (26 U.S.C. 371)" and inserting "Internal Revenue Code of 1986",*

*(5) in section 348—*

*(A) in subsection (b) by striking "1301(a), 1305(a), 1201(a), 1221, and 1228(a)" and inserting "1201(a), 1221, 1228(a), 1301(a), and 1305(a)", and*

*(B) in subsections (b), (c), (d), and (e) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307",*

*(6) in section 349(a) by striking "109(f)" and inserting "109(g)",*

*(7) in section 362—*

*(A) in subsection (a) by striking "(15 U.S.C. 78eee(a)(3))", and*

*(B) in subsection (b)—*

*(i) by striking "(15 U.S.C. 78eee(a)(3))",*

*(ii) in paragraph (10) by striking "or" at the end,*

*(iii) in paragraph (12)—*

*(I) by striking "(46 App. U.S.C. 911 et seq.)", and*

*(II) by striking "(46 App. U.S.C. 1117 and 1271 et seq., respectively)",*

*(iv) in paragraph (13)—*

*(I) by striking "(46 App. U.S.C. 911 et seq.)",*

*(II) by striking "(46 App. U.S.C. 1117 and 1271 et seq., respectively)",*

*(III) by striking "or" at the end,*

*(v) in paragraph (15), as added by Public Law 101-508, by striking "or" at the end,*

*(vi) in paragraph (16), as added by Public Law 101-508, by striking the period at the end and inserting a semicolon, and*

*(vii) in paragraph (14), as added by Public Law 101-311—*

*(I) by striking the period at the end and inserting "; or",*

*(II) by redesignating such paragraph as paragraph (17), and*

*(III) by transferring such paragraph so as to insert such paragraph after paragraph (16),*

*(8) in section 363—*

*(A) in subsection (b)(2) by striking "(15 U.S.C. 18a)", and*

*(B) in subsection (c)(1) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304",*

*(9) in section 364—*

*(A) in subsection (a) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304", and*

*(B) in subsection (f)—*

*(i) by striking "(15 U.S.C. 77e)", and*

*(ii) by striking "(15 U.S.C. 77aaa et seq.)",*

*(10) in section 365—*

*(A) in subsection (d)(6)(C) by striking "(49 App. U.S.C. 1301)",*

*(B) in subparagraphs (A) and (B) of subsection (g)(2) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307",*

*(C) in subsection (n)(1)(B) by striking "to to" and inserting "to", and*

*(D) in subsection (o) by striking "the Federal" the first place it appears and all that follows through "successors,", and inserting "a Federal depository institutions regulatory agency (or predecessor to such agency)",*

*(11) in section 507—*

*(A) in subsection (a)(8) by striking "the Federal" the first place it appears and all that follows through "successors,", and inserting "a Federal depository institutions regulatory agency (or predecessor to such agency)", and*

*(B) in subsection (d) by striking "or (a)(6)" and inserting "(a)(6), (a)(7), (a)(8), or (a)(9)",*

*(12) in section 522(d)(10)(E)(iii)—*

*(A) by striking "408, or 409" the first place it appears and inserting "or 408", and*

*(B) by striking "Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409)" and inserting "Internal Revenue Code of 1986",*

*(13) in section 523—*

*(A) in subsection (a)—*

*(i) by striking "1141,," and inserting "1141,",*

*(ii) in paragraph (2)(C) by striking "(15 U.S.C. 1601 et seq.)", and*

*(iii) in paragraph (12) by striking the semicolon at the end and inserting a period,*

*(B) in subsection (b)—*

*(i) by striking "(20 U.S.C. 1087–3)", and*

*(ii) by striking "(42 U.S.C. 294f)", and*

*(C) in subsection (e) by striking "depository institution or insured credit union" and inserting "insured depository institution",*

*(14) in section 524—*

*(A) in subsection (a)(3) by striking "or 1328(c)(1)" and inserting ", 1228(a)(1), or 1328(a)(1)",*

*(B) in subsection (c)(4) by striking "recission" and inserting "rescission", and*

*(C) in subsection (d)(1)(B)(ii) by adding "and" at the end,*

*(15) in section 525(a)—*

*(A) by striking "(7 U.S.C. 499a–499s)",*

*(B) by striking "(7 U.S.C. 181–229)", and*

*(C) by striking "(57 Stat. 422; 7 U.S.C. 204)",*

*(16) in section 542(e) by striking "to to" and inserting "to",*

*(17) in section 546(a)(1) by striking "1302, or 1202" and inserting "1202, or 1302",*

*(18) in section 549(b) inserting "the trustee may not avoid under subsection (a) of this section" after "involuntary case,",*

*(19) in section 553—*

*(A) in subsection (a)(1) by striking "other than under section 502(b)(3) of this title", and*

*(B) in subsection (b)(1) by striking "362(b)(14),," and inserting "362(b)(14),",*

*(20) in section 555 by striking "(15 U.S.C. 78aaa et seq.)",*

*(21) in section 559 by striking "(15 U.S.C. 78aaa et seq.)",*

*(22) in section 706(a) by striking "1307, or 1208" and inserting "1208, or 1307",*

*(23) in section 724(d) by striking "Internal Revenue Code of 1954 (26 U.S.C. 6323)" and inserting "Internal Revenue Code of 1986",*

*(24) in section 726(b) inserting a comma after "section 1112",*

*(25) in section 741(4)(A)(iii) by striking "(15 U.S.C. 78a et seq.)",*

*(26) in section 742 by striking "(15 U.S.C. 78aaa et seq.)",*

*(27) in section 743 by striking "342(a)" and inserting "342",*

*(28) in section 745(c) by striking "Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)" and inserting "Internal Revenue Code of 1986",*

*(29) in section 761—*

*(A) in paragraph (1) by striking "(7 U.S.C. 1 et seq.)",*

*(B) in paragraph (5) by striking "(7 U.S.C. 6c(b))", and*

*(C) in paragraph (13) by striking "(7 U.S.C. 23)",*

*(30) in section 1104(c) inserting a comma after "interest",*

*(31) in section 1110(a)—*

*(A) by striking "(49 U.S.C. 1301)", and*

*(B) by striking "(46 U.S.C. 911(4))",*

*(32) in section 1123(a)(1) inserting a comma after "title" the last place it appears,*

*(33) in section 1129—*

*(A) in subsection (a)—*

*(i) in paragraph (4) by striking the semicolon at the end and inserting a period, and*

*(ii) in paragraph (12) inserting "of title 28" after "section 1930", and*

*(B) in subsection (d) by striking "(15 U.S.C. 77e)",*

*(34) in section 1145—*

*(A) in subsection (a)—*

*(i) by striking "does" and inserting "do",*

*(ii) by striking "(15 U.S.C. 77e)", and*

*(iii) in paragraph (3)(B)(i) by striking "(15 U.S.C. 78m or 78o(d))",*

*(B) in subsection (b)(1) by striking "(15 U.S.C. 77b(11))", and*

*(C) in subsection (d) by striking "(15 U.S.C. 77aaa et seq.)",*

*(35) in section 1166(2) by striking "(45 U.S.C. 791(b))",*

*(36) in section 1167—*

*(A) by striking "(45 U.S.C. 151 et seq.)", and*

*(B) by striking "(45 U.S.C. 156)",*

*(37) in section 1226(b)(2)—*

*(A) by striking "1202(d)" and inserting "1202(c)", and*

*(B) by striking "1202(e)" and inserting "1202(d)",*

*(38) in section 1302(b)(3) by striking "and" at the end, and*

*(39) in section 1328(a)—*

*(A) in paragraph (2) by striking "(5) or (8)" and inserting "(5), (8), or (9)", and*

*(B) by striking the last paragraph (3).*

***TITLE VI—EFFECTIVE DATE; APPLICATION OF AMENDMENTS.***

***SEC. 601. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.***

*(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.*

*(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.*

AMENDMENT NO. 3431

Mr. FORD. Mr. President, on behalf of Senator HEFLIN I move that the Senate concur in the amendment of the House with a substitute amendment that I now send to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. HEFLIN, proposes an amendment numbered 3431.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. DECONCINI. Mr. President, I am pleased that the Senate and House have resolved their differences on bankruptcy reform legislation. This bill accomplishes a number of significant changes to the Bankruptcy Code that should improve the administration of bankruptcy cases as well as make the Code fairer for all parties.

There are two provisions in this bill that I would especially like to address. The first is reimbursement of the expenses of members of creditors' and equity security holders' committees and the second concerns money orders.

Creditors' and equity security holders' committees were created to play significant roles in chapter 11 bankruptcies. Congress created these committees to protect the interest of small unsecured creditors who are often underrepresented in a bankruptcy action.

Section 113 of S. 1985 clarifies that the members of official creditors' and equity security holders' committees can be reimbursed for their actual and necessary expenses incurred during a chapter 11 proceeding. However, they cannot recover compensation for services rendered as members of these committees. I believe this provision will encourage the active participation of creditors' and equity security holders' committees and will provide for a more efficient and cost effective system.

Section 309 of the bill seeks to clarify that money order proceeds are not the property of the bankruptcy estate. This change ensures the continued widespread availability and low cost of money orders to consumers. Currently, when a business that sells money orders on behalf of a money order issuer files bankruptcy, the money order proceeds may not be released to the money order issuer. The money order issuer, however, must still pay the outstanding money orders.

Most money order issuers have agreements with the selling locations requiring that the proceeds collected from money order purchasers be held in trust and not commingled. However, problems have arisen when courts have failed to recognize this agreement if it was violated by the debtor, even if the issuer was not aware of the violation.

Given the large number of locations selling money orders, detecting violations is difficult. This section provides protection in those circumstances as long as the issuer has taken action to make it clear that compliance is required. Under this section, the proceeds of money orders sold during the 14 days prior to a bankruptcy filing are not considered part of the estate and are available to the money order issuers.

I would like to thank Senator HEFLIN and his staff for their untiring efforts to secure passage of this bill. This is a good bill which makes many needed changes to the Code.

Mr. KOHL. Mr. President, I rise to congratulate my colleague and friend Senator HEFLIN—chairman of the Courts Subcommittee—for his leadership on the Bankruptcy Amendments of 1992. Without his personal attention to moving this legislation we would not have passed a bill. Additionally, I congratulate Senators GRASSLEY and METZENBAUM for their contributions during this long process.

This is compromise legislation worked out between the House and the Senate. And as with most compromises, additions to, and deletions from the original bill were necessary to move forward. In the end I believe we have a good bankruptcy bill—one with provisions which will assist both debtors and creditors, and which will expedite the overall bankruptcy process. Of particular note are three sections that I helped craft and I will speak to them in more detail.

The first of the these provisions aids the Nation's air and rail industries in accessing affordable financing for essential equipment. This amendment would resolve ambiguities in the current law and is supported by all sectors of the air and rail equipment financing industries—including airlines, railroads, manufacturers, and financing parties.

Congress enacted sections 1110 and 1168 of the Bankruptcy Code to ensure affordable capital for the transportation industry by protecting those who finance air, shipping and rail equipment. Recent airline bankruptcies have produced continuing uncertainty as to the availability of sections 1110 and 1168. Lenders and lessors seek assurance that the protection of these sections will apply to their transactions. Because this assurance does not exist, financing costs have increased to compensate for additional risk. These increased costs adversely affect not only the airlines and railroads, but also the manufacturers of air and rail equipment, and ultimately the passengers and businesses that rely on our Nation's airlines and railroads.

The uncertainty surrounding sections 1110 and 1168 has had an immediate and ongoing impact on the air and rail industries at a time when they are in severe need of affordable capital. The modifications to sections 1110 and 1168 reflect the realities of modern financing and, without the clarifications in this amendment, the problem will continue to drive up capital costs for the transportation industry.

It should be emphasized again that all parties involved in these industries agree that clarification of sections 1110 and 1168 is urgently needed. Furthermore, all agree that this amendment would resolve many of the ambiguities in the law, while upsetting the delicate balance of fairness and equity between the air and rail industries, the equipment manufacturers and the parties financing the equipment.

The second provision, section 307, addresses a problem threatening the value of real estate lease agreements. After a recent third circuit court opinion, it is unclear whether the sale of a real estate lease by a chapter 11 tenant is permanent or not. This amendment would clarify that a valid, good faith sale of a lease by a tenant in bankruptcy would not be affected by a later court order, unless a party challenging the sale obtains a court order halting the sale during the appeal. This clarification will go a long way in eliminating lease purchasers' fears that their purchase might be revoked long after a bankruptcy court approval, and after they have invested their time and money in reliance on that approval.

In the 1990 third circuit opinion of *In re Joshua Slocum, Ltd.*, 922 F.2d. 1081, the court considered the finality of orders in section 365 lease assignments. Slocum held that a landlord's appeal of a bankruptcy court's order authorizing a chapter 11 tenant's assignment of a real estate lease to a good faith assignee for value was not subject to mootness and could be reversed on appeal. This ruling came in spite of the parties having consummated the assignment and the good faith assignee having taken possession of the premises almost 2 years prior to the third circuit's opinion. The third circuit refused to interpret mootness principles currently embodied in sections 363(m) and 364(e) to reach a similar result in connection with the appeal of consummated lease assignments under section 365.

In order to prevent what could be significant finality problems if other courts adopt the Slocum ruling, this amendment modifies section 365 to include a provision similar to those contained in sections 363(m) and 364(e).

Mr. President, I would like to take this opportunity to thank Alan Gordon, an attorney in Philadelphia, and a member of the American Bankruptcy Institute's Task Force on Asset Sales. Mr. Gordon first brought this issue to the attention of my staff and, without his help and that of the ABI, this provision would not have been included in the bill.

Finally Mr. President, there is one other section I will mention, section 107, which would allow State pension funds and the Pension Benefit Guaranty Corporation [PBGC] to sit on creditor committees in chapter 11 reorganizations. Under present law the U.S. Trustee appoints committees of unsecured claim holders. Ordinarily, the creditor and equity holders committee are composed of persons or institutions holding the seven largest claims of the kind represented by that committee. So, for example, an equity security holders' committee would be composed of those persons holding the seven largest amounts of equity securities. These committees have a broad range of powers to ensure their interests are protected during a bankruptcy reorganization.

Currently, State pension funds and the PBGC are precluded from participating as voting members of these committees. The unique interests of retirement funds, as long-term investors, are not represented by other creditor and equity holder committee members, who may have different goals or shorter investment horizons. These interests are thus put at an unintended fiscal disadvantage. Section 107 would allow State pension funds and the PBGC to serve on these committees, as long as they meet all the other appropriate criteria. It would not give them any special treatment; rather it would simply lift an unintended burden from their shoulders.

In my home State, the State of Wisconsin Investment Board acts as the investment manager for the $22 billion Wisconsin Retirement System. That $22 billion represents the retirement funds for 360,000 participants—school teachers, policemen, firefighters, and other state employees. These are the people that keep Wisconsin running. Simply put, it seems unfair that when decisions regarding their retirement funds are being made during a chapter 11 bankruptcy reorganization, their interests are not represented. Section 107 will eliminate that unfairness and allow them a place at the table and a voice in the decision.

Mr. President, this is not a panacea for all the problems existing in the Bankruptcy Code. However, it does address many of the concerns that have been raised by both creditors and debtors. It is a good bill, and I hope the House acts on this as soon as it is sent to that body.

Mr. GRASSLEY. Mr. President, I am pleased to support S. 1985. This bill represents the collective wisdom of the Senate and the House concerning needed bankruptcy reforms. As an original cosponsor of the Senate-passed bill, I would have preferred that the Senate bill could have been enacted in its entirety. Nonetheless, compromise is the key to enact just about anything, and I can support this compromise bill as a good effort to improve our Nation's bankruptcy laws. Indeed, several of the provisions of the House bill were an improvement on the Senate language, and the bill before us adopts some of those House provisions.

At this time, I would like to address a number of the issues covered by this legislation. First, I am pleased that chapter 12, which governs family farmer bankruptcies, will be extended for 2 years. Chapter 12 was enacted in 1986 because other provisions of the code did not adequately reflect the unique circumstances of family farmers. In the ensuing period, chapter 12 has worked well, permitting thousands of family farmers to continue to work the land who would have otherwise been devastated. Now facing an October 1993 sunset, chapter 12 will be extended 2 years by S. 1985.

I am also very pleased that the House has agreed to create a bankruptcy review commission. Since the enactment of the present code in 1978, the code has not changed nearly as much as the economy and other laws. Although the code largely has functioned well, no one in 1978 could have foreseen the changed circumstances that now confront our bankruptcy system. This year, more than 1 million new bankruptcy petitions will be filed. Since 1978, the world economy has become more international in scope, and a boom in part financed through debt has led to a multitude of bankruptcies in the 1990's. Additionally, new laws have been enacted whose relation to bankruptcy has not been carefully evaluated. And despite the 1984 legislation in response to the Northern Pipeline decision, the constitutionality of the current bankruptcy system is now certain. The blue-ribbon commission established by this bill will evaluate the code's deficiencies, substantively and operationally, and make recommendations to the Congress for legislative change. Thus, while S. 1985 will im-

prove the bankruptcy system, its greatest contribution will be as a result of the commission it creates.

The bill will also address the treatment of mortgages in chapter 13. Under the bill, first mortgages in chapter 13 will not be able to be crammed down to the fair market value of the loan, nor will other terms of those mortgages be able to be modified. Junior liens will be entitled to a lesser degree of protection.

Finally, the bill amends section 550 of the code relating to the recovery of preferences to insiders. Section 547 of the Bankruptcy Code authorizes trustees to require preferential payments made to creditors within 90 days prior to a bankruptcy filing. Because of the concern that corporate insiders, such as officers and directors, who are creditors of their own corporation have an unfair advantage over outside creditors, section 547 of the Bankruptcy Code further authorizes trustees to recapture preferential payments made to such insiders in their creditors a full year prior to a bankruptcy filing. Several recent court decisions have allowed trustees to recapture payments made to noninsider creditors a full year prior to the bankruptcy filing, if an insider benefits from the transfer in some way. See *Levit* v. *Ingersoll Rand Financial Corp. (in re V.N. Deprizio Construction Co.)*, 874 F. 2d 1186 (7th Cir. 1989); *Ray* v. *City Bank & Trust Co. (in re C-L Cartage Co.)*, 899 F. 2d 1490 (6th Cir. 1990); *Manufacturers Hanover Leasing Corp.* v. *Lowrey (in re Robinson Brothers Drilling)*, 892 F. 2d 850 (10th Cir. 1989). Although the creditor is not an insider in these cases, the courts have reasoned that because the repayment benefited a corporate insider, namely the officer who signed the guarantee, the noninsider transferee should be liable for returning the transfer to the bankrupt estate as if it were an insider as well. This section overrules the Deprizio line of cases and clarifies congressional intent that non-insider transferees should not be subject to the preference provisions of the Bankruptcy Code beyond the 90-day statutory period. The anticipated result of this clarification would be to encourage commercial lenders and landlords to extend credit to smaller business entities.

I wish to commend Senator HEFLIN for his persistent efforts to see to it that we enact these necessary reforms. I look forward to studying the report of the Bankruptcy Review Commission to determine what further efforts should be made to strengthen the operation of the Bankruptcy Code.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. I now move to reconsider the vote by which the bill passed.

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

The motion to lay on the table was agreed to.

## VETERANS BENEFITS ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5008.

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

*Resolved*, That the House agree to the amendments of the Senate to the bill (H.R. 5008) entitled "An Act to amend title 38, United States Code, to reform the formula for payment of dependency and indemnity compensation to survivors of veterans dying from service-connected causes, to increase the rate of payments for benefits under the Montgomery GI bill, and for other purposes", with the following amendments:

(1) In lieu of the matter proposed to be inserted by the amendment of the Senate numbered 1, insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "Veterans' Benefits Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—REFORM OF THE DEPENDENCY AND INDEMNITY COMPENSATION PROGRAM

Sec. 101. Short title.
Sec. 102. Reform in payment formula.
Sec. 103. Exception to operation of OBRA provision.
Sec. 104. GAO report relating to the provision of benefits to survivors of veterans and members of the Armed Forces.

TITLE II—LIFE INSURANCE PROGRAMS

Sec. 201. Servicemen's Group Life Insurance.
Sec. 202. Veterans' Group Life Insurance.
Sec. 203. Supplemental Service Disabled Veterans' insurance for totally disabled veterans.
Sec. 204. Increase in amount of veterans' mortgage life insurance.
Sec. 205. Effective date.

TITLE III—EDUCATIONAL ASSISTANCE PROGRAMS

Sec. 301. Increase in amount of Montgomery GI Bill basic educational assistance.
Sec. 302. Montgomery GI Bill entitlement dates.
Sec. 303. Extension of period for completing requirements for secondary school diploma.
Sec. 304. Treatment of certain active-duty service toward eligibility for educational assistance.
Sec. 305. Treatment of certain assignments of individuals for purposes of eligibility under Montgomery GI Bill program.
Sec. 306. Treatment of pursuit of education at service academies and certain educational institutions for purposes of eligibility under Montgomery GI Bill program.
Sec. 307. Educational assistance for certain persons whose initial period of obligated service was less than three years.
Sec. 308. Death benefit.
Sec. 309. Clarification of opportunity to withdraw election not to enroll in Montgomery GI Bill program.
Sec. 310. Use of educational assistance for solo flight training.
Sec. 311. Limitation on amount of advance payment of work-study allowance.
Sec. 312. Revision of requirements relating to approval of accredited courses.
Sec. 313. Disapproval of nonaccredited independent study.
Sec. 314. Treatment of advance payments of certain assistance to veterans who die.
Sec. 315. Bar of assistance for persons whose education is paid for as Federal employee training.
Sec. 316. Revision in measurement of courses.
Sec. 317. Clarification of permitted changes in programs of education.
Sec. 318. Authority of members of Selected Reserve to receive tutorial assistance.
Sec. 319. Requirement of attendance certification in apprenticeship program under the Montgomery GI Bill Selected Reserve program.
Sec. 320. Technical amendments.

TITLE IV—VOCATIONAL REHABILITATION AND PENSION PROGRAMS

Sec. 401. Permanent authority for program of vocational rehabilitation for certain service-disabled veterans.
Sec. 402. Extension of program of vocational training for certain pension recipients.
Sec. 403. Permanent authority for protection of health-care eligibility for certain pension recipients.
Sec. 404. Vocational rehabilitation for certain service-disabled veterans with serious employment handicaps.
Sec. 405. Increase in subsistence allowance for veterans participating in a rehabilitation program.

TITLE V—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICES FOR VETERANS

Sec. 501. Improvement of disabled veterans' outreach program.
Sec. 502. Repeal of delimiting date relating to treatment of veterans of the Vietnam Era for disabled veterans' outreach program purposes.
Sec. 503. Disabled veterans' outreach program priorities.
Sec. 504. Repeal of requirement that to be represented on advisory committee on veterans employment and training a veterans organization must have a Federal charter.
Sec. 505. Expansion and extension of veterans readjustment appointments with the Federal Government.
Sec. 506. Redesignation of sections of chapter 43.

TITLE VI—OTHER VETERANS' PROGRAMS

Sec. 601. Extension of limitation on pension for veterans receiving medicaid-covered nursing home care; applicability to surviving spouses; and facility expenses.
Sec. 602. Extension of authority to carry out income verification.

Sec. 603. Access to information necessary for the administration of certain veterans benefits laws.
Sec. 604. Extension of expiring cost-recovery authority.
Sec. 605. Exclusion for low-income veterans from medication copayment requirement.
Sec. 606. Extension of copayment programs.

**SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.**

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

## TITLE I—REFORM OF THE DEPENDENCY AND INDEMNITY COMPENSATION PROGRAM

**SEC. 101. SHORT TITLE.**

This title may be cited as the "Dependency and Indemnity Compensation Reform Act of 1992".

**SEC. 102. REFORM IN PAYMENT FORMULA.**

(a) SURVIVING SPOUSE BASIC RATE.—Subsection (a) of section 1311 is amended by striking out the matter preceding the table and inserting in lieu thereof the following:

"(a)(1) Dependency and indemnity compensation shall be paid to a surviving spouse at the monthly rate of $750.

"(2) The rate under paragraph (1) shall be increased by $165 in the case of the death of a veteran who at the time of death was in receipt of or was entitled to receive (or but for the receipt of retired pay or retirement pay was entitled to receive) compensation for a service-connected disability that was rated totally disabling for a continuous period of at least eight years immediately preceding death. In determining the period of a veteran's disability for purposes of the preceding sentence, only periods in which the veteran was married to the surviving spouse shall be considered.

"(3) In the case of dependency and indemnity compensation paid to a surviving spouse that is predicated on the death of a veteran before January 1, 1993, the monthly rate of such compensation shall be the amount based on the pay grade of such veteran, as set forth in the following table, if the amount is greater than the total amount determined with respect to that veteran under paragraphs (1) and (2):".

(b) ADDITIONAL RATE FOR SURVIVING SPOUSE WITH MINOR CHILDREN.—Subsection (b) of such section is amended by striking out "$71 for each such child" and inserting in lieu thereof "$100 for each such child during fiscal year 1993, $150 for each such child during fiscal year 1994, and $200 for each such child thereafter".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1993.

(d) PAYMENT FOR IMPLEMENTATION OF REVISIONS.—The costs of implementing, during fiscal years 1993 and 1994, any revisions in the payment of dependency and indemnity compensation to surviving spouses under section 1311 of title 38, United States Code, that result from the amendments made by subsections (a) and (b) shall be paid from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

**SEC. 103. EXCEPTION TO OPERATION OF OBRA PROVISION.**

(a) EXCEPTION.—The amendments made by section 8004 of the Omnibus Budget Reconciliation Act of 1990 (105 Stat. 424) shall not apply to any case in which a legal proceeding to terminate an existing marital relationship was commenced before November 1, 1990, by an individual described in subsection (b) if that proceeding directly resulted in the termination of such marriage.

(b) COVERED INDIVIDUALS.—An individual referred to in subsection (a) is an individual who, but for the marital relationship referred to in subsection (a), would be considered to be the surviving spouse of a veteran.

**SEC. 104. GAO REPORT RELATING TO THE PROVISION OF BENEFITS TO SURVIVORS OF VETERANS AND MEMBERS OF THE ARMED FORCES.**

(a) IN GENERAL.—The Comptroller General of the United States shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report with respect to the most appropriate combination of financial, health-care, educational, and other survivor benefits to meet the needs of survivors of veterans.

(b) CONTENTS OF REPORT.—The report shall include the following:

(1) A review and compilation of data on current and proposed survivor benefits programs that will permit an assessment of the adequacy of such benefits programs, including information on—

(A) in the case of each current and proposed alternative survivor benefits program—

(i) each benefit provided;

(ii) the survivors entitled to the benefit;

(iii) the extent to which survivors are entitled to similar benefits under the program; and

(iv) the costs of providing such benefits under the program;

(B) the extent to which current and anticipated benefits under current survivor benefits programs meet the current and anticipated financial, health-care, educational, and other needs of survivors; and

(C) the differences, if any, in the survivor benefits provided under current and proposed survivor benefits programs to survivors of various categories of veterans and members of the Armed Forces (including survivors of veterans having service-connected disabilities, veterans without such disabilities, members of the Armed Forces who die during service in the Armed Forces, members of the Armed Forces retired under any provision of law other than chapter 61 of title 10, United States Code, and members of the Armed Forces retired under chapter 61 of title 10, United States Code (relating to retirement or separation for physical disability)).

(2) A review and compilation of existing studies on the adequacy of survivor benefits provided under current and proposed survivor benefits programs to meet the financial, health-care, educational, and other needs of survivors.

(3) A comprehensive assessment and evaluation of the adequacy of current and proposed survivor benefits programs, including data and methods for an assessment and evaluation of—

(A) the feasibility and desirability of limiting the period of entitlement of survivors to survivor benefits;

(B) the feasibility and desirability of modifying the provision of monetary benefits to survivors by—

(i) revising the term of payment of any such benefits;

(ii) replacing the periodic payment of such benefits with a lump sum payment;

(iii) providing such benefits through insurance or other premium-based payment mechanisms; or

(iv) carrying out any other revision or modification proposed before the date of the enactment of this Act by the Secretary of Veterans Affairs, the Secretary of Defense, the Secretary of Health and Human Services, or organizations recognized by the Secretary of Veterans Affairs under section 5902(a)(1) of title 38, United States Code;

(C) the feasibility and desirability of modifying the provision of health-care benefits to survivors;

(D) the feasibility and desirability of modifying the provision of benefits to children survivors; and

(E) the feasibility and desirability of consolidating, expanding, or otherwise modifying any program relating to the provision of survivor benefits.

(4) The recommendations of the Comptroller General (including a proposal for legislation) on the most appropriate combination of survivor benefits to meet the current and anticipated financial, health-care, educational, and other needs of survivors.

(c) SUBMISSION OF REPORT.—The Comptroller General shall submit the report not later than April 1, 1994.

(d) DEFINITIONS.—In this section:

(1) The term "survivor", in the case of a veteran or member of the Armed Forces who dies, means the surviving spouse or surviving dependent child of the veteran or member.

(2) The term "survivor benefit" means any monetary, health-care, educational, or other benefit paid, payable, or otherwise provided to survivors of veterans and survivors of members of the Armed Forces under the following:

(A) Laws administered by the Secretary of Veterans Affairs.

(B) Laws administered by the Secretary of Defense.

(C) The Social Security Act (42 U.S.C. 301 et seq.).

(3) The term "veteran" has the meaning given such term in section 101(2) of title 38, United States Code.

## TITLE II—LIFE INSURANCE PROGRAMS

**SEC. 201. SERVICEMEN'S GROUP LIFE INSURANCE.**

Section 1967 is amended by adding at the end thereof the following:

"(e) In addition to the amounts of insurance otherwise provided under this section, an eligible member may, upon application, obtain increased coverage beyond that provided under this section in the amount of $100,000, or any lesser amount evenly divisible by $10,000.".

**SEC. 202. VETERANS' GROUP LIFE INSURANCE.**

Section 1977 is amended—

(1) in subsection (a)—

(A) by inserting "and (e)" after "1967(a) and after "1967(b)";

(B) by striking out "$100,000" each place it appears and inserting in lieu thereof "$200,000";

(C) by striking out "sixty days" and inserting in lieu thereof "60 days";

(D) by striking out "sixty-day period" and inserting in lieu thereof "60-day period"; and

(E) by striking out "of this section" after "subsection (e)";

(2) in subsection (b)(2), by striking out "nonrenewable" and inserting in lieu thereof "renewable"; and

(3) in subsection (h)(2), by striking out "Notwithstanding subsection (b)(2) of this section" and inserting in lieu thereof "In accordance with subsection (b)".

**SEC. 203. SUPPLEMENTAL SERVICE DISABLED VETERANS' INSURANCE FOR TOTALLY DISABLED VETERANS.**

(a) IN GENERAL.—Subchapter I of chapter 19 is amended by inserting after section 1922 the following new section:

**"§ 1922A. Supplemental service disabled veterans' insurance for totally disabled veterans**

"(a) Any person insured under section 1922(a) of this title who qualifies for a waiver of premiums under section 1912 of this title is eligible, as provided in this section, for supplemental insurance in an amount not to exceed $20,000.

"(b) To qualify for supplemental insurance under this section a person must file with the Secretary an application for such insurance not later than the end of (1) the one-year period beginning on the first day of the first month following the month in which this section is enacted, or (2) the one-year period beginning on the date that the Department notifies the person that the person is entitled to a waiver of premiums under section 1912 of this title, whichever is later.

"(c) Supplemental insurance granted under this section shall be granted upon the same terms and conditions as insurance granted under section 1922(a) of this title, except that such insurance may not be granted to a person under this section unless the application is made for such insurance before the person attains 65 years of age.

"(d) No waiver of premiums shall be made in the case of any person for supplemental insurance granted under this section.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 19 is amended by inserting after the item relating to section 1922 the following new item:

"1922A. Supplemental service disabled veterans' insurance for totally disabled veterans.".

**SEC. 204. INCREASE IN AMOUNT OF VETERANS' MORTGAGE LIFE INSURANCE.**

(a) INCREASE.—Section 2106(b) is amended in the first sentence—

(1) by striking out "initial"; and

(2) by striking out "$40,000" and inserting in lieu thereof "$90,000".

(b) TECHNICAL AMENDMENT.—The item relating to section 2106 in the table of sections at the beginning of chapter 21 is amended to read as follows:

"2106. Veterans' mortgage life insurance.".

**SEC. 205. EFFECTIVE DATE.**

The amendments made by this title shall take effect on December 1, 1992.

## TITLE III—EDUCATIONAL ASSISTANCE PROGRAMS

**SEC. 301. INCREASE IN AMOUNT OF MONTGOMERY GI BILL BASIC EDUCATIONAL ASSISTANCE.**

(a) AMOUNT OF BENEFIT PAYMENTS UNDER CHAPTER 30.—Section 3015 is amended—

(1) in subsection (a)(1), by striking out "$300" and inserting in lieu thereof "$400"; and

(2) in subsection (b)(1), by striking out "$250" and inserting in lieu thereof "$325".

(b) AMOUNT OF BENEFIT PAYMENTS UNDER SELECTED RESERVE PROGRAM.—Section 2131(b)(1) of title 10, United States Code, is amended—

(1) in subparagraph (A), by striking out "$140" and inserting in lieu thereof "$190";

(2) in subparagraph (B), by striking out "$105" and inserting in lieu thereof "$143"; and

(3) in subparagraph (C), by striking out "$70" and inserting in lieu thereof "$95".

(c) CONFORMING AMENDMENTS TO CHAPTER 30.—Section 3015(f) is amended—

(1) by striking out paragraph (1);

(2) by redesignating paragraph (2) as paragraph (1) and in that paragraph striking out "may continue to pay" and all that follows through "such rates" and inserting in lieu thereof "shall provide a percentage increase in the monthly rates payable under subsections (a)(1) and (b)(1) of this section"; and

(3) by redesignating paragraph (3) as paragraph (2) and in that paragraph striking out "may" both places it appears and inserting in lieu thereof "shall".

(d) CONFORMING AMENDMENTS TO SELECTED RESERVE PROGRAM.—Section 2131(b)(2) of title 10, United States Code, is amended—

(1) by striking out subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (A) and in that subparagraph striking out "may continue to pay" and all that follows through "such rates" and inserting in lieu thereof "shall provide a percentage increase in the monthly rates payable under subparagraphs (A), (B), and (C) of paragraph (1)"; and

(3) by redesignating subparagraph (C) as subparagraph (B) and in that subparagraph striking out "may" both places it appears and inserting in lieu thereof "shall".

(e) EFFECTIVE DATE AND RULE OF CONSTRUCTION.—(1) The amendments made by this section shall take effect on April 1, 1993.

(2) The amendments made by this section shall not be construed to change the account from which payment is made for that portion of a payment under chapter 30 of title 38, United States Code, or chapter 106 of title 10, United States Code, which is a Montgomery GI bill rate increase and a title III benefit is paid. For the purposes of this subsection, the terms "Montgomery GI bill rate increase" and "title III benefit" have the meanings provided in section 393 of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (105 Stat. 99).

**SEC. 302. MONTGOMERY GI BILL ENTITLEMENT DATES.**

(a) CHANGE IN DATES.—Chapter 30 is amended—

(1) in section 3011(a)(1)(B), by striking out "on October 19, 1984," and all that follows through "and—" and inserting in lieu thereof "at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, continued on active duty without a break in service and—";

(2) in section 3012(a)(1)(B), by striking out "on October 19, 1984," and all that follows through "and—" and inserting in lieu thereof "at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, continued on active duty without a break in service and—"; and

(3) in section 3031(e), by striking out "October 18, 1984" and inserting in lieu thereof "June 30, 1985".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as of October 28, 1986.

**SEC. 303. EXTENSION OF PERIOD FOR COMPLETING REQUIREMENTS FOR SECONDARY SCHOOL DIPLOMA.**

(a) IN GENERAL.—(1) Section 3011 is amended—

(A) in subsection (a)(2), by inserting ", except as provided in subsection (e) of this section," after "who"; and

(B) by adding at the end thereof the following new subsection:

"(e) For the purposes of subsection (a)(2) of this section, an individual who was on active duty on August 2, 1990, and who completes the requirements of a secondary school diploma (or equivalency certificate) before the end of the 24-month period beginning on the date of the enactment of this subsection shall be considered to have completed such requirements within the individual's initial obligated period of active duty.".

(2) Section 3012 is amended—

(A) in subsection (a)(2), by inserting "except as provided in subsection (f) of this section," after "who,"; and

(B) by adding at the end thereof the following new subsection:

"(f) For the purposes of subsection (a)(2) of this section, an individual who was on active duty on August 2, 1990, and who completes the requirements of a secondary school diploma (or equivalency certificate) before the end of the 24-month period beginning on the date of the enactment of this subsection shall be considered to have completed such requirements within the individual's initial obligated period of active duty.".

(b) NOTIFICATION REQUIREMENT.—Not later than 60 days after the date of enactment of this Act, the Secretary of each of the military departments shall notify each individual who was on active duty in the Armed Forces on August 2, 1990, and who has not met the requirements of a secondary school diploma (or equivalency certificate), of the extension of the period for the completion of such requirements afforded by the amendments made by this section.

**SEC. 304. TREATMENT OF CERTAIN ACTIVE-DUTY SERVICE TOWARD ELIGIBILITY FOR EDUCATIONAL ASSISTANCE.**

(a) TREATMENT OF SERVICE.—Section 3011 (as amended by section 303) is further amended by adding at the end the following new subsection:

"(f)(1) For the purposes of this chapter, a member referred to in paragraph (2) of this subsection who serves the periods of active duty referred to in that paragraph shall be deemed to have served a continuous period of active duty whose length is the aggregate length of the periods of active duty referred to in that paragraph.

"(2) This subsection applies to a member who—

"(A) after a period of continuous active duty of not more than 12 months, is discharged or released from active duty under subclause (I) or (III) of subsection (a)(1)(A)(ii) of this section; and

"(B) after such discharge or release, reenlists or re-enters on a period of active duty.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if enacted on June 30, 1985, and apply to the payment of educational assistance for education or training pursued on or after October 1, 1993.

**SEC. 305. TREATMENT OF CERTAIN ASSIGNMENTS OF INDIVIDUALS FOR PURPOSES OF ELIGIBILITY UNDER MONTGOMERY GI BILL PROGRAM.**

(a) TREATMENT.—Section 3011 (as amended by sections 303 and 304) is further amended by adding at the end the following new subsection:

"(g) Notwithstanding section 3002(6)(A) of this title, a period during which an individual is assigned full time by the Armed Forces to a civilian institution for a course of education as described in such section 3002(6)(A) shall not be considered a break in service or a break in a continuous period of active duty of the individual for the purposes of this chapter.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted on October 19, 1984.

**SEC. 306. TREATMENT OF PURSUIT OF EDUCATION AT SERVICE ACADEMIES AND CERTAIN EDUCATIONAL INSTITUTIONS FOR PURPOSES OF ELIGIBILITY UNDER MONTGOMERY GI BILL PROGRAM.**

(a) ACTIVE DUTY.—Section 3011 (as amended by sections 303, 304, and 305) is further amended by adding at the end the following new subsection:

"(h)(1) Notwithstanding section 3002(6)(B) of this title, a member referred to in paragraph (2) of this subsection who serves the periods of active duty referred to in subparagraphs (A) and (C) of that paragraph shall be deemed to have served a continuous period of active duty whose length is the aggregate length of the periods of active duty referred to in such subparagraphs.

"(2) This subsection applies to a member who—

"(A) during an initial period of active duty, commences pursuit of a course of education—

"(i) at a service academy; or

"(ii) at a post-secondary school for the purpose of preparation for enrollment at a service academy;

"(B) fails to complete the course of education; and

"(C) re-enters on a period of active duty.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted on June 30, 1985, and apply to the payment of educational assistance for education or training pursued on or after October 1, 1993.

**SEC. 307. EDUCATIONAL ASSISTANCE FOR CERTAIN PERSONS WHOSE INITIAL PERIOD OF OBLIGATED SERVICE WAS LESS THAN THREE YEARS.**

(a) EDUCATIONAL ASSISTANCE.—Section 3015 (as amended by section 301) is amended—

(1) by redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (f), and (g), respectively;

(2) in subsection (d) (as so redesignated), by striking out "(a) and (b)" and inserting in lieu thereof "(a), (b), and (c)"; and

(3) by inserting after subsection (b) the following new subsection (c):

"(c)(1) The amount of basic educational allowance payable under this chapter to an individual referred to in paragraph (2) of this subsection is the amount determined under subsection (a) of this section.

"(2) Paragraph (1) of this subsection applies to an individual entitled to an educational assistance allowance under section 3011 of this title—

"(A) whose initial obligated period of active duty is less than three years;

"(B) who, beginning on the date of the commencement of the person's initial obligated period of such duty, serves a continuous period of active duty of not less than three years; and

"(C) who, after the completion of that continuous period of active duty, meets one of the conditions set forth in subsection (a)(3) of such section 3011.".

(b) CONFORMING AMENDMENTS.—Such section 3015 (as so amended) is further amended—

(1) in subsection (a), by striking out "and (f)" and inserting in lieu thereof "(f), and (g)"; and

(2) in subsection (b), by striking out "and (f)" and inserting in lieu thereof "(f), and (g)".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if enacted on June 30, 1985, and apply to the payment of educational assistance for education or training pursued on or after September 1, 1993.

**SEC. 308. DEATH BENEFIT.**

Section 3017(a)(1)(B) is amended by inserting before the comma "or within one year after discharge or release from active duty".

**SEC. 309. CLARIFICATION OF OPPORTUNITY TO WITHDRAW ELECTION NOT TO ENROLL IN MONTGOMERY GI BILL PROGRAM.**

(a) CLARIFICATION.—Section 3018(b)(3)(B) is amended—

(1) by striking out "or (iii)" and inserting in lieu thereof "(iii)"; and

(2) by adding before the semicolon at the end the following: ", or (iv) a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense (or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service of the Navy)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted on December 1, 1988.

**SEC. 310. USE OF EDUCATIONAL ASSISTANCE FOR SOLO FLIGHT TRAINING.**

(a) ACTIVE-DUTY PROGRAM.—Section 3032(f) is amended—

(1) in paragraph (1), by striking out "(other than tuition and fees charged for or attributable to solo flying hours)"; and

(2) by adding at the end the following new paragraph (4):

"(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.".

(b) SELECTED RESERVE PROGRAM.—Section 2131(g) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking out "(other than tuition and fees charged for or attributable to solo flying hours)"; and

(2) by adding at the end the following new paragraph (4):

"(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.".

(c) POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.—Section 3231(f) is amended—

(1) in paragraph (1), by striking out "(other than tuition and fees charged for or attributable to solo flying hours)"; and

(2) by adding at the end the following new paragraph (4):

"(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to flight training received under chapters 30 and 32 of title 38, United States Code, and chapter 106 of title 10, United States Code, after September 30, 1992.

**SEC. 311. LIMITATION ON AMOUNT OF ADVANCE PAYMENT OF WORK-STUDY ALLOWANCE.**

Section 3485(a)(1) is amended in the third sentence—

(1) by striking out "40 per centum" and inserting in lieu thereof "40 percent"; and

(2) by inserting "(but not more than an amount equal to 50 times the applicable hourly minimum wage)" before the period at the end.

**SEC. 312. REVISION OF REQUIREMENTS RELATING TO APPROVAL OF ACCREDITED COURSES.**

(a) REVISION OF REQUIREMENTS.—Subsection (a) of section 3675 is amended—

(1) by striking out "(a)" and inserting in lieu thereof "(a)(1)";

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and

(3) by striking out the matter below subparagraph (C) (as so redesignated) and inserting in lieu thereof the following new paragraphs:

"(2)(A) For the purposes of this chapter, the Secretary of Education shall publish a list of nationally recognized accrediting agencies and associations which that Secretary determines to be reliable authority as to the quality of training offered by an educational institution.

"(B) A State approving agency may utilize the accreditation of any accrediting association or agency listed pursuant to subparagraph (A) of this paragraph for approval of courses specifically accredited and approved by such accrediting association or agency.

"(3)(A) An educational institution shall submit an application for approval of courses to the appropriate State approving agency. In making application for approval, the institution (other than an elementary school or secondary school) shall transmit to the State approving agency copies of its catalog or bulletin which must be certified as true and correct in content and policy by an authorized representative of the institution.

"(B) Each catalog or bulletin transmitted by an institution under subparagraph (A) of this paragraph shall—

"(i) state with specificity the requirements of the institution with respect to graduation;

"(ii) include the information required under paragraphs (6) and (7) of section 3676(b) of this title; and

"(iii) include any attendance standards of the institution, if the institution has and enforces such standards.".

(b) APPROVAL OF NURSES AIDE COURSES.—Subsection (a)(1) of such section (as amended by subsection (a)) is further amended—

(1) in subparagraph (B), by striking out "sections 11–28 of title 20; or" and inserting in lieu thereof "the Act of February 23, 1917 (20 U.S.C. 11 et seq);";

(2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; or"; and

(3) by adding at the end the following new subparagraph (D):

"(D) such courses are approved by the State as meeting the requirement of regulations prescribed by the Secretary of Health and Human Services under sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Social Security Act (42 U.S.C. 1395i–3(f)(2)(A)(i) and 1396r(f)(2)(A)(i)).".

**SEC. 313. DISAPPROVAL OF NONACCREDITED INDEPENDENT STUDY.**

(a) DISAPPROVAL.—(1) Section 3676 is amended by adding at the end the following new subsection:

"(e) Notwithstanding any other provision of this title, a course of education shall not

be approved under this section if it is to be pursued in whole or in part by independent study.".

(2) Subchapter I of chapter 36 is amended by inserting after section 3680 the following new section:

**"§ 3680A. Disapproval of enrollment in certain courses**

"(a) The Secretary shall not approve the enrollment of an eligible veteran in—

"(1) any bartending course or personality development course;

"(2) any sales or sales management course which does not provide specialized training within a specific vocational field;

"(3) any type of course which the Secretary finds to be avocational or recreational in character (or the advertising for which the Secretary finds contains significant avocational or recreational themes) unless the veteran submits justification showing that the course will be of bona fide use in the pursuit of the veteran's present or contemplated business or occupation; or

"(4) any independent study program except an accredited independent study program leading to a standard college degree.

"(b) Except to the extent otherwise specifically provided in this title or chapter 106 of title 10, the Secretary shall not approve the enrollment of an eligible veteran in any course of flight training other than one given by an educational institution of higher learning for credit toward a standard college degree the eligible veteran is seeking.

"(c) The Secretary shall not approve the enrollment of an eligible veteran in any course to be pursued by radio or by open circuit television, except that the Secretary may approve the enrollment of an eligible veteran in a course, to be pursued in residence, leading to a standard college degree which includes, as an integral part thereof, subjects offered through open circuit television.

"(d)(1) Except as provided in paragraph (2) of this subsection, the Secretary shall not approve the enrollment of any eligible veteran, not already enrolled, in any course for any period during which the Secretary finds that more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or by the Department of Veterans Affairs under this title or under chapter 106 of title 10. The Secretary may waive the requirements of this subsection, in whole or in part, if the Secretary determines, pursuant to regulations which the Secretary shall prescribe, it to be in the interest of the eligible veteran and the Federal Government. The provisions of this subsection shall not apply to any course offered by an educational institution if the total number of veterans and persons receiving assistance under this chapter or chapter 30, 31, 32, or 35 of this title or under chapter 106 of title 10 who are enrolled in such institution equals 35 percent or less, or such other percent as the Secretary prescribes in regulations, of the total student enrollment at such institution (computed separately for the main campus and any branch or extension of such institution), except that the Secretary may apply the provisions of this subsection with respect to any course in which the Secretary has reason to believe that the enrollment of such veterans and persons may be in excess of 85 percent of the total student enrollment in such course.

"(2) Paragraph (1) of this subsection does not apply with respect to the enrollment of a veteran—

"(A) in a course offered pursuant to section 3019, 3034(a)(3), 3234, or 3241(a)(2) of this title;

"(B) in a farm cooperative training course; or

"(C) in a course described in section 3689(b)(6) of this title.".

(3)(A) Chapter 34 is amended by repealing section 3473.

(B) The table of sections at the beginning of chapter 34 is amended by striking out the item relating to section 3473.

(4) Section 3034 is amended—

(A) in subsection (a)(1), by striking out "3473,"; and

(B) in subsection (d)(1), by striking out "3473(b)" and inserting in lieu thereof "3680A(b)".

(5) Section 3241 is amended—

(A) by striking out "3473," both places it appears; and

(B) in subsection (b)(1), by striking out "3473(b)" and inserting in lieu thereof "3680A(b)".

(6) Section 2136(c)(1) of title 10, United States Code, is amended by striking out "1673(b)" and inserting in lieu thereof "3680A(b)".

(7) Section 3523(a)(4) is amended by striking out "one" and all that follows and inserting in lieu thereof "an accredited independent study program leading to a standard college degree.".

(8) The table of sections at the beginning of chapter 36 is amended by inserting after the item relating to section 3680 the following new item:

"3680A. Disapproval of enrollment in certain courses.".

(b) SAVINGS PROVISION.—The amendments made by paragraphs (2) through (6) of subsection (a) of this section shall not apply to any person receiving educational assistance for pursuit of an independent study program in which the person was enrolled on the date of enactment of this section for as long as such person is continuously thereafter so enrolled and meets the requirements of eligibility for such assistance for the pursuit of such program under title 38, United States Code, or title 10, United States Code, in effect on that date.

**SEC. 314. TREATMENT OF ADVANCE PAYMENTS OF CERTAIN ASSISTANCE TO VETERANS WHO DIE.**

(a) TREATMENT.—Section 3680(e) is amended—

(1) by striking out "(e) If" and inserting in lieu thereof "(e)(1) Subject to paragraph (2), if"; and

(2) by adding at the end the following new paragraph:

"(2) Paragraph (1) shall not apply to the recovery of an overpayment of an educational allowance or subsistence allowance advance payment to an eligible veteran or eligible person who fails to enroll in or pursue a course of education for which the payment is made if such failure is due to the death of the veteran or person.".

(b) TECHNICAL AMENDMENT.—Section 3680(e)(1) (as amended by subsection (a)) is further amended by striking out "eligible person," and inserting in lieu thereof "eligible person".

**SEC. 315. BAR OF ASSISTANCE FOR PERSONS WHOSE EDUCATION IS PAID FOR AS FEDERAL EMPLOYEE TRAINING.**

Section 3681(a) is amended by striking out "and whose full salary is being paid to such person while so training".

**SEC. 316. REVISION IN MEASUREMENT OF COURSES.**

(a) IN GENERAL.—Section 3688 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking out "thirty hours" and all that follows through "full time" and inserting in lieu thereof "22 hours per week of attendance (excluding supervised study) is required, with no more than 2½ hours of rest periods per week allowed";

(B) in paragraph (2), by striking out "twenty-five hours" and all that follows through "full time" and inserting in lieu thereof "18 hours per week net of instruction (excluding supervised study but which may include customary intervals not to exceed 10 minutes between hours of instruction) is required";

(C) in paragraph (4)—

(i) by striking out "in residence"; and

(ii) by inserting ", other than a course pursued as part of a program of education beyond the baccalaureate level," after "semester-hour basis";

(D) in paragraph (6), by striking out "3491(a)(2)" and inserting in lieu thereof "3034(a)(3), 3241(a)(2) or 3533(a)"; and

(E) by striking out paragraph (7) and all that follows to the end of the subsection and inserting in lieu thereof the following:

"(7) an institutional course not leading to a standard college degree offered by an educational institution on a standard quarter- or semester-hour basis shall be measured as full time on the same basis as provided in paragraph (4) of this subsection, but if the educational institution offering the course is not an institution of higher learning, then in no event shall such course be considered full time when it requires less than the minimum weekly hours of attendance required for full time by paragraph (1) or (2) of this subsection, as appropriate.";

(2) in subsection (b), by striking out "34" and inserting in lieu thereof "30, 32,"; and

(3) by striking out subsections (c), (d), and (e).

(b) INDEPENDENT STUDY.—Section 3532(c) is amended by striking out paragraphs (3) and (4).

(c) EFFECTIVE DATE.—The amendments made by this section apply to enrollments in courses beginning on or after July 1, 1993.

**SEC. 317. CLARIFICATION OF PERMITTED CHANGES IN PROGRAMS OF EDUCATION.**

Subsection (d) of section 3691 is amended to read as follows:

"(d) For the purposes of this section, the term 'change of program of education' shall not be deemed to include a change by a veteran or eligible person from the pursuit of one program to the pursuit of another program if—

"(1) the veteran or eligible person has successfully completed the former program;

"(2) the program leads to a vocational, educational, or professional objective in the same general field as the former program;

"(3) the former program is a prerequisite to, or generally required for, pursuit of the subsequent program; or

"(4) in the case of a change from the pursuit of a subsequent program to the pursuit of a former program, the veteran or eligible person resumes pursuit of the former program without loss of credit or standing in the former program.".

**SEC. 318. AUTHORITY OF MEMBERS OF SELECTED RESERVE TO RECEIVE TUTORIAL ASSISTANCE.**

Section 2131 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(h)(1)(A) Subject to subparagraph (B), the Secretary of Veterans Affairs shall approve individualized tutorial assistance for any person entitled to educational assistance under this chapter who—

"(i) is enrolled in and pursuing a post-secondary course of education on a half-time

or more basis at an educational institution; and

"(ii) has a deficiency in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, the program of education.

"(B) The Secretary of Veterans Affairs shall not approve individualized tutorial assistance for a person pursuing a program of education under this paragraph unless such assistance is necessary for the person to successfully complete the program of education.

"(2)(A) Subject to subparagraph (B), the Secretary concerned, through the Secretary of Veterans Affairs, shall pay to a person receiving individualized tutorial assistance pursuant to paragraph (1) a tutorial assistance allowance. The amount of the allowance payable under this paragraph may not exceed $100 for any month, nor aggregate more than $1,200. The amount of the allowance paid under this paragraph shall be in addition to the amount of educational assistance allowance payable to a person under this chapter.

"(B) A tutorial assistance allowance may not be paid to a person under this paragraph until the educational institution at which the person is enrolled certifies that—

"(i) the individualized tutorial assistance is essential to correct a deficiency of the person in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved program of education;

"(ii) the tutor chosen to perform such assistance is qualified to provide such assistance and is not the person's parent, spouse, child (whether or not married or over eighteen years of age), brother, or sister; and

"(iii) the charges for such assistance do not exceed the customary charges for such tutorial assistance.

"(3)(A) A person's period of entitlement to educational assistance under this chapter shall be charged only with respect to the amount of tutorial assistance paid to the person under this subsection in excess of $600.

"(B) A person's period of entitlement to educational assistance under this chapter shall be charged at the rate of one month for each amount of assistance paid to the individual under this section in excess of $600 that is equal to the amount of the monthly educational assistance allowance which the person is otherwise eligible to receive for full-time pursuit of an institutional course under this chapter.".

**SEC. 319. REQUIREMENT OF ATTENDANCE CERTIFICATION IN APPRENTICESHIP PROGRAM UNDER THE MONTGOMERY GI BILL SELECTED RESERVE PROGRAM.**

Section 2136(b) of title 10, United States Code, is amended by striking out "1780(c),".

**SEC. 320. TECHNICAL AMENDMENTS.**

(a) TITLE 10.—Chapter 106 of title 10, United States Code, is amended—

(1) in section 2131(c)—

(A) by striking out "section 1795 of title 38" in paragraph (2) and inserting in lieu thereof "section 3695 of title 38";

(B) by striking out "of this subparagraph, his or her" in paragraph (3)(B)(ii) and inserting in lieu thereof ", the individual's"; and

(C) by striking out "of this paragraph." in paragraph (3)(C) and inserting in lieu thereof a period;

(2) in section 2133(b)—

(A) by striking out "section 1431(f) of title 38" in paragraph (2) and inserting in lieu thereof "section 3031(f) of title 38"; and

(B) by striking out "section 1431(d) of title 38" in paragraph (3) and inserting in lieu thereof "section 3031(d) of title 38"; and

(3) in section 2136 (as amended by section 319 of this Act), by striking out "sections 1670" in subsection (b) and all that follows through "1792)" and inserting in lieu thereof "sections 3470, 3471, 3474, 3476, 3482(g), 3483, and 3485 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 3686(a), 3687, and 3692)".

## TITLE IV—VOCATIONAL REHABILITATION AND PENSION PROGRAMS

**SEC. 401. PERMANENT AUTHORITY FOR PROGRAM OF VOCATIONAL REHABILITATION FOR CERTAIN SERVICE-DISABLED VETERANS.**

(a) PROGRAM MADE PERMANENT.—(1) Subsection (a)(1) of section 1163 is amended by striking out "during the program period" and inserting in lieu thereof "after January 31, 1985,".

(2) Subsection (a)(2) of such section is amended to read as follows:

"(2) For purposes of this section, the term 'qualified veteran' means a veteran who has a service-connected disability, or service-connected disabilities, not rated as total but who has been awarded a rating of total disability by reason of inability to secure or follow a substantially gainful occupation as a result of such disability or disabilities.".

(b) COUNSELING SERVICES.—Subsection (b) of such section is amended by striking out "During the program period, the Secretary" and inserting in lieu thereof "The Secretary".

(c) NOTICE.—Subsection (c)(1) of such section is amended by striking out "during the program period" and all that follows through "(a)(2)(A)" and inserting in lieu thereof "after January 31, 1985, of a rating of total disability described in subsection (a)(2)".

(d) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

**"§ 1163. Trial work periods and vocational rehabilitation for certain veterans with total disability ratings".**

(2) The item relating to such section in the table of sections at the beginning of chapter 11 is amended to read as follows:

"1163. Trial work periods and vocational rehabilitation for certain veterans with total disability ratings.".

**SEC. 402. EXTENSION OF PROGRAM OF VOCATIONAL TRAINING FOR CERTAIN PENSION RECIPIENTS.**

(a) EXTENSION OF PROGRAM.—Subsection (a)(1) of section 1524 is amended to read as follows:

"(a)(1) In the case of a veteran under age 45 who is awarded a pension during the program period, the Secretary shall, based on information on file with the Department of Veterans Affairs, make a preliminary finding whether such veteran, with the assistance of a vocational training program under this section, has a good potential for achieving employment. If such potential is found to exist, the Secretary shall solicit from the veteran an application for vocational training under this section. If the veteran thereafter applies for such training, the Secretary shall provide the veteran with an evaluation, which may include a personal interview, to determine whether the achievement of a vocational goal is reasonably feasible.".

(b) PROGRAM EXTENSION.—Section 1524(a) is further amended—

(1) by striking out paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3) and in that paragraph striking out "December 31, 1992" and inserting in lieu thereof "December 31, 1995".

(c) CONFORMING AMENDMENTS.—(1) Section 1524(b)(4) is amended by striking out "January 31, 1992" and inserting in lieu thereof "December 31, 1995".

(2)(A) The heading of such section is amended to read as follows:

**"§ 1524. Vocational training for certain pension recipients".**

(B) The item relating to such section in the table of sections at the beginning of chapter 15 is amended to read as follows:

"1524. Vocational training for certain pension recipients.".

**SEC. 403. PERMANENT AUTHORITY FOR PROTECTION OF HEALTH-CARE ELIGIBILITY FOR CERTAIN PENSION RECIPIENTS.**

(a) PERMANENT PROTECTION.—Section 1525 is amended—

(1) in subsection (a), by striking out "during the program period" and inserting in lieu thereof "after January 31, 1985,"; and

(2) by striking out subsection (b) and inserting in lieu thereof the following:

"(b) For purposes of this section, the term 'terminated by reason of income from work or training' means terminated as a result of the veteran's receipt of earnings from activity performed for renumeration or with gain, but only if the veteran's annual income from sources other than such earnings would, taken alone, not result in the termination of the veteran's pension.".

(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

**"§ 1525. Protection of health-care eligibility".**

(2) The item relating to such section in the table of sections at the beginning of chapter 15 is amended to read as follows:

"1525. Protection of health-care eligibility.".

**SEC. 404. VOCATIONAL REHABILITATION FOR CERTAIN SERVICE-DISABLED VETERANS WITH SERIOUS EMPLOYMENT HANDICAPS.**

(a) VOCATIONAL REHABILITATION.—Section 3102 is amended to read as follows:

**"§ 3102. Basic entitlement**

"A person shall be entitled to a rehabilitation program under the terms and conditions of this chapter if—

"(1) the person—

"(A) is—

"(i) a veteran who has a service-connected disability which is, or but for the receipt of retired pay would be, compensable at a rate of 20 percent or more under chapter 11 of this title and which was incurred or aggravated in service on or after September 16, 1940; or

"(ii) hospitalized or receiving outpatient medical care, services, or treatment for a service-connected disability pending discharge from the active military, naval, or air service, and the Secretary determines that—

"(I) the hospital (or other medical facility) providing the hospitalization, care, services, or treatment is doing so under contract or agreement with the Secretary concerned, or is under the jurisdiction of the Secretary of Veterans Affairs or the Secretary concerned; and

"(II) the person is suffering from a disability which will likely be compensable at a rate of 20 percent or more under chapter 11 of this title; and

"(B) is determined by the Secretary to be in need of rehabilitation because of an employment handicap; or

"(2) the person is a veteran who—

"(A) has a service-connected disability which is, or but for the receipt of retired pay would be, compensable at a rate of 10 percent under chapter 11 of this title and which was incurred or aggravated in service on or after September 16, 1940; and

"(B) has a serious employment handicap.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1993.

**SEC. 405. INCREASE IN SUBSISTENCE ALLOWANCE FOR VETERANS PARTICIPATING IN A REHABILITATION PROGRAM.**

(a) INCREASE.—Section 3108(b) is amended by striking out the table at the end and inserting in lieu thereof the following new table:

| "Column I | Column II | Column III | Column IV | Column V |
|---|---|---|---|---|
| Type of program | No dependents | One dependent | Two dependents | More than two dependents |
| | | | | The amount in column IV, plus the following for each dependent in excess of two: |
| Institutional training: | | | | |
| Full-time | $366 | $454 | $535 | $39 |
| Three-quarter-time | 275 | 341 | 400 | 30 |
| Half-time | 184 | 228 | 268 | 20 |
| Farm cooperative, apprentice, or other on-job training: | | | | |
| Full-time | 320 | 387 | 446 | 29 |
| Extended evaluation: | | | | |
| Full-time | 366 | 454 | 535 | 39 |
| Independent living training: | | | | |
| Full-time | 366 | 454 | 535 | 39 |
| Three-quarter-time | 275 | 341 | 400 | 30 |
| Half-time | 184 | 228 | 268 | 20". |

(b) COST-OF-LIVING INCREASE.—Such section is further amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end the following new paragraphs:

"(2) With respect to the fiscal year beginning on October 1, 1994, the Secretary shall provide a percentage increase in the monthly rates payable under paragraph (1) of this subsection equal to the percentage by which the Consumer Price Index (all items, United States city average published by the Bureau of Labor Statistics) for the 12-month period ending June 30, 1994, exceeds such Consumer Price Index for the 12-month period ending June 30, 1993.

"(3) With respect to any fiscal year beginning on or after October 1, 1995, the Secretary shall continue to pay, in lieu of the rates payable under paragraph (1) of this subsection, the monthly rates payable under this subsection for the previous fiscal year and shall provide, for any such fiscal year, a percentage increase in such rates equal to the percentage by which—

"(A) the Consumer Price Index (all items, United States city average) for the 12-month period ending on June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

"(B) such Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A).".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 1993.

## TITLE V—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICES FOR VETERANS

**SEC. 501. IMPROVEMENT OF DISABLED VETERANS' OUTREACH PROGRAM.**

Section 4103A(a)(1) is amended in the first sentence by striking out "specialist for each 5,300 veterans" and all that follows through the end of the sentence and inserting in lieu thereof "specialist for each 6,900 veterans residing in such State who are either veterans of the Vietnam era, veterans who first entered on active duty as a member of the Armed Forces after May 7, 1975, or disabled veterans.".

**SEC. 502. REPEAL OF DELIMITING DATE RELATING TO TREATMENT OF VETERANS OF THE VIETNAM ERA FOR DISABLED VETERANS' OUTREACH PROGRAM PURPOSES.**

Section 4211(2) is amended—

(1) in subparagraph (A), by striking out "(A) Subject to subparagraph (B) of this paragraph, the term" and inserting in lieu thereof "The term"; and

(2) by striking out subparagraph (B).

**SEC. 503. DISABLED VETERANS' OUTREACH PROGRAM PRIORITIES.**

Subparagraph (A) of section 4103A(b)(1) is amended to read as follows:

"(A) Services to special disabled veterans.".

**SEC. 504. REPEAL OF REQUIREMENT THAT TO BE REPRESENTED ON ADVISORY COMMITTEE ON VETERANS EMPLOYMENT AND TRAINING A VETERANS ORGANIZATION MUST HAVE A FEDERAL CHARTER.**

Section 4110(c)(1)(A) is amended by striking out "are chartered by Federal law and".

**SEC. 505. EXPANSION AND EXTENSION OF VETERANS READJUSTMENT APPOINTMENTS WITH THE FEDERAL GOVERNMENT.**

(a) EXPANSION TO INCLUDE ALL VIETNAM ERA VETERANS.—Section 4214(b)(2)(A) is amended to read as follows:

"(A) a veteran of the Vietnam era; and".

(b) EXTENSION WITH FEDERAL GOVERNMENT.—Section 4214(b)(3) of title 38, United States Code, is amended—

(1) in subparagraph (A)(ii), by striking out "December 31, 1993" and inserting in lieu thereof "December 31, 1995"; and

(2) in subparagraph (B)(ii), by striking out "December 18" and inserting in lieu thereof "December 31".

**SEC. 506. REDESIGNATION OF SECTIONS OF CHAPTER 43.**

(a) REDESIGNATION OF SECTIONS TO CONFORM TO CHAPTER NUMBER.—Sections 2021, 2022, 2023, 2024, 2025, 2026, and 2027 are redesignated as sections 4301, 4302, 4303, 4304, 4305, 4306, and 4307, respectively.

(b) TABLES OF SECTIONS.—The table of sections at the beginning of chapter 43 is revised so as to conform the section reference in the table to the redesignations made by subsection (a).

(c) CROSS REFERENCES.—(1) Section 4322 (as redesignated by subsection (a)) is amended—

(A) by striking out "2021(a)" and inserting in lieu thereof "4321(a)"; and

(B) by striking out "2024" and inserting in lieu thereof "4324".

(2) Section 4323 (as redesignated by subsection (a)) is amended by striking out "2021(a)" each place it appears and inserting in lieu thereof "4321(a)".

(3) Section 4324 (as redesignated by subsection (a)) is amended by striking out "2021(a)" each place it appears and inserting in lieu thereof "4321(a)".

(4) Section 1204(a)(1) of title 5, United States Code, is amended by striking out "2023" and inserting in lieu thereof "4323".

(5) Section 706(c) of title 10, United States Code, is amended by striking out "2021" and inserting in lieu thereof "4321".

(6) Any reference in a provision of law to a section redesignated by subsection (a), other than a provision specified in paragraphs (1) through (5) of this subsection, shall be deemed to refer to the section as so redesignated.

(d) COORDINATION WITH OTHER ACT.—If the Uniformed Services Employment and Reemployment Rights Act of 1992 is enacted before this Act, this section, including the amendments made by this section, shall not take effect. If the Uniformed Services Employment and Reemployment Rights Act of 1992 is enacted after this Act, this section, and the amendments made by this section, shall be treated for all purposes as not having been enacted, and the provisions of title 38, United States Code, shall read as if those amendments had not been made.

## TITLE VI—OTHER VETERANS' PROGRAMS

**SEC. 601. EXTENSION OF LIMITATION ON PENSION FOR VETERANS RECEIVING MEDICAID-COVERED NURSING HOME CARE; APPLICABILITY TO SURVIVING SPOUSES; AND FACILITY EXPENSES.**

(a) REDUCTION IN PENSION.—Section 5503(f) is amended—

(1) by redesignating paragraphs (5) and (6) as paragraph (6) and (7), respectively; and

(2) by inserting after paragraph (4) the following new paragraph (5):

"(5) The provisions of this subsection shall apply with respect to a surviving spouse having no child in the same manner as they apply to a veteran having neither spouse nor child.".

(b) EXTENSION.—Such section is further amended by striking out "September 30, 1992" in paragraph (7) (as redesignated by subsection (a)(1)) and inserting in lieu thereof "September 30, 1997".

(c) FACILITY EXPENSES.—Section 5503(a)(1)(B) is amended by adding at the end thereof the following: "Effective through September 30, 1997, any amount in excess of $90 per month to which the veteran would be entitled but for the application of the preceding sentence shall be deposited in a revolving fund at the Department medical facility which furnished the veteran nursing care, and such amount shall be available for obligation without fiscal year limitation to help defray operating expenses of that facility.".

(d) EFFECTIVE DATES.—The amendments made by subsection (a) shall take effect on October 1, 1992, and shall apply with respect to months after September 1992. The amendment made by subsection (c) shall take effect on November 1, 1992, and shall apply with respect to months after October 1992.

**SEC. 602. EXTENSION OF AUTHORITY TO CARRY OUT INCOME VERIFICATION.**

(a) TITLE 38.—Section 5317(g) is amended by striking out "September 30, 1992" and inserting in lieu thereof "September 30, 1997".

(b) INTERNAL REVENUE CODE OF 1986.—(1) Subparagraph (D) of section 6103(l)(7) of the Internal Revenue Code of 1986 is amended by striking out "September 30, 1992" in the last sentence and inserting in lieu thereof "September 30, 1997".

(2) Clause (viii) of such subparagraph is amended—

(A) in subclause (II), by striking out "section 415" and inserting in lieu thereof "section 1315"; and

(B) in subclause (III), by striking out "section 610(a)(1)(I), 610(a)(2), 610(b), and 612(a)(2)(B)" and inserting in lieu thereof "sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B)".

**SEC. 603. ACCESS TO INFORMATION NECESSARY FOR THE ADMINISTRATION OF CERTAIN VETERAN BENEFITS LAWS.**

(a) ACCESS.—Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by adding at the end the following new subsection:

"(p)(1) Nothing in this title shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of Veterans Affairs where the disclosure of such information is necessary to, and such information is used solely for the purposes of, the proper administration of benefits programs under laws administered by the Secretary.

"(2) Notwithstanding any other provision of law, any request authorized by paragraph (1) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing the customer's name and address to the Department of Veterans Affairs and shall be barred from redisclosure by the financial institution or its agents.".

(b) PRIVACY SAFEGUARDS.—(1) Chapter 53 is amended by adding at the end the following new section:

**"§5319. Limitations on access to financial records**

"(a) The Secretary may make a request referred to in section 1113(p) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(p)) only if the Secretary determines that the requested information—

"(1) is necessary in order for the Secretary to administer the provisions of law referred to in that section; and

"(2) cannot be secured by a reasonable search of records and information of the Department.

"(b) The Secretary shall include a certification of the determinations referred to in subsection (a) in each request presented to a financial institution.

"(c) Information disclosed pursuant to a request referred to in subsection (a) may be used solely for the purpose of the administration of benefits programs under laws administered by the Secretary if, except for the exemption in subsection (a), the disclosure of that information would otherwise be prohibited by any provision of the Right to Financial Privacy Act of 1978.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"5319. Limitations on access to financial records.".

**SEC. 604. EXTENSION OF EXPIRING COST-RECOVERY AUTHORITY.**

Section 1729(a)(2)(E) is amended by striking out "October 1, 1993" and inserting in lieu thereof "August 1, 1994".

**SEC. 605. EXCLUSION FOR LOW-INCOME VETERANS FROM MEDICATION COPAYMENT REQUIREMENT.**

(a) EXCLUSION.—Section 1722A(a) is amended—

(1) by striking out "(other than" and all that follows through "or more"; and

(2) by adding at the the end the following:

"(3) Paragraph (1) does not apply—

"(A) to a veteran with a service-connected disability rated 50 percent or more; or

"(B) to a veteran whose annual income (as determined under section 1503 of this title) does not exceed the maximum annual rate of pension which would be payable to such veteran if such veteran were eligible for pension under section 1521 of this title.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to medication furnished after the date of the enactment of this Act.

**SEC. 606. EXTENSION OF COPAYMENT PROGRAMS.**

(a) MEDICATION COPAYMENT REQUIREMENT.—Section 1722A(c) is amended by adding at the end the following new sentence: "Notwithstanding the preceding sentence, the provisions of subsection (a) shall be in effect through September 30, 1997.".

(b) HEALTH-CARE CATEGORIES AND COPAYMENTS.—Section 8013(e) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) is amended by adding at the end the following new sentence: "Notwithstanding the preceding sentence, the amendments made by this section shall be in effect through September 30, 1997.".

In lieu of the matter in the amendment of the Senate numbered 2, insert: "Page 12, strike out line 19 and all that follows over to and including line 5 on page 13.".

In lieu of the amendment of the Senate to the title of the bill, amend the title so as to read: "An Act to amend title 38, United States Code, to reform the formula for payment of dependency and indemnity compensation to survivors of veterans dying from service-connected causes, to increase the rate of payments for benefits under the Montgomery GI Bill and make other improvements in veterans education programs, and to make other improvements in veterans life insurance, job training, and vocational rehabilitation programs, and for other purposes.".

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs I am very pleased that the Senate is about to take final action on landmark legislation—the proposed Veterans' Benefits Act of 1992—to bring greater fairness to the Department of Veterans Affairs' system of survivors' compensation and to improve VA's program of educational assistance and vocational rehabilitation and training.

The pending measure, H.R. 5008 as amended by a House amendment to the Senate amendment to the bill, represents a compromise agreement that the Veterans' Affairs Committees of the House of Representatives and the Senate have reached on bills relating to survivors' benefits and veterans' educational assistance, rehabilitation, and employment programs.

This compromise agreement would, as would the original House and Senate versions in somewhat different ways, revise VA's system of dependency and indemnity compensation [DIC] benefits for the survivors of those who die from service-connected conditions, require VA to conduct a study to determine the adequacy of veterans' survivors' benefits, and increase certain VA insurance benefits.

The compromise agreement also would provide much-needed cost-of-living adjustments in Montgomery GI bill [MGIB] benefits and in the subsistence allowance paid to service-disabled veterans participating in vocational rehabilitation, provide for automatically indexed COLA's in both MGIB benefits and the vocational rehabilitation subsistence allowance in the future, make other improvements in VA educational and vocational assistance programs, and extend or expand three cost-saving provisions from the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, to offset completely the costs of the benefits improvements contained in this bill.

Mr. President, the House passed this compromise bill on October 3, 1992, and I urge the Senate to approve this measure and thus send it to the White House for signature.

Because I will submit for the RECORD an explanatory statement prepared by the two Veterans' Affairs Committees that describes in detail the provisions in this measure, at this point, I will only briefly summarize the provisions of the compromise agreement and then discuss certain provisions in the bill.

SUMMARY OF PROVISIONS

TITLE I—REFORM OF DEPENDENCY AND INDEMNITY COMPENSATION PROGRAM

Title I of the compromise agreement contains provisions that would:

First, provide surviving spouses with a basic monthly rate of dependency and indemnity compensation [DIC] of $750.

Second, provide additional monthly DIC of $165 to survivors of veterans who were rated 100-percent disabled while married to the surviving spouse for a continuous period of at least 8 years immediately preceding the veteran's death. A 100-percent rating based on "individual unemployability" would qual-

ify the same as a rating based on physical disability.

Third, exempt from section 8004 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508 [OBRA], which eliminated reinstated entitlement for survivors' benefits for formerly remarried surviving spouses whose disqualifying marriage terminated after November 1, 1990, those formerly remarried surviving spouses who had initiated legal proceedings to terminate the remarriage prior to the effective date of section 8004.

Fourth, require the Comptroller General of the United States, as head of the General Accounting Office, to submit to Committees on Veterans' Affairs by April 1, 1994, a report on the most appropriate combination of survivors' benefits. GAO would be required to determine the adequacy of current and anticipated benefits to meet the financial, healthcare, educational, and other needs of survivors of those who die on active duty or as a result of a service-connected disability.

TITLE II—LIFE INSURANCE PROGRAMS

Title II of the compromise agreement contains provisions that would:

First, increase from $100,000 to $200,000 the maximum amount of Servicemen's Group Life Insurance [SGLI], which service members and certain members of the Reserves can purchase at low monthly premiums.

Second, increase from $100,000 to $200,000 the maximum amount of Veterans' Group Life Insurance [VGLI] available to eligible veterans and allow VA to offer VGLI on a renewable, 5-year term basis, rather than the single 5-year term allowed under current law, convertible to a commercial insurance policy upon termination of a VGLI term.

Third, provide eligibility for up to $20,000 in additional Service Disabled Veterans' Insurance [SDVI] for totally disabled veterans who qualify for a waiver of premium. The veteran must apply for the additional coverage within the 1-year period beginning on the month after the committee bill is enacted or within 1 year after VA notified or notifies the veteran that he or she is eligible for a waiver of premiums, whichever is later. The veteran would have to pay the regular premium for the additional amount of SDVI.

Fourth, increase the maximum Veterans' Mortgage Life Insurance from $40,000 to $90,000.

TITLE III—EDUCATIONAL ASSISTANCE PROGRAMS

Title III of the compromise agressment contains provisions that would:

First, increase the MGIB monthly full-time-study educational benefits to: One, $400 for those serving on active duty for 3 years or more; two, $325 for those serving 2 years on active duty, and three, $190 for reservists, with rates for part-time study increased proportionally, and provide for indexing to the Consumer Price Index [CPI] future MGIB increases.

Second, restore, effective October 28, 1986, MGIB eligibility for an individual who, due to interrupted service, was not on active duty on October 19, 1984, but who had active duty service sometime during the period beginning on October 19, 1984, and ending on July 1, 1985, and continued on active duty without a break for the period required to establish entitlement under the MGIB.

Third, restore MGIB eligibility to an individual who was on active duty on August 2, 1990, and did not complete the requirements of a secondary school diploma—or equivalency certificate—before leaving active duty, but who completes those requirements within 24 months after the date of enactment.

Fourth, provide that individuals who are discharged by reason of disability, hardship, or reduction-in-force after less than 12 months of active duty and later re-enter on active duty would be deemed to have served a continuous period of active duty equal to the total of the two periods of active duty.

Fifth, provide that a period during which an MGIB participant is assigned full-time by the Armed Forces to a civilian institution for a course of education would not be considered a break in the continuity of the individual's active-duty service for purposes of MGIB eligibility.

Sixth, provide, in the case of MGIB participants who leave their initial period of active-duty service to enroll in a service academy or service-academy preparatory school, drop out of the academy or preparatory school, and reenter active duty, that they would be able to merge their second active-duty period with the initial period so that the aggregate length of the two periods will be considered a continuous period of service for purposes of MGIB eligibility.

Seventh, provide that an individual who was initially obligated to serve only 2 years of active duty but actually serves a continuous period of 3 years on active duty is eligible for the same level of MGIB benefits as one who performs an initial obligated period of active-duty service of 3 years.

Eighth, extend eligibility for the death benefit—an amount equal to the amount by which a participant's pay is reduced for purposes of MGIB participation minus the total of the amount of educational assistance that was paid to the individual—to the survivors of an MGIB participant who dies of a service-connected cause within one year of discharge from active duty.

Ninth, provide MGIB entitlement to individuals who enrolled in the program during the "open period" between December 1, 1988, and June 30, 1989, and who separated from the service early due to certain physical or mental conditions.

Tenth, permit active-duty participants in the MGIB to receive educational allowances and advance payments of allowances at the same rate as veterans.

Eleventh, authorize, for the last two years of the current 4-year program under which veterans may use VA educational benefits for flight training, the use of those benefits for solo flying hours up to the minimum required for the rating or certification being pursued.

Twelfth, limit advance payments to work-study participants to the amount they would be paid for the first 50 hours of each work-study contract.

Thirteenth, for VA purposes: repeal to requirement that an elementary or secondary school furnish a copy of a catalog in applying for approval of an accredited course; add a requirement that schools that have and enforce standards of attendance submit those standards for approval, and allow nurses' aide courses to be approved for VA educational assistance when such courses have been approved by a State under regulations established by the Secretary of Health and Human Services.

Fourteenth, prohibit the use of VA educational benefits for nonaccredited independent study.

Fifteenth, provide that the termination of an educational assistance allowance by reason of the death of the payee of an advance payment is effective as of the end of the period for which the advance payment was made.

Sixteenth, bar payment of VA educational assistance for a course paid for under the Government Employees Training Act.

Seventeenth, replace the statutory measurement system used in evaluating courses at an educational institution for the payment of VA education benefits with the institution's measurement system.

Eighteenth, provide that the limitations on changes of programs by students using VA educational assistance do not apply to a student beginning a new program of education after successfully completing another program; a student not changing his or her vocational objective, and a student transferring back to a former program without loss of credit for that program.

Nineteenth, permit reservists to receive tutorial assistance under the MGIB.

Twentieth, provide VA with administrative authority to withhold the training assistance allowance of a participant in the MGIB Selected Reserve program pursuing a program of apprenticeship or other on-job training until VA has received a certification of attendance from the person and the training establishment.

TITLE IV—VOCATIONAL REHABILITATION AND PENSION PROGRAMS

Title IV of the compromise agreement contains provisions that would:

First, make permanent the programs of 12-month trial-work periods and vocational rehabilitation outreach for service-disabled veterans who have total disability ratings based on individual unemployability.

Second, amend section 1524 of title 38 to extend the temporary vocational training program for VA pension recipients through December 31, 1995; eliminate the limitation on the number of program participants who may be evaluated annually, and amend the program for veterans under age 45 who are awarded pension during the program period so as to first, require the Secretary, based on information on file with VA, to make a preliminary finding whether the veteran, with the assistance of a VA vocational training program, has a good potential for achieving employment, second, if that potential is found to exist, require the Secretary to solicit from the veteran an application for VA vocational training, and third, if the veteran applies for training, require the Secretary to provide and evaluation to determine whether the achievement of a vocational goal is reasonably feasible.

Third, maintain the 3-year protection of VA health-care eligibility for veteran pension recipients participating in a program of vocational training who lose their pension due to employment income.

Fourth, provide VA rehabilitation program entitlement to a veteran who has a 10-percent service-connected disability and a serious employment handicap.

Fifth, increase by 10 percent the subsistence allowance for veterans with service-connected disabilities who participate in a VA vocational rehabilitation program, and provide for indexing to the CPI future increases in the subsistence allowance.

TITLE V—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICES FOR VETERANS

Title V of the compromise agreement contains provisions that would:

First, expand the formula for the appointment of disabled veterans outreach program specialists to include, in addition to Vietnam-era veterans and disabled veterans, veterans who first entered on active duty after the end of the Vietnam era, May 7, 1975.

Second, repeal the limitation on veterans employment and job-training programs under chapters 41 and 42 of title 38 that provides that, after December 31, 1994, no vet-

eran would be eligible for those programs on the grounds that his or her service occurred during the Vietnam era.

Third, establish as the first priority for disabled veteran outreach program specialists' services to "special disabled veterans" as defined in section 4211(1) of title 38 to include those who have service-connected disabilities that are rated at either 30 percent or more, or in the case of those who have been determined to have a service-employment handicap for purposes of chapter 31, at 10 or 20 percent, or were discharged or released from active duty because of a service-connected disability.

Fourth, strike the requirement that veterans organizations represented on the Advisory Committee on Veterans Employment and Training be chartered.

Fifth, reinstate the Veterans' Readjustment Appointments [VRA] authority for all veterans of the Vietnam era until December 31, 1995, or 10 years after the veterans' date of last discharge or release from active duty, whichever is later.

Sixth, renumber the sections of chapter 43 of title 38, United States Code, to conform with the renumbering scheme required in Public Laws 102-40 and 102-83.

TITLE VI—OTHER VETERANS' PROGRAMS

Title VI of the compromise agreement contains provisions that would:

First, extend from September 30, 1992, to September 30, 1997, the $90-a-month limit on pension payments for Medicaid-eligible veterans receiving VA needs-based pension who have no dependents and who are in nursing homes participating in Medicaid.

Second, effective October 1, 1992, through September 30, 1997, expand the nursing-home pension-reduction provision to cover similarly situated veterans' survivors who receive VA pensions.

Third, effective through September 30, 1997, require that the amount of the reduction, under current section 5503(a)(1)(B) of title 38, to $90 a month of pension paid to a veteran or veteran's survivor in a VA nursing home be deposited in a revolving fund at the VA medical facility that furnished nursing care to the veteran, to help defray the operating expenses of that facility.

Fourth, extend through September 30, 1997, the requirement that VA verify eligibility for VA needs-based benefits using income data from the Social Security Administration and the Internal Revenue Service.

Fifth, amend the Right to Financial Privacy Act to authorize VA to obtain from financial institutions the current mailing addresses of certain VA beneficiaries whose benefits are deposited by direct deposit, provided that the information is necessary to administer veterans' benefits programs and cannot be obtained by a reasonable search of VA records. Information disclosed by the financial institution under this provision could be used solely for the purpose of administering veterans' benefits programs.

Sixth, amend title 38 to require the Secretary to determine and certify that the information is necessary to administer veterans' benefits programs and cannot be obtained from VA records.

Seventh, extend from September 30, 1993, to July 31, 1994, VA's authority to recover from third parties, under a veteran's health-plan contract, the cost of medical care provided by VA for the treatment of a non-service-connected disability of a service-disabled veteran.

Eighth, extend from September 30, 1992, to September 30, 1997, the requirement that VA collect a copayment of $2 for each 30-day supply of medication for outpatient treatment of non-service-connected conditions.

Ninth, exempt from the $2 medication copayment requirement veterans whose income, if taken alone, would qualify them for VA needs-based pension.

Tenth, extend from September 30, 1992, to September 30, 1997, amendments to chapter 17 of title 38 made by the Omnibus Budget Reconciliation Act of 1990 that established the current "mandatory" and "discretionary" categories of veterans eligible for VA care and services and the copayments and deductibles certain veterans are required to pay for certain types of care.

DEPENDENCY AND INDEMNITY COMPENSATION REFORM

Mr. President, as I discussed in my statement when the Senate passed S. 2323 on September 22, 1992, which appears in the RECORD beginning on page S14662, VA pays dependency and indemnity compensation [DIC] to the survivors of servicemembers or veterans who died from a disease or injury incurred or aggravated during military service. Survivors eligible for DIC include surviving spouses, unmarried children under the age of 18, certain helpless children age 18 or older, and children between the ages of 18 and 23 who are enrolled in school. As of May 1992, VA was paying DIC benefits to, or on behalf of, 275,857 surviving spouses, and 37,628 children.

The basic purpose of the compromise agreement is to reform the DIC Program for surviving spouses and dependent children. The bill we are considering today represents the product of over a year of hard work on the very difficult issues involved in DIC reform. I have listened and responded to the concerns of all those involved with the DIC Program, including the veterans organizations, VA, other members of the Veterans' Affairs Committees, organizations representing survivors of those who died on active duty, and military organizations. I particularly note the contributions of the veterans organizations, who presented to our committee a historic compromise proposal for DIC reform that challenged us to address the problems with the current system and guided us in crafting this bill.

I am convinced that the compromise represents a reasonable, fair, and long-overdue reform of the DIC system and I am especially pleased that this compromise achieves my fundamental goal for DIC reform: that compensation provided to a surviving spouse of a veteran who was severely disabled for an extended period recognize the lasting financial impact of the deceased veteran's disability. The disability add-on of $165 per month provided under the compromise agreement is close to the maximum level that I proposed in the Senate bill, $200 per month, as compared to the much smaller disability add-on that the House bill would have provided, $50 per month. With the higher basic monthly rate we have been able to provide in the compromise agreement, $750, the maximum total DIC rate for the surviving spouse of a long-term, totally disabled veteran under the compromise agreement—$915—is very close to the $925 maximum rate that the Senate bill would have provided.

Mr. President, the compromise agreement would protect current DIC beneficiaries by prohibiting any reduction in benefits as a result of DIC reform. Moreover, current DIC beneficiaries who would receive higher payments under the new DIC system automatically will receive the increased benefits.

Mr. President, I want to make it clear that I and others on the two Committees intend that Congress, consistent with past practice, will provide annual cost-of-living adjustments [COLAs] in the base and add-on rates and, after the phased in increases are completed in fiscal year 1995, in the additional compensation for dependent children. We also intend that Congress will continue to provide COLA's for current DIC beneficiaries who continue to receive DIC under the existing program. I note that the Congressional Budget Office assumed these COLA's in its cost estimate of this legislation.

Mr. President, I am very disappointed that the compromise agreement does not contain a provision that was in the Senate bill that would have provided an additional amount of DIC based on the length of the deceased veteran's service. The House was adamantly opposed to this provision and, in order to reach an agreement with the House on DIC reform, we in the Senate had no choice but to yield on this point and I did so most reluctantly.

INSURANCE PROVISIONS

Mr. President, I am pleased that the compromise agreement contains four provisions that would improve VA insurance benefits. I have been working on two of these provisions, which increase the amounts of Service Disabled Veterans Life Insurance [SDVI] and Veterans' Mortgage Life Insurance [VMLI], for over 2 years. I first proposed increasing SDVI and VMLI in S. 2100 of the 101st Congress, which was reported by our Committee on July 19, 1990, but not considered by the full Senate.

Adequate life insurance allows an individual to provide for his or her survivors and is a vitally important part of any person's estate. Disabled veterans often are unable to obtain commercial insurance. As a result, life insurance provided through the VA administered programs is often the only reasonably priced coverage available to these individuals.

The provisions in the compromise agreement relating to life insurance programs would increase insurance coverage available to servicemembers and disabled veterans, and are an im-

portant component in the overall effort of this legislation to improve the entire package of financial benefits for veterans' survivors so as to help them to maintain an adequate standard of living.

EDUCATIONAL ASSISTANCE PROGRAMS

Mr. President, I am very pleased that title III of the compromise agreement contains a number of provisions that would revise and improve educational assistance for veterans and members of the Armed Forces, including increases in veterans' educational and vocational rehabilitation allowances.

Mr. President, the compromise agreement would increase the monthly full-time-study benefits under the MGIB to $400 for those serving on active duty for 3 years or more, $325 for those serving 2 years on active duty, and $190 for reservists, with rates for part-time study increased proportionally. The compromise agreement would also provide automatic annual MGIB COLA's liked to the Consumer Price Index in fiscal year 1994 and later years.

Mr. President, as temporarily increased by title III-C of Public Law 102-25, the Persian Gulf War Veterans' Benefits Act of 1991, the levels of MGIB educational assistance for full-time study currently are $350 per month for active-duty participants who serve an initial obligated period of active duty of 3 years or more, $275 per month for those who serve an initial obligated period of 2 years, and $170 per month for participants in the selected Reserve program. In all cases, proportionally reduced amounts are provided for part-time study. Under current law, for fiscal year 1994, the Secretary of Veterans Affairs must choose one of three options with respect to MGIB rates: First, continue the current rates; second, provide for a COLA in those rates; or third, allow the rates to revert to their original levels—before the enactment of Public Law 102-25—of $300 per month for participants obligated for 3 years or more, $250 per month for those who are obligated for 2 years, and $140 per month for participants in the selected Reserve program. For each following fiscal year, the Secretary is authorized to continue to pay the monthly rates that were paid during the previous fiscal year or provide a COLA.

Mr. President, it is difficult to quantify the importance of an education, especially for those members of our Armed Forces and selected Reserves who have foregone completing their formal education in order to serve their country and will be returning to civilian life in the near future. However, we are better able to quantify the costs of education and how the rising cost of education has chipped away at the value of MGIB educational assistance.

Since the original MGIB payment rates were established in 1984, inflation as measured by the CPI has been 31 percent and the cost of education at a 4-year public college has increased by 42.5 percent. Last year's 16.7-percent increase in MGIB benefits, enacted in the Persian Gulf War Veterans' Benefits Act of 1991, marked the only rate increase in the program's history. It fell far short of the increase in the cost of education since 1984 mainly because of the limits that were inherent in the special nature of the funding of that legislation.

Mr. President, the Committees on Veterans' Affairs desire to bring the MGIB benefits more closely abreast of the rising costs of higher education by raising the basic monthly educational allowance for active duty and Reserve participants. Thus, effective April 1, 1993, section 301 of the compromise agreement would provide an increase of approximately 15 percent in the MGIB rates. Also, as I proposed in the Senate and the House had earlier proposed, effective October 1, 1993, section 301 of the compromise agreement would provide automatic COLA's in MGIB rates based on the increase in the CPI.

Veterans and active-duty participants have watched the value of their educational benefits slowly dwindle as prices rose and their MGIB rates stayed the same. The compromise agreement would ensure that the MGIB rates keep pace with the times and that our veterans and active-duty participants receive the educational benefits they deserve.

VOCATIONAL REHABILITATION AND PENSION PROGRAMS

Mr. President, title IV of the compromise agreement includes several provisions to improve the VA program of vocational rehabilitation for service-disabled veterans. These provisions are designed to make it possible for more service-disabled veterans to use their existing talents and develop new ones to support themselves and their families. These improvements are a sound investment in enabling service-disabled veterans to return to work. We should encourage and support their efforts to do so. Productive work gives disabled veterans a renewed sense of self-worth and purpose as well as helping the government reduce expenditures over the long-term.

Current law provides vocational-rehabilitation entitlement to a veteran who has a service-connected disability that is compensable at a rate of 20 percent or more and is determined by the Secretary to be in need of rehabilitation because of an employment handicap. The Omnibus Budget Reconciliation Act of 1990 increased the requisite disability rating from 10 percent to 20 percent.

Mr. President, many veterans with service-connected disabilities rated at 10 percent have a serious employment handicap resulting either from their service-connected disabilities alone or from those disabilities in conjunction with non-service-connected disabilities.

Thus, I am pleased that the compromise agreement includes my proposal to reopen the vocational rehabilitation program for these veterans who, by reason of having a serious employment handicap, are clearly in need of vocational rehabilitation services to improve their ability to return to the work force.

Mr. President, the subsistence allowance provided to veterans pursuing a rehabilitation program was last increased in January, 1990, under Public Law 101-237. That increase, of 7.5 percent, did not adequately cover the nearly 20-percent increase in the CPI that had occurred since the previous adjustment 6 years earlier in October 1984. The CPI has increased another 9.8 percent in fiscal years 1990 and 1991.

A recent General Accounting Office study of the effectiveness of the VA vocational rehabilitation and counseling program [GAO/HRD-92-100, September 1992] revealed that 71 percent of all applicants for vocational rehabilitation drop out of the program before obtaining suitable employment. The study indicated that one reason for attrition is that the subsistence allowance is too low to provide a decent living for program participants. At its current levels, the subsistence allowance has lost approximately 22 percent of its value due to the increase in the CPI since 1984.

Mr. President, the compromise agreement would, effective October 1, 1993, increase the subsistence-allowance rates by 10 percent in order to bring its value more in line with the rising cost of living. While a 10-percent increase falls short of the full measure of the inflationary rise, this increase would be useful in helping service-disabled veterans maintain a reasonable standard of living while pursuing programs of rehabilitation.

In order to prevent further slippage of the value of this allowance in future years, the compromise agreement contains my proposal to index future increases to changes in the CPI. Service-disabled veterans should be encouraged to participate in vocational rehabilitation and training to find suitable employment, not discouraged by having their subsistence allowance fall farther and farther behind the cost of living.

JOB COUNSELING, TRAINING, AND PLACEMENT SERVICES FOR VETERANS

Mr. President, the compromise agreement also includes, in title V, several provisions to improve job counseling, training, and placement services for veterans, and I will highlight two of these provisions.

The compromise agreement includes my proposal to update and strengthen the Disabled Veterans' Outreach Program [DVOP] administered by the Department of Labor to provide job counseling, training, and placement serv-

ices for veterans. Most importantly, it would stabilize the staffing of this program, which in recent years has existed in the shadow of a sunset provision that threatened to reduce its employment base to an unworkable level.

Currently, section 4103A of title 38 provides for the appointment of one DVOP specialist for each 5,500 veterans of the Vietnam era and disabled veterans residing in each State. This formula now requires 1,885 DVOP specialists. However, section 4211 of title 38, provides, that for the purpose of the DVOP formula, no veterans may be considered to be veterans of the Vietnam era after December 31, 1994, which would cause the number of DVOPs in the statutory formula to drop to 433 after that date. Last year, when I proposed to extend the sunset provision regarding the definition of veterans of the Vietnam era from 1991 to 1994, in what became Public Law 102-16, I promised to review the concept of the formula. The proposed changes in the compromise agreement reflect this review.

Thus, Mr. President, the compromise agreement would delete the sunset provision, thereby allowing Vietnam-era veterans to be a permanent part of the DVOP formula. This measure would also recognize that veterans who entered active duty after the Vietnam era also need and are eligible for the employment assistance provided by DVOP's and should be considered in calculating available DVOP staffing. As a beginning point, I was interested in approximating the size of the current DVOP force, with a number of DVOP specialists added in recognition of their increased involvement in the Transition Assistance Program, administered under section 1144 of title 10, United States Code. I also wanted to use a formula rather than a fixed figure in order to allow for program growth to meet the projected new workload expected to result from the military downsizing. Additionally, I believe the formula should continue to distribute DVOP specialists to States in proportion to the States' veteran employment workloads. The result is a revised formula that would provide for the appointment of one DVOP specialist for each 6,900 veterans residing in a State who are either veterans of the Vietnam era, veterans who first entered on active duty as a member of the Armed Forces after May 7, 1975, or who are disabled veterans. This formula would provide for approximately 1906 DVOP specialists as compared to the 1885 under the current formula for fiscal year 1993.

Mr. President, I have long valued very highly the services being provided for veterans by the State Employment Security Agencies. This legislation is designed to eliminate the uncertainty that has too long plagued the DVOP program and to provide a stronger, more realistically sized work force.

Mr. President, I am pleased that the compromise agreement includes a provision that would reinstate Veterans' Readjustment Appointment [VRA] eligibility for certain Vietnam-era veterans who did not have a full 10-year opportunity to use this program. Under section 505, all Vietnam-era veterans qualifying for the VRA program would be eligible for appointments through December 31, 1995, or 10 years after the veteran's date of last discharge or release from active duty, whichever is later.

All veterans of the Vietnam era were eligible for VRA's—limited noncompetitive appointments that can lead to full civil service status—in the Federal Government through December 31, 1989, at which time the statutory authority for these appointments expired. Public Law 101-237, the Veterans' Benefits Amendments of 1989, extended the VRA authority to December 31, 1993, but appointment was limited to Vietnam-era veterans who were service-disabled or had received a campaign badge, which means they served in the Southeast Asia theater of operations, and to post-Vietnam-era veterans. Post-Vietnam-era veterans included only those who first entered on active duty after May 7, 1975.

Public Law 102-16 made the VRA authority permanent but limited eligibility for Vietnam-era veterans to those covered by Public Law 101-237. For Vietnam-era veterans who received a campaign badge, Public Law 102-16 also extended their VRA eligibility to 10 years after the date of their last discharge or release from active duty, or December 31, 1993, whichever is later.

Thus, since January 1, 1990, Vietnam-era veterans who are not service disabled nor authorized a campaign badge have not been eligible for a VRA appointment, even those who are leaving the service at the same time as post-Vietnam-era veterans who have such eligibility.

Mr. President, we all know that the Vietnam era has been over for many years and recognize that most of those who served their country during that period and who were discharged shortly thereafter have long ago successfully made the transition into the civilian workplace. For them, readjustment is not an issue. However, for some Vietnam-era veterans, including those who remained on active duty after the Vietnam era or who joined the Selected Reserves and were activated during Desert Storm, employment may very well be a major concern in today's economy. This population of Vietnam-era veterans—those who recently have been released or who are scheduled to soon be released under the Department of Defense's down-sizing plans, but who are not eligible for a VRA appointment—would be assisted by this provision.

The compromise agreement would provide VRA eligibility to all Vietnam-era veterans through December 31, 1995, or 10 years after the veteran's date of last discharge or release from active duty, whichever is later.

CONCLUSION

Mr. President, I express my appreciation to the distinguished ranking Republican member of the Senate Committee, Mr. SPECTER, and all other members of the committee, as well as the chairman and ranking minority member of the House Committee on Veterans' Affairs, Mr. MONTGOMERY and Mr. STUMP, for their cooperation on this measure.

Mr. President, I also want to express my deep gratitude to the committee staff members who worked on this legislation—on the minority staff, Quentin Kinderman, Charlie Battaglia, and Tom Roberts, and on the majority staff, Neil Koren, Michael Cogan, Tom Hart, Chuck Lee, Bill Brew, and Ed Scott—and the House Committee on Veterans' Affairs staff—John Brizzi, Jill Cochran, Pat Ryan, and Mack Fleming for the majority and for the minority, Sue Forrest, Kingston Smith, and Carl Commenator.

Mr. President, I also note the fine work of the staff of the two Offices of Legislative Counsel, Charlie Armstrong in the Senate, and Bob Cover in the House. They provided their usual excellent assistance as we prepared this legislation.

Mr. President, I urge the Senate to give its unanimous approval to this measure.

Mr. President, I ask unanimous consent that the explanatory statement to which I referred earlier, and which takes the place of a joint explanatory statement in a conference report, be printed in the RECORD at this point.

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

JOINT EXPLANATORY STATEMENT ON H.R. 5008, THE PROPOSED "VETERANS' BENEFITS ACT OF 1992"

H.R. 5008, the proposed "Veterans Benefits' Act of 1992" reflects a compromise agreement that the Senate and House of Representatives Committees on Veterans' Affairs have reached on certain bills considered in the Senate and the House during the 102nd Congress. These are H.R. 5008 as passed by the House on August 10, 1992 (hereinafter referred to in connection with titles I, II, and VI referred to as the "House bill", and in connection with title III as "H.R. 5008"); H.R. 4342 as passed by the House on June 9, 1992 (hereinafter referred to as "H.R. 4342"); H.R. 5087 as passed by the House on August 10, 1992 (hereinafter referred to as "H.R. 5087"); S. 775 as passed by the Senate on November 20, 1991 (hereinafter referred to as "S. 775"); S. 2323 as passed on September 22, 1992, by the Senate as a substitute amendment for all of the text of H.R. 5008 except section 304, which was included in the Senate-passed bill (hereinafter referred to in connection with titles I, II, and VI as the "Senate amendment"); and S. 2647 as passed by the Senate as a substitute amendment to H.R. 5087 on September 25, 1992 (hereinafter referred to in connection with titles III, IV, and V as the "Senate amendment").

The Committees on Veterans' Affairs have prepared the following explanation of H.R. 5008 (hereinafter referred to as "compromise agreement"). Differences between the provisions contained in the compromise agreement and the related provisions in the bills noted above are noted in this document, except for clerical corrections and conforming changes made necessary by the compromise agreement and minor drafting, technical, and clarifying changes.

TITLE I—REFORM OF DEPENDENCY AND INDEMNITY COMPENSATION PROGRAM

REFORM IN PAYMENT FORMULA

*Current law:* Under section 1310 of title 38, United States Code, VA pays dependency and indemnity compensation (DIC) to surviving spouses of servicemembers or veterans who died from a disease or injury incurred or aggravated during military service.

Under section 1311(a) of title 38, the surviving spouse's basic compensation rate is determined by the deceased veteran's military pay grade (service rank). Under section 1311(b), compensation for surviving spouses with dependent children under 18 year of age is increased by $71 a month for each child.

*House bill:* Section 101(a) would, effective January 1, 1993, provide surviving spouses eligible for DIC with basic monthly compensation of $750. The basic rate would be increased by $50 for survivors of servicemembers who die on active duty and for survivors of a veteran who had a disability rated totally disabling for a continuous period of at least five years or continuously from the date of the veteran's discharge until the veteran's death.

Surviving spouses of veterans who died before January 1, 1993, would receive compensation under the current system or the new formula, whichever would provide the greater benefits.

Section 101(b) would increase the additional amount payable to a surviving spouse with dependent children of the deceased veteran from the current level of $71 a month for each child to $100 a month, beginning on December 1, 1993; to $150 a month, during FY 1994; and to $200 a month after FY 1994.

*Senate amendment:* Section 2(a) and (b) would, effective December 1, 1992, establish a basic monthly DIC rate of $725. Surviving spouses would be eligible for additional amounts of compensation based on either the length and severity of the veteran's disability or the length of the veteran's service, whichever factor would provide greater benefits.

Survivors of veterans rated 100-percent for at least one, but less than 5, years while married to the veteran would qualify for an additional $50 a month. The add-on would increase to $150 a month for a period of at least 5, but less than 10, years and to $200 for a period of 10 years or more. A rating of total disability based on "individual unemployability" under section 4.16 of title 38, Code of Federal Regulations, would qualify the survivor for benefits on the same basis as a 100-percent schedular rating.

The additional monthly DIC based on the length of the deceased veteran's military service would be $100 a month for 30 or more years of service; $70 for at least 20, but less than 30, years of service; $40 for at least 10, but less than 20, years; and $20 for at least 5, but less than 10, years.

Surviving spouses of veterans who died before December 1, 1993, would receive compensation under the current system or the new formula, whichever would provide greater benefits.

Section 2(b) also would, effective December 1, 1992, provide a special transitional rate of DIC for the month after the veteran's death equal to either 50 percent of the disability compensation paid to the deceased veteran for the last full month before the veteran's death or the amount of DIC calculated under the new DIC provisions, whichever is greater.

Section 2(c) would increase the additional amount payable to a surviving spouse with dependent children of the deceased veteran from the current level of $71 a month for each child to $100 a month, beginning on October 1, 1993; to $150 a month, during FY 1994; and to $200 a month after FY 1994.

Section 2(d) would provide for up to $5 million of the costs of implementing the DIC reform provisions of the Senate bill during FY 1993 to be paid from VA's Compensation and Pension account.

*Compromise agreement:* Section 102(a) would provide, effective January 1, 1993, a basic monthly DIC rate of $750, plus an additional amount of compensation for survivors of veterans rated totally disabled while married to the surviving spouse, including a rating based on individual unemployability. The add-on would be $165 a month for veterans so rated for a continuous period of at least 8 years immediately preceding the veteran's death.

Surviving spouses of veterans who die before January 1, 1993, would receive compensation under the current system or the new formula, whichever would provide greater benefits.

Section 102(b) would increase the additional amount payable to a surviving spouse with dependent children of the deceased veteran from the current level of $71 a month for each child to $100 a month, beginning on January 1, 1993; to $150 a month, during FY 199; and to $200 a month thereafter.

Section 102(d) would provide for the costs of implementing the DIC reforms in FYs 1993 and 1994 to be paid from VA's Compensation and Pension account.

The Committees intend and expect that Congress will continue to provide annual cost-of-living adjustments, through separate annual legislation, in the DIC rates under the current system, and the basic-rate and the disability-based add-on contained in the compromise agreement. The Committees also intend and expect that Congress will provide annual COLAs in the additional compensation for surviving spouses with dependent children after the phased-in increases take full effect in FY 1995.

EXCEPTION TO OPERATION OF OBRA PROVISION

*Current law:* Under section 101(3) of title 38, the term "surviving spouse" is defined in such a way that an individual is no longer considered a surviving spouse upon remarriage and thus looses eligibility for veteran's survivors' benefits when he or she remarries. Prior to the enactment of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) (OBRA), remarried surviving spouses' VA benefits eligibility could be restored when the disqualifying remarriage ended, through divorce or the death of the subsequent spouse. Section 8004 of OBRA, the application of which was modified by section 502 of the Veteran' Benefits Programs Improvements Act of 1991 (Public Law 102-86), eliminated the restored eligibility for a survivor whose disqualifying remarriage terminated after October 31, 1990.

*House bill:* Section 102(a) would provide that amendments made by section 8004 of OBRA shall not apply to survivors' benefits to formerly remarried surviving spouses who, before November 1, 1990, had initiated legal proceedings to terminate their remarriage.

*Senate amendment:* No provision.

*Compromise agreement:* Section 103 follows the House provision.

GAO REPORT RELATING TO THE PROVISION OF BENEFITS TO SURVIVORS OF VETERANS AND MEMBERS OF THE ARMED FORCES

*House bill:* Section 102(b) would require VA to conduct a study, beginning within 90 days of enactment, in consultation with the Secretaries of Defense and Health and Human Services, to evaluate the effect of section 8004 of OBRA (described above) on formerly remarried surviving spouses denied survivors' benefits because of that provision. The Secretary would be required to survey a representative sample of those affected by the OBRA provision and report the results of the study to Committees on Veterans' Affairs by September 1, 1993.

*Senate amendment:* Section 3 would require the Secretary of Veterans Affairs to establish a "Commission on the Study of Survivor Benefits," comprised of three independent experts, and representatives of VA, the Department of Defense, a veterans service organization, and an organization representing surviving spouses. The Commission would be required to determine the most appropriate combination of survivors' benefits and report to the Secretary on its recommendations. The Commission would be required to base its findings on data to be provided by the National Academy of Sciences (or another entity) in a study conducted under contract with VA. NAS (or another entity) would be required to submit its report to the Commission by October 1, 1993. The Commission would be required to report to the Secretary by December 1, 1993, and the Secretary would be required to report to the Committees by March 1, 1994.

*Compromise agreement:* Section 104 follows the Senate provision, except that the Comptroller General of the United States (as head of the General Accounting Office) would perform the functions of the National Academy of Sciences and the independent commission. The Comptroller General would be required to conduct the study and make the recommendations for legislation, if appropriate, that would have been required by the Senate amendment. The Comptroller General would be required to submit a report on the study to the Committees by April 1, 1994.

TITLE II—LIFE INSURANCE PROGRAMS

SERVICEMEN'S GROUP LIFE INSURANCE

*Current law:* Subchapter III of chapter 19 of title 38, United States Code, provides for the Servicemen's Group Life Insurance (SGLI) program. Under subchapter III, the Secretary of Veterans Affairs is authorized to purchase from commercial life insurance companies a policy or policies of group life insurance to insure against death any active duty servicemember and certain members of the Ready Reserve and Retired Reserve. Eligible servicemembers and reservists who do not decline coverage automatically are provided $100,000 of SGLI coverage and the monthly premiums are deducted from their basic pay. Servicemembers may elect coverage of less than $100,000 or not to participate in the program.

SGLI coverage is provided free of charge for 120 days following separation from active duty.

*House bill:* Section 202 would permit servicemembers and Reservists to purchase additional amounts of SGLI up to an additional $100,000, thereby increasing from $100,000 to $200,000 the maximum amount of SGLI, which eligible servicemembers and Reservists could purchase in $10,000 increments.

*Senate amendment:* No provision.

*Compromise agreement:* Section 201 follows the House provision, except that, under section 205, it would be effective December 1, 1992.

VETERANS' GROUP LIFE INSURANCE

*Current law:* Subchapter III of chapter 19 of title provides for the Veterans' Group Life Insurance (VGLI) program. Under subchapter III, veterans who participated in the SGLI program (described above) may participate in the VGLI program after separation from active duty.

VGLI provides five-year term group life insurance of up to $100,000. A veteran may not obtain more insurance under VGLI than the veteran had under the SGLI program. At the end of the five-year term, the veteran has the right to obtain an individual life insurance policy at a standard rate from any company participating in the VGLI program.

*House bill:* Section 202 would (a) increase from $100,000 to $200,000 the maximum amount of VGLI available to eligible veterans, and (b) provide that coverage under VGLI shall be on a renewable, five-year term basis.

*Senate amendment:* No provision.

*Compromise agreement:* Section 202 follows the House provision, except that, under section 205, it would be effective December 1, 1992.

SUPPLEMENTAL SERVICE DISABLED VETERANS' INSURANCE FOR TOTALLY DISABLED VETERANS

*Current law:* Section 1922(a) of title 38 requires VA to provide $10,000 in life insurance at standard rates to any veteran released from active duty after April 24, 1951, who is suffering from a service-connected disability rated at least 10-percent disabling that renders the veteran uninsurable according to the standards of good health established by the Secretary. The veterans must apply for the policy within two years after VA determines the service-connection of such disability.

Section 1912(a) of title 38 provides that, upon application by the veteran, and under regulations promulgated by the Secretary, the Secretary may waive premiums payments on the insurance if the insured continuously is rated totally disabled for six or more consecutive months and that disability began (1) after the date of the insured's application for insurance, (2) while the insurance was in force under premium-paying conditions, and (3) before the insured's sixty-fifth birthday.

*House bill:* Section 201 would provide supplemental SDVI coverage, at standard premiums, of up to $10,000, to veterans eligible for a waiver of premiums due to total disability.

*Senate amendment:* Section 4 is substantively identical to the House provision, except it would provide supplemental coverage of $20,000 and would specify that a veteran not currently eligible for waiver of premiums of SDVI must apply for the additional coverage within one year after either the end of the first full month following enactment or the date VA notifies the veteran that the veteran is eligible for a waiver of premiums, whichever is later.

*Compromise agreement:* Section 203 follows the Senate provision, except that, under section 205, it would be effective December 1, 1992.

INCREASE IN AMOUNT OF VETERANS' MORTGAGE LIFE INSURANCE

*Current law:* Under section 2106 of title 38, VA automatically provides $40,000 of Veterans' Mortgage Life Insurance (VMLI) to veterans who qualify for a specially adapted housing grant under chapter 21 of title 38.

*House bill:* Section 202 would increase the maximum amount of VMLI available under section 2106 of title 38 from $40,000 to $90,000.

*Senate amendment:* Section 5 is substantively identical to the House provision, except that it includes a technical correction to the table of sections at the beginning of chapter 21.

*Compromise agreement:* Section 204 follows the Senate provision, except that, under section 205, it would be effective December 1, 1992.

TITLE III—EDUCATIONAL ASSISTANCE PROGRAMS

INCREASE IN AMOUNT OF MONTGOMERY GI BILL BASIC EDUCATIONAL ASSISTANCE

*Current law:* Section 3015(f) of title 38, United States Code, temporarily establishes the current amounts of educational assistance under the Montgomery GI Bill (MGIB) program for full-time study at $350 per month for active-duty participants whose initial obligated period is three years or more and at $275 per month for those whose initial obligated period of active duty is two years. Section 2131(b)(2) of title 10 establishes the full-time-study benefit at $170 per month for participants in the Selected Reserve program. In all cases, proportionally reduced amounts are provided for part-time study. For FY 1994, the Secretary of Veterans Affairs is authorized to (a) continue these rates, (b) continue these rates and provide for a cost-of-living adjustment (COLA) increase, or (c) allow the monthly rates to revert to the original payment rates of $300 per month for full-time active-duty participants, $250 per month for those who are obligated for two years, and $140 per month for full-time participants in the Selected Reserve program. With respect to any fiscal year after FY 1994, the Secretary is authorized to (a) continue to pay the monthly rates that are paid during the previous fiscal year, (b) provide a COLA in those rates, or (c) allow the monthly rates to revert to the original payment rates.

*House bill:* Section 301 of H.R. 5008 would, effective April 1, 1993, increase the monthly full-time-study benefits to (1) $400 for those serving on active duty for three years or more, and (2) $325 for those serving two years on active duty, and (3) to $190 for reservists. Part-time-study rates would be increased proportionately. Beginning in fiscal year 1994, future increases would be indexed to changes in the Consumer Price Index. This section would repeal the Secretary of Veterans Affairs' authority, under section 3015(f), to modify the educational assistance rates and index future increases to changes in the Consumer Price Index.

*Senate amendment:* Section 101 is substantively identical to the House bill, but effective September 1, 1993.

*Compromise agreement:* Section 301 follows the House bill.

MONTGOMERY GI BILL ENTITLEMENT DATES

*Current law:* Sections 3011 and 3012 of title 38 provide that an individual who on December 31, 1989, was eligible for benefits under the Vietnam-era GI Bill is eligible to convert to the MGIB if the individual was on active duty October 19, 1984, had no break in service after that date, and served three years of continuous active duty after June 30, 1985.

*House bill:* Section 8 of H.R. 5087 would, effective October 28, 1986, restore MGIB eligibility for an individual who, due to interrupted service, was not on active duty on October 19, 1984, but who had active-duty service sometime during the period beginning on October 19, 1984, and ending on July 1, 1985, and continued on active duty without a break for the period required to establish entitlement under MGIB.

*Senate amendment:* No provision.

*Compromise agreement:* Section 302 follows the House bill.

EXTENSION OF PERIOD FOR COMPLETING REQUIREMENTS FOR SECONDARY SCHOOL DIPLOMA

*Current law:* Sections 3011(a)(2) and 3012(a)(2) of title 38 require, as a condition of eligibility under the MGIB active-duty program, that the individual complete the requirements of a secondary school diploma (or equivalency certificate) before leaving active duty.

*House bill:* Section 1 of H.R. 5087 would allow an individual who was on active duty on August 2, 1990, and who does not complete the requirements of a secondary school diploma (or equivalency certificate) before leaving active duty to do so within 12 months after the date of enactment of this measure.

*Senate amendment:* No provision.

*Compromise agreement:* Section 303 follows the House bill with an amendment extending to 24 months after leaving active duty the time within which the individual must complete the requirements of a secondary school diploma (or equivalent certificate).

TREATMENT OF CERTAIN ACTIVE-DUTY SERVICE TOWARD ELIGIBILITY FOR EDUCATIONAL ASSISTANCE

*Current law:* Under chapter 30 of title 38, eligible servicemembers generally can earn 36 months of MGIB benefits if they undergo prescribed basic pay reductions of $100 per month for 12 months at the outset of their initial obligated period of active duty. Servicemembers who are discharged or released due to hardship, disability, or reduction-in-force prior to the completion of 12 months of payroll deductions are eligible to receive only one month of educational assistance for each month of continuous service following their initial entry into active duty. If such an individual re-enters active duty, he or she is not eligible to re-enter the MGIB program in order to obtain full benefits by resuming his or her payroll deductions.

*House bill:* Section 2 of H.R. 5087 would provide that any initial period of active duty beginning after June 30, 1985, would not be considered as an individual's obligated period of active duty for purposes of the MGIB if (a) that period is one year or less in length, (b) the individual is discharged or released by reason of disability, hardship, or reduction-in-force, and (c) the individual subsequently completes a period of active duty that is at least one month longer in duration than the previous active-duty period and would have established MGIB entitlement if he or she had not served the earlier period. Upon reentry on active duty, the individual would establish entitlement to the MGIB by undergoing the 12 months of basic pay reductions, but would be credited with basic-pay reductions made during the previous period of active duty.

*Senate amendment:* Section 103 would provide that, for MGIB purposes, a servicemember who, after a period of continuous active duty of not more than 12 months, is discharged or released from active duty by reason of disability, hardship, or reduction-in-force, and then reenlists or re-enters on active duty, would be deemed to have served a continuous period of active duty equal in

length to the total of those two periods of active duty. The provision would take effect as if enacted on June 30, 1985, and apply to payment of assistance for education and training pursued on or after October 1, 1993.

*Compromise agreement:* Section 304 follows the Senate amendment.

TREATMENT OF CERTAIN ASSIGNMENTS OF INDIVIDUALS FOR PURPOSES OF ELIGIBILITY UNDER MONTGOMERY GI BILL PROGRAM

*Current law:* Section 3011 of title 38 requires as a condition of MGIB eligibility that a servicemember serve an initial obligated period of active duty of at least three years of continuous active duty or, in the case of an individual whose initial period of obligated active duty is less than three years, at least two years of continuous active duty. A break in the initial period of service disqualifies a participant from receiving the full amount of educational assistance. The term "active duty," as defined in section 3002(6)(A) of title 38, excludes any period during which a servicemember was assigned full time by the Armed Forces to a civilian institution for a course of education. Therefore, if a servicemember, whose pay has been reduced for MGIB purposes but who has served less than the required period of initial active-duty service accepts full-time civilian-study assignment as part of his or her active-duty service, he or she incurs a break in active-duty service for MGIB purposes and thus becomes ineligible for MGIB benefits.

*House bill:* No provision.

*Senate amendment:* Section 104 would repeal the provision that requires an assignment to a civilian educational institution to be considered a break in active-duty service.

*Compromise agreement:* Section 305 follows the Senate amendment.

TREATMENT OF PURSUIT OF EDUCATION AT SERVICE ACADEMIES AND CERTAIN EDUCATIONAL INSTITUTIONS FOR PURPOSES OF ELIGIBILITY UNDER MONTGOMERY GI BILL PROGRAM

*Current law:* Under section 3011(a)(1)(A) of title 38, MGIB eligibility criteria include a requirement that (a) the individual serve as his or her initial obligated period of active duty at least three years of continuous active duty—or, in the case of an individual whose initial period of active duty is less than three years, that the period of continuous active duty be at least two years—or (b) the individual be discharged or released for a disability, hardship, or reduction-in-force. Section 3002(6)(B) of title 38 defines "active duty" as not including any period during which an individual served as a cadet or midshipman at one of the service academies.

Currently, a servicemember participating in the MGIB can lose MGIB eligibility if he or she leaves active duty during his or her initial period of service to pursue a course of education at a service academy or a service-academy preparatory school before completing the period of continuous service mandated for MGIB eligibility, fails to complete the course of education at the academy or preparatory school, and is required to reenter active duty. Such an individual would be (1) not entitled to MGIB educational assistance because the statutory period of continuous service was interrupted before being satisfactorily completed, and (2) not eligible to re-enter the MGIB program because the period of active duty marked by the re-entry was not the individual's initial period.

*House bill:* No provision.

*Senate amendment:* Section 105 would amend section 3011 to provide that MGIB participants who enroll in a service academy or a service-academy preparatory school during their initial period of active-duty service, drop out of the academy or school, and re-enter active duty would be able to merge their second active-duty period with their initial period so that the aggregate length of the two periods would be considered one continuous period of service. This provision would take effect as if enacted on June 30, 1985, and would apply to the payment of educational assistance for education or training pursued on or after October 1, 1993.

*Compromise agreement:* Section 306 follows the Senate amendment.

EDUCATIONAL ASSISTANCE FOR CERTAIN PERSONS WHOSE INITIAL PERIOD OF OBLIGATED SERVICE WAS LESS THAN THREE YEARS

*Current law:* Section 3015 of title 38 provides that MGIB participants who serve at least three years of continuous active duty as their initial obligated period of active duty are entitled to educational assistance at a rate higher than is paid to those whose initial obligated period of active duty is two years. If a servicemember whose initial obligated period of active duty is two years reenlists without a break in service for an additional year or more, he or she is currently denied the full educational benefits offered to servicemembers whose initial obligated period of active duty is for three or more continuous years.

*House bill:* No provision.

*Senate amendment:* Section 105 would amend section 3015 to grant full MGIB benefits to participants who serve their initial obligated period of two years and continue on active duty for an additional year or more without a break in service. The amendment to section 3015 would take effect as if enacted on June 30, 1985, and apply to the payment of educational assistance for education or training pursued on or after September 1, 1993.

*Compromise agreement:* Section 307 follows the Senate amendment.

DEATH BENEFIT

*Current law:* Section 3017 of title 38 provides for the payment of a death benefit to the survivors of an MGIB participant who dies of a service-connected cause on active duty. The death benefit is equal to the amount by which the participant's pay was reduced for purposes of MGIB participation minus the total of the amount of educational assistance that was paid to the individual.

*House bill:* Section 7 of H.R. 5087 would extend eligibility for the death benefit to the survivors of those who die of service-connected causes within one year of discharge from active duty.

*Senate amendment:* No provision.

*Compromise agreement:* Section 308 follows the House bill.

CLARIFICATION OF OPPORTUNITY TO WITHDRAW ELECTION NOT TO ENROLL IN MONTGOMERY GI BILL PROGRAM

*Current law:* Section 3011(c)(1) of title 38 provides that a servicemember who, at the time he or she initially enters on active duty, makes an election not to receive educational assistance under the MGIB is not entitled to MGIB benefits. As an exception to that rule, section 3018 of title 38 established the period between December 1, 1988, and June 30, 1989, as an "open period" during which certain servicemembers had the opportunity to withdraw an election not to receive educational assistance under the MGIB program and thereby become participants in the program. However, the general exception to MGIB length-of-service requirements for those who are separated early from service due to a physical or mental condition that is not characterized as a disability and did not result from the person's own willful misconduct but did interfere with the person's performance of duty does not currently apply to section 3018.

*House bill:* No provision.

*Senate amendment:* Section 107 would apply to individuals who enrolled in the MGIB during the "open period" the exception of length-of-service requirements for those who are separated early from the service for physical or mental conditions not characterized as disabilities.

*Compromise agreement:* Section 309 follows the Senate amendment.

USE OF EDUCATIONAL ASSISTANCE FOR SOLO FLIGHT TRAINING

*Current law:* Sections 3034(d) and 3241(b) of title 38 and section 2136(c) of title 10 provide that veterans participating in the MGIB or Post-Vietnam Era Veterans Educational Assistance programs may use VA benefits for flight training during fiscal year 1991 through 1994 if (1) the training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation; (2) the individual possesses a valid private pilot's license and meets the medical requirements necessary for a commercial license; and (3) the flight school courses meet Federal Aviation Administration (FAA) standards and are approved by the State approving agency.

Sections 3032(f) and 3231(f) of title 38 and section 2131(g) of title 10 provide that the educational assistance allowance is to be paid in an amount equal to 60 percent of the established charges for tuition and fees. Tuition and fees for solo flying hours are specifically excluded.

*House bill:* No provision.

*Senate amendment:* Section 109 would, for the remainder of the current temporary program under which veterans may use VA educational assistance for flight training, authorize the use of benefits for solo flying hours. The number of solo hours for which benefits could be used would be limited to the minimum required by the Federal Aviation Administration for the rating or certification being sought.

*Compromise agreement:* Section 310 follows the Senate amendment, but with an effective date of October 1, 1992.

LIMITATION ON AMOUNT OF ADVANCE PAYMENT OF WORK-STUDY ALLOWANCE

*Current law:* Section 3485(a)(1) of title 38 requires that 40 percent of the total amount agreed to be paid to a work-study participant under a work-study contract must be paid in advance of the performance of any service. The remaining allowance is paid after services are performed.

*House bill:* No provision.

*Senate amendment:* Section 110 would limit advance payments by VA to work-study participants to payments for the first 50 hours of each work-study contract.

*Compromise agreement:* Section 311 follows the Senate amendment.

REVISION OF REQUIREMENTS RELATING TO APPROVAL OF ACCREDITED COURSES

*Current law:* Section 3675 of title 38 requires an educational institution that desires its courses to be approved for VA benefits purposes to submit an application for approval of the courses to the appropriate State approving agency (SAA). In making application for approval, the institution must transmit to the SAA copies of its catalog or bulletin. Elementary and secondary schools frequently do not publish catalogs and, as a re-

sult, their courses are denied SAA approval. Additionally, sections 3474 and 3524 of title 38 require that educational benefits be terminated for any recipient who fails to comply with any attendance standards that his or her school applies. However, section 3675 of title 38 does not require schools that have and enforce standards of attendance to include these standards in their applications for course approval.

No provisions of current law deal specifically with the use of MGIB benefits for nurses' aide training. VA Regulations for Vocational Rehabilitation and Education state, "[E]nrollment in an institutional course for the objective of nurse's aide . . . will not be authorized" (38 CFR 21.4265(b)(3)).

*House bill:* No provision.

*Senate amendment:* Section 111(a) would modify the requirements for the approval of an accredited school by an SAA by (a) repealing the requirement that an elementary or secondary school furnish a copy of a catalog in applying for approval of an accredited course, and (b) adding a requirement that other institutions that have and enforce standards of attendance include these standards in each catalog or bulletin that they submit to the SAA.

Section 111(b) would amend section 3675(a)(1) of title 38 to allow a State approving agency to approve a nurses' aide course for MGIB purposes when it is approved by the State as meeting the requirements of regulations prescribed by the Secretary of Health and Human Services under sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Social Security Act (title 42, United States Code, sections 1395i-3(f)(2)(A)(i) and 1396r(f)(2)(A)(i)).

*Compromise agreement:* Section 312 follows the Senate amendment.

DISAPPROVAL OF NONACCREDITED INDEPENDENT STUDY

*Current law:* Section 3676 of title 38 provides that educational assistance may be granted to a veteran for enrollment in nonaccredited courses, including independent study, if certain conditions specified in that section are met.

*House bill:* Section 5 of H.R. 5087 would limit approval of independent study to courses that are part of an accredited degree program.

*Senate amendment:* Section 112 is substantively identical to the House bill.

*Compromise agreement:* Section 313 contains this provision.

TREATMENT OF ADVANCE PAYMENTS OF CERTAIN ASSISTANCE TO VETERANS WHO DIE

*Current law:* Section 3680(e) of title 38 provides that, when a veteran or eligible person entitled to educational benefits dies, benefits are discontinued effective the last day of attendance. Thus, any advance payment made toward a student's education covering a time period after the death of the student is considered an overpayment by VA and constitutes a liability to the student's estate.

*House bill:* No provision.

*Senate amendment:* Section 113 would make inapplicable the requirement in section 3680(e) for the recovery of advance payments for a course of education where the failure to enroll in or pursue a course is due to the individual's death.

*Compromise agreement:* Section 314 follows the Senate amendment.

BAR OF ASSISTANCE FOR PERSONS WHOSE EDUCATION IS PAID FOR AS FEDERAL EMPLOYEE TRAINING

*Current law:* Section 3681(a)(2) of title 38 generally prohibits payment of VA educational benefits to an individual for a course of education or training paid for under the Government Employees Training Act (GETA) and whose full salary is being paid while so training. A November 26, 1991, VA General Counsel opinion (O.G.C. Precedent 72-91) construed section 3681(a)(2) as permitting payment of VA educational assistance to a veteran or other eligible person training under the GETA if the training were received during periods of the day other than those for which the person's salary is paid.

*House bill:* Section 4 of H.R. 5087 would clarify that payment of VA education benefits may not be made to an individual for pursuit of a course of education that is paid for by the Government under the GETA.

*Senate amendment:* Section 114 is substantively identical to the House bill.

*Compromise agreement:* Section 315 contains this provision.

REVISION IN MEASUREMENT OF COURSES

*Current law:* Section 3688 of title 38 establishes a complex system of measuring and valuing courses of education for the purpose of benefit payments. Some programs provide for five different payment levels. For nondegree training at a vocational school, there is a distinction between accredited and nonaccredited facilities and between shop practice and classroom training. Maximum rest periods and supervised study periods are defined. Nondegree training at colleges is measured in three different ways—credit-hour measurement, clock-hour measurement, and a combination of credit hours and clock hours, known as "mixed" measurement. There is a distinction between courses taken in residence and courses taken by independent study or open circuit television. Some courses are considered to be a combination of resident training and independent study. Payment for independent study and open circuit television courses are reduced in some instances. For some participants, the rate of payment can change each week because of changes in the student's scheduled classroom training.

*House bill:* Section 6 of H.R. 5087 would (a) eliminate the benefit differential for accredited and non-accredited noncollege-degree courses; (b) base benefit payments for concurrent pursuit of graduate and undergraduate training on the training time certified by the school rather than on the conversion computations in current law; (c) make uniform the measurement of refresher courses and part-time training under the MGIB, Post-Vietnam Era Educational Assistance program, and the survivors' and dependents' educational assistance program; and (d) delete statutory measurement requirements in section 3688 of title 38 so as to (1) eliminate the benefit differential for independent study and other nontraditional types of training in accredited undergraduate degree programs that have been approved by SAAs, and (2) eliminate the standard class-session criterion.

*Senate amendment:* Section 114 is substantively identical to the House bill, but contains an effective date of September 1, 1993.

*Compromise agreement:* Section 316 follows the House bill, but with an effective date of July 1, 1993.

CLARIFICATION OF PERMITTED CHANGES IN PROGRAMS OF EDUCATION

*Current law:* Section 3691 of title 38 generally allows a veteran or other eligible person receiving VA-administered educational assistance one change of program of education without seeking the Secretary's approval. The Secretary generally may approve additional changes if the Secretary finds that the proposed program is suitable to the person's aptitudes, interests, and abilities. However, if the student's interruption or failure to make progress in an education program was due to the person's own misconduct or neglect, or lack of application, a change is not permitted unless the Secretary finds that a reasonable likelihood exists that there will not be a recurrence of such an interruption or failure of progress. The Secretary may also approve additional changes if the Secretary finds that they are necessitated by circumstances beyond the person's control.

*House bill:* No provision.

*Senate amendment:* Section 116 would provide that the limitations on changes of program by students using VA educational assistance do not apply to (a) a student beginning a new program of education after successfully completing another program, (b) a student not changing his or her vocational objective, and (c) a student transferring back to a former program without loss of credit for that program.

*Compromise agreement:* Section 317 follows the Senate amendment.

AUTHORITY OF MEMBERS OF SELECTED RESERVE TO RECEIVE TUTORIAL ASSISTANCE

*Current law:* Currently, members of the Selected Reserve who are eligible for MGIB educational assistance under chapter 106 of title 10 are not entitled to receive individualized tutorial assistance as are participants in the MGIB who serve on active duty (under chapter 30 of title 38) and survivors and dependents who receive educational assistance under chapter 35 of title 38.

*House bill:* No provision.

*Senate amendment:* Section 117 would provide that members of the Selected Reserve participating in the MGIB could receive—as do other MGIB participants and eligible survivors and dependents—a tutorial assistance allowance of up to $100 per month for a maximum of 12 months, or until a maximum of $1,200 is utilized. The criteria and restrictions relating to this benefit would be the same as those applied to the tutorial benefits now available to other MGIB participants and to survivors and dependents.

*Compromise agreement:* Section 318 follows the Senate amendment.

REQUIREMENT OF ATTENDANCE CERTIFICATION IN APPRENTICESHIP PROGRAM UNDER THE MONTGOMERY GI BILL SELECTED RESERVE PROGRAM

*Current law:* Section 2131(d)(2) of title 10, United States Code, requires a reduction in a reservist's payments under the MGIB Selected Reserve program in any month in which he or she, while pursuing a program of apprenticeship or other on-the-job training, fails to complete 120 hours of training. Section 2136(b) of title 10, in listing title 38 provisions that do not apply to the administration of the MGIB Selected Reserve program, specifically precludes VA from exercising its authority under section 3680(c) of title 38 to require a certification of attendance of a program of apprenticeship or other on-job training from either the student or training establishment.

*House bill:* Section 4 of H.R. 5087 would amend section 2136(b) to delete the exception of section 3680(c) and thereby provide VA with administrative authority to withhold the training assistance allowance of an individual pursuing a program of apprenticeship or other on-job training until VA has received a certification of attendance from the person and the training establishment.

*Senate amendment:* No provision.

*Compromise agreement:* Section 319 follows the House bill.

TECHNICAL AMENDMENTS

*Current law:* Chapter 106 of title 10, United States Code, authorizes the use of the MGIB program by members of the Selected Reserve and makes numerous references to the program as set forth in title 38. Public Law 102-40, enacted May 7, 1991, and Public Law 102-83, enacted August 6, 1991, changed section numbers in title 38, and thus made the title 38 references in title 10 inaccurate.

*House bill:* No provision.

*Senate amendment:* Section 118 would update title 10 references to title 38 to match the current section numbers.

*Compromise agreement:* Section 320 follows the Senate amendment.

TITLE IV—VOCATIONAL REHABILITATION AND PENSION PROGRAMS

PERMANENT AUTHORITY FOR PROGRAM OF VOCATIONAL REHABILITATION FOR CERTAIN SERVICE-DISABLED VETERANS

*Current law:* Section 1163 of title 38, United States Code, provides a temporary program for trial-work periods and vocational rehabilitation services to service-disabled veterans. Under section 1163, a veteran who has a service-connected disability not rated as total but who has been awarded a rating of total disability by reason of an individual determination that he or she is unable to secure or follow a substantially gainful occupation as a result of that disability—an individual unemployability (IU) rating—and who starts a substantially gainful occupation before December 31, 1992, may not have his or her disability rating reduced on the basis of having obtained and continued the employment unless he or she maintains that employment for 12 consecutive months.

*House bill:* No provision.

*Senate amendment:* Section 201 would make permanent the program of 12-month trial-work periods and vocational rehabilitation services for veterans who have total service-connected disability ratings based on an IU rating.

*Compromise agreement:* Section 401 follows the Senate amendment.

EXTENSION OF PROGRAM OF VOCATIONAL TRAINING FOR CERTAIN PENSION RECIPIENTS

*Current law:* Section 1524 provides for a temporary vocational training program—until December 31, 1992—for not more than 3,500 veterans during any 12-month period who are pension recipients.

A veteran under the age of 45 who is awarded a pension during the program period must be evaluated with respect to his or her potential for rehabilitation. The evaluation must include a personal interview by a VA employee trained in vocational counseling. If the veteran refuses to participate in the evaluation, the veteran's pension is suspended until the veteran participates in an evaluation. Participation in the vocational training itself is voluntary.

For a veteran pension recipient who is 45 years of age or older, the program of vocational training is totally voluntary. If such a veteran-pensioner applies to participate and VA makes a preliminary finding on the basis of information in the application that, with the assistance of a vocational training program, the veteran has a good potential for achieving employment, VA may, upon the veteran's request, evaluate the veteran to further determine whether the achievement of a vocational goal is reasonably feasible.

*House bill:* No provision.

*Senate amendment:* Section 202 would amend section 1524(a) to (1) make the program permanent; (2) make the program totally voluntary for all pension recipients, regardless of age; (3) eliminate the limitation on the number of program participants who may be evaluated annually; (4) expressly provide that the Secretary may determine what training is necessary for a VA employee to be able to conduct personal interviews of veterans under this program; and (5) authorize VA not to conduct an evaluation if the Secretary determines that it is not feasible or is not necessary in order to determine whether the achievement of a vocational goal is reasonably feasible.

*Compromise agreement:* Section 402 would (1) extend the temporary vocational training program through December 31, 1995; (2) eliminate the limitation on the number of program participants who may be evaluated annually; and (3) amend the program for veterans under age 45 who are awarded pension during the program period so as to (A) require the Secretary, based on information on file with VA, to make a preliminary finding whether the veteran, with the assistance of a VA vocational training program, has a good potential for achieving employment, (B) if that potential is found to exist, require the Secretary to solicit from the veteran an application for VA vocational training, and (C) if the veteran applies for training, require the Secretary to provide an evaluation to determine whether the achievement of a vocational goal is reasonably feasible.

PERMANENT AUTHORITY FOR PROTECTION OF HEALTH-CARE ELIGIBILITY FOR CERTAIN PENSION RECIPIENTS

*Current law:* Section 1525 of title 38 provides a veteran with protection of his or her VA health-care eligibility for a period of three years following the termination of pension benefits due to "income from work or training"—that is, as a result of the veteran's receipt of earnings from activity performed for renumeration or with gain, but only if the veteran's annual income from sources other than such earnings would, taken alone, not result in the termination of the veteran's pension. Under current law, these provisions are scheduled to expire on December 31, 1992.

*House bill:* No provision.

*Senate amendment:* Section 203 would make this health-care eligibility protection permanent.

*Compromise agreement:* Section 403 follows the Senate amendment.

VOCATIONAL REHABILITATION FOR CERTAIN SERVICE-DISABLED VETERANS WITH SERIOUS EMPLOYMENT HANDICAPS

*Current law:* Section 3102 of title 38 provides vocational-rehabilitation entitlement under chapter 31 of title 38 to a veteran who has a service-connected disability that is compensable at a rate of 20 percent or more and is determined by the Secretary to be in need of rehabilitation because of an employment handicap. The current eligibility requirement of a rating of 20 percent or more was established by the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), enacted November 1, 1990. Prior to OBRA 90, the requirement was for at least a 10-percent rating.

*House bill:* No provision.

*Senate amendment:* Section 204 would restore entitlement to vocational rehabilitation, effective October 1, 1993, to a veteran who has a service-connected disability that is compensable at a rate of 10 percent if he or she also has a serious employment handicap.

*Compromise agreement:* Section 404 follows the Senate amendment.

INCREASE IN SUBSISTENCE ALLOWANCE FOR VETERANS PARTICIPATING IN A REHABILITATION PROGRAM

*Current law:* Section 3108 of title 38 provides for a subsistence allowance for veterans pursuing rehabilitation under the chapter 31 program of rehabilitation for veterans with service-connected disabilities.

*House bill:* No provision.

*Senate amendment:* Section 205 would, effective October 1, 1993, increase the subsistence-allowance rates by 10 percent and index future increases to changes in the Consumer Price Index.

*Compromise agreement:* Section 405 follows the Senate amendment.

TITLE V—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICES FOR VETERANS

IMPROVEMENT OF DISABLED VETERANS' OUTREACH PROGRAM

*Current law:* Section 4103A(a)(1) of title 38, United States Code, provides for the appointment in each State of one disabled veterans' outreach program (DVOP) specialist for each 5,300 veterans of the Vietnam era and disabled veterans residing in the State. According to the Department of Labor (DoL), application of the current formula results in 1,885 DVOP-specialist positions. Although Vietnam-era and disabled veterans are the population cohorts for the present DVOP staffing formula, DVOP employment assistance is available to all eligible veterans.

*House bill:* No provision.

*Senate amendment:* Section 301 would expand the statutory formula for the appointment of DVOP specialists to provide for one specialist for each 6,900 veterans residing in a State who are either Vietnam-era veterans, veterans with service-connected disabilities, or veterans who first entered on active duty after the end of the Vietnam ear (May 7, 1975).

*Compromise agreement:* Section 501 follows the Senate amendment.

The Committees note that in FY 1993 the change in the formula would add 21 additional DVOP-specialist positions to the 1,885 positions now determined by DoL to be derived from the current statutory formula. The Committees believe the additional staffing is necessary for implementation of the transition assistance program under section 1144 of title 10.

REPEAL OF DELIMITING DATE RELATING TO TREATMENT OF VETERANS OF THE VIETNAM ERA FOR DISABLED VETERANS' OUTREACH PROGRAM PURPOSES

*Current law:* Section 4211(2)(B) of title 38 provides that, after December 31, 1994, no veteran may be considered to be a "veteran of the Vietnam era" for purposes of various employment and training programs in chapter 41 and 42 of title 38 except for the veterans readjustment appointment authority in section 4214. Veterans of the Vietnam era are the major population cohort used in the calculation of disabled veterans' outreach program (DVOP) positions under section 4103A(a)(1). Under the current formula, the elimination of this cohort after December 31, 1994, would cause the number of mandatory DVOP positions to drop from 1,885 to 433.

*House bill:* Section 5 of H.R. 4342 would extend the definition of Vietnam-era veterans for one year to December 31, 1995, for purposes of various veterans' employment and training programs under chapters 41 and 42 of title 38.

*Senate amendment:* Section 302 would make permanent the consideration of a veteran of the Vietnam era under chapters 41 and 42 of

title 38 by repealing the expiration date of December 31, 1994, for that consideration.

*Compromise agreement:* Section 502 follows the Senate amendment.

DISABLED VETERANS' OUTREACH PROGRAM PRIORITIES

*Current law:* Section 4103A(b)(1) of title 38 specifies that DVOP specialists shall be assigned only those duties directly related to meeting the employment needs of eligible veterans, with first priority being the provision of services to disabled veterans of the Vietnam era who are participating in or have completed a program of vocational rehabilitation under chapter 31, followed by services to other disabled veterans and then services to other eligible veterans.

*House bill:* Section 2 of H.R. 4342 would amend section 4103A(b)(1)(A) by expanding the first item in the priority listing of DVOP responsibilities to include veterans who served during the Persian Gulf War.

*Senate amendment:* No provision.

*Compromise agreement:* Section 503 amends section 4103A(b)(1)(A) to establish as the first priority for DVOP specialists services to "special disabled veterans" as defined in section 4211(1) of title 38 to include those who (a) have service-connected disabilities that are rated at either 30 percent or more or, in the case of those who have been determined to have a service-employment handicap for purposes of chapter 31, at 10 or 20 percent, or (b) were discharged or released from activity duty because of a service-connected disability.

The Committees recognize the importance of a close relationship between DVOP specialists and local VA staff administering the training and rehabilitation program for veterans with service-connected disabilities under chapter 31 of title 38. By this amendment, the Committees do not in any way intend to dilute this relationship so important to the furnishing of effective employment services to those service-disabled veterans who have participated in a VA vocational rehabilitation program.

REPEAL OF REQUIREMENT THAT TO BE REPRESENTED ON ADVISORY COMMITTEE ON VETERANS EMPLOYMENT AND TRAINING

*A veterans organization must have a federal charter*

*Current law:* Section 4110(c)(a)(A) of title 38 requires that to be represented on the Advisory Committee on Veterans Employment and Training a veterans organization must have a Federal charter. However, the House of Representatives Judiciary Committee has adopted a policy of not reporting legislation granting such charters.

*House bill:* Section 6 of H.R. 4342 would modify section 4110(c)(a)(A) of title 38 by striking the requirement that veterans organizations represented on the Advisory Committee on Veterans Employment and Training be chartered.

*Senate amendment:* No provision.

*Compromise agreement:* Section 504 follows the House bill.

EXPANSION AND EXTENSION OF VETERANS' READJUSTMENT APPOINTMENTS WITH THE FEDERAL GOVERNMENT

*Current law:* Section 4214 of title 38 establishes a program of veterans' readjustment appointment (VRA) under which certain veterans are eligible for limited non-competitive appointments that can lead to career civil service status in the Federal government.

Section 4214(b)(2) provides VRA eligibility to (a) Vietnam-era veterans who (1) are entitled to VA disability compensation or who were discharged or released from active duty for a disability incurred or aggravated in line of duty, or (2) received a campaign badge for service in a combat theater of operations; and (b) post-Vietnam-era veterans, that is, those who entered active duty after May 7, 1975. A Vietnam-era veteran with eligibility based on a service-connected disability rated at less than 30 percent or receipt of a campaign badge has VRA eligibility for 10 years after the date of his or her last discharge or release from active duty, or December 31, 1993, whichever is later. A post-Vietnam-era veteran generally has VRA eligibility within the 10-year period following the later of the date of his or her last discharge or release from active duty, or December 18, 1989 (the effective date of Public Law 101-237, the law that initially gave post-Vietnam-era veterans VRA eligibility). There is no time limitation on the VRA eligibility for a veteran who has a service-connected disability rated at 30 percent or more.

Under Public Law 101-237, since January 1, 1990, Vietnam-era veterans who are not service disabled nor authorized a campaign badge have not been eligible for a VRA appointment.

*House bill:* Section 1 of H.R. 4342 would amend section 4214(b)(2)(A) to restore VRA eligibility for all veterans of the Vietnam era.

Section 3 of H.R. 4342 would provide that all Vietnam-era veterans qualifying for the VRA program would be eligible for appointments through December 31, 1999, or 10 years after the veteran's date of last discharge or release from active duty, whichever is later.

*Senate amendment:* Section 303 would restore VRA eligibility for veterans of the Vietnam era who are not otherwise eligible and who were discharged or released from active duty after December 31, 1979 (the date being 10 years prior to the December 31, 1989, expiration of previous eligibility), under conditions other than dishonorable. Such veterans would be eligible to receive such a VRA appointment during the period ending 10 years after the date of their last discharge or release from active duty, or December 31, 1993, whichever is later.

*Compromise agreement:* Section 505 follows the House bill, except that Vietnam-era veterans would be eligible for appointments through December 31, 1995 (rather than 1990), or 10 years after the veteran's date of discharge, whichever is later.

REDESIGNATION OF SECTIONS OF CHAPTER 43

*Current law:* Public Law 102-40, enacted May 7, 1991, and Public Law 102-83 enacted August 6, 1991, renumbered the sections of title 38, United States Code, in order to reflect the chapters in which the sections appear. Prior to the enactment of these laws, Congress was in the process of rewriting chapter 43 of title 38 which provides veterans' reemployment rights; consequently, the sections of chapter 43 were not renumbered in Public Laws 102-40 and 102-83.

*House bill:* No provision.

*Senate amendment:* S. 1095 as reported by the Senate Committee on Veterans' Affairs would revise chapter 43 of title 38, including changing the section numbers to conform with the change made by Public Laws 102-40 and 102-83.

*Compromise agreement:* Section 506 would renumber the sections of chapter 43 to conform with the renumbering scheme required in Public Laws 102-40 and 102-83.

AUTHORIZATION OF APPROPRIATIONS FOR CERTAIN EMPLOYMENT, JOB TRAINING, AND OTHER ASSISTANCE

*Current law:* Section 1144 of title 10 requires the Department of Labor, in conjunction with VA and the Department of Defense, to establish and maintain a transition assistance program (TAP) to furnish counseling, assistance in identifying employment and training opportunities, help in obtaining employment and training, and other related information and services to members of the Armed Forces who are being separated from active duty and their spouses. The services are to be provided to a member during the 180-day period before separating from active duty. Subsection (e) of section 1144 authorizes DoL appropriations of $9 million for each of fiscal years 1992 and 1993, and VA appropriations of $4 million for each of those years.

*House bill:* No provision.

*Senate amendment:* Section 303 would authorize an increase in the FY 1993 appropriation for TAP and would extend the authorization for the TAP appropriation by two years—through FY 1995—at the following levels: $11 million for FY 1993 and $8 million for each of FYs 1994 and 1995 for the DoL, and $6.5 million for each of FYs 1993-1995 for VA.

*Compromise agreement:* No provision.

The Committee note that similar provisions are included in section 4470 of the conference report (H. Rept. No. 102-966) on H.R. 5006, the National Defense Authorization Act for FY 1993.

TITLE VI—OTHER VETERANS' PROGRAMS

EXTENSION OF LIMITATION ON PENSION FOR VETERANS RECEIVING MEDICAID-COVERED NURSING HOME CARE; APPLICABILITY TO SURVIVING SPOUSES; AND FACILITY EXPENSES

*Current law:* Section 5503(f) of title 38, United States Code, which expires on September 30, 1992, limits to $90 a month the maximum amount of VA needs-based pension payable to Medicaid-eligible veterans who are in nursing homes that participate in Medicaid and who have no dependents. Section 5502(f)(3) of title 38 protects this $90 monthly VA pension payment from State Medicaid rules limiting the medicaid-nursing-home beneficiary's personal allowance to less than $90 per month.

Section 5503(a)(1)(B) of title 38 reduces to $90 the maximum monthly pension payable to certain veterans being furnished nursing home care by VA. The reduction takes effect after the end of the third full calendar month following the month of admission.

*House bill:* Section 302 would extend the expiration date of section 5503(f) by five years, from September 30, 1992, to September 30, 1997, and, effective October 1, 1992, would expand that provision to cover veterans' Medicaid-eligible survivors receiving VA pension who are in nursing homes that participate in Medicaid and who have no dependents.

*Senate amendment:* Section 6 is substantively identical to the House provision, except it would take effect on July 1, 1992, and would repeal the expiration date of section 5503(f).

*Compromise agreement:* Section 601 follows the House provision and would require, during the period from November 1, 1992, through September 30, 1997, that the amount of the reduction, under section 5503(a)(1)(B) of title 38, in pension paid to a veteran receiving nursing home care from VA be deposited in a revolving fund at the VA medical facility that furnished nursing care to the veteran. The fund would be available, without fiscal-year limitation, to help defray the operating expenses of that facility.

EXTENSION OF AUTHORITY TO CARRY OUT INCOME VERIFICATION

*Current law:* Section 5317 of title 38 requires the Secretary to verify the eligibility of re-

cipients of, or applicants for, VA needs-based benefits using income data from the Internal Revenue Service and Social Security Administration, and section 6103(10(7) of the Internal Revenue Code of 1986 provides the Secretary with access to that information.

These provisions expire on September 30, 1992.

*House bill:* Section 303 would extend the provisions to September 30, 1997.

*Senate amendment:* Section 7 would make the provisions permanent.

*Compromise agreement:* Section 602 follows the House provision.

ACCESS TO INFORMATION NECESSARY FOR THE ADMINISTRATION OF CERTAIN VETERANS BENEFITS LAWS

*Current law:* The Right to Financial Privacy Act of 1978 (RFPA) (Public Law 98-21) generally prohibits federal agencies from gaining access to or obtaining copies of information contained in the financial records of a financial institution's customer unless the records are reasonably described and the customer has authorized disclosure or the records are sought pursuant to an administrative subpoena or summons, a search warrant, a judicial subpoena, or, in certain circumstances, a formal written request by a government authority. There are 11 types of disclosures to federal agencies that are excluded from the general prohibition, including disclosure authorized under the Internal Revenue Code and disclosure necessary for the proper administration of programs of withholding taxes on nonresident aliens, Federal Old-Age, survivors and Disability Insurance Benefits, and Railroad Retirement Benefits.

*Senate bill:* Section 4 of S. 775 would amend the RFPA to authorize VA to obtain from financial institutions the current mailing addresses of certain VA beneficiaries whose benefits are deposited by direct deposit. The Secretary would be authorized to request and obtain this information only if the Secretary determines and certifies that the information is necessary to administer veterans' benefits programs and that the information cannot be obtained by a reasonable search of VAS records. Information disclosed by the financial institution under this provision could be used solely for the purpose of administering veterans' benefits programs.

*House bill:* Section 403 of H.R. 2280 is substantively identical to the Senate provision, except it would amend title 38, United States code, to require the Secretary to make the required determinations and certifications.

*Compromise agreement:* Section 603 contains the House provision.

EXTENSION OF EXPIRING COST-RECOVERY AUTHORITY

*Current law:* Section 1729(a)(2)(E) authorizes VA to recover from third parties, under a veteran's health-plan contract, the cost of medical care provided by VA for the treatment of a non-service-connected disability of a service-disabled veteran. This authority expires on October 1, 1993.

*Senate bill:* Section 401 of S. 2647 as passed by the Senate in H.R. 5087 on September 25, 1992, would make this authority permanent.

*House bill:* No provision.

*Compromise agreement:* Section 604 would extend this authority through July 31, 1994.

EXCLUSION FOR LOW-INCOME VETERANS FROM MEDICATION COPAYMENT REQUIREMENT

*Current law:* Section 1722A of title 38 requires the Secretary to charge veterans (other than those with a service-connected disability rate 50 percent or more) $2 (or the actual cost, if less) for each 30-day supply of a medication furnished by VA on an outpatient basis for the treatment of a non-service-connected disability or condition. This provisions expires on September 30, 1992.

*Compromise agreement:* Section 605 would exclude from the copayment requirement veterans whose income is at a level which, if taken alone, would qualify them for VA non-service-connected disability pension.

EXTENSION OF COPAYMENT PROGRAMS

*Current law:* Under sections 1710 and 1712 of title 38, VA health-care eligibility consists of two categories of veterans for purposes of copayments—those whom VA is required to charge and those who do not have to pay.

Those who are not required to pay are those to whom VA is required to provide needed hospital care, known as the "mandatory" category, which includes, among others, veterans with a service-connected disability and veterans without a service-connected disability whose annual income does not exceed certain levels (currently $18,844 for a single veteran without dependents).

Those whom VA is required to charge are those to whom VA may furnish hospital care, known as the "discretionary" category, which includes non-service-disabled veterans whose income exceeds those levels. The charges are (1) for hospital care, an amount equal to the Medicare deductible (currently $652) for the first 90 days of care during any 365-day period, and half the Medicare deductible for each 90-day period of care thereafter; (2) for nursing-home care, the same deductible for any 90-day period as under the Medicare program; (3) an additional $10 a day for hospital care and $5 a day for nursing-home care; and (4) for outpatient care, 20 percent of the estimated cost of a VA outpatient visit for each visit.

The current health-care categories and copayments and deductibles reflect amendments made by section 8013 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508. Section 518 of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for FY 1992, Public Law 102-139, extended these provisions through September 30, 1992.

Section 1722A of title 38 requires the Secretary to charge veterans (other than those with a service-connected disability rated 50 percent or more) $2 (or the actual cost, if less) for each 30-day supply of a medication furnished by VA on an outpatient basis for the treatment of a non-service-connected disability or condition. This provision expires on September 30, 1992.

*House bill:* Section 304 would extend the expiration date of these provisions from September 30, 1992, to September 30, 1996.

*Senate amendment:* Section 8 is identical to the House provisions.

*Compromise agreement:* Section 606 follows these provisions, except that it would extend the provisions through September 30, 1997. (The medication copayment requirement would be modified by section 605 of the compromise agreement.)

Mr. FORD. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

## VETERANS HOME LOAN PROGRAM AMENDMENTS OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 939.

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

*Resolved,* That the House agree to the amendment of the Senate to the text of the bill (H.R. 939) entitled "An Act to amend title 38, United States Code, with respect to housing loans for veterans, and for other purposes," with the following amendment:

In lieu of the matter inserted by said amendment, insert:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Veterans Home Loan Program Amendments of 1992".

**SEC. 2. ELIGIBILITY OF SELECTED RESERVE.**

(a) SELECTED RESERVE.—Chapter 37 of title 38, United States Code, is amended—

(1) in section 3701(b), by adding at the end the following:

"(5)(A) The term 'veteran' also includes an individual who is not otherwise eligible for the benefits of this chapter and who has completed a total service of at least 6 years in the Selected Reserve and, following the completion of such service, was discharged from service with an honorable discharge, was placed on the retired list, was transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or continues serving in the Selected Reserve.

"(B) The term 'Selected Reserve' means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces, as required to be maintained under section 268(b) of title 10."; and

(2) in section 3702(a)(2), by adding at the end the following:

"(E) For the 7-year period beginning on the date of enactment of this subparagraph, each veteran described in section 3701(b)(5) of this title.".

(b) FEES.—(1) Section 3729(a)(2) of such title is amended—

(A) by striking out "and" at the end of subparagraph (B);

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and

(C) by adding after subparagraph (C) the following new subparagraph:

"(D) in the case of a loan made to, or guaranteed or insured on behalf of, a veteran described in section 3701(b)(5) of this title under this chapter, the amount of such fee shall be—

"(i) two percent of the total loan amount;

"(ii) in the case of a loan for any purpose specified in section 3712 of this title, one percent of such amount; or

"(iii) in the case of a loan for a purchase (other than a purchase referred to in section 3712 of this title) or for construction with respect to which the veteran has made a downpayment of 5 percent or more of the total purchase price or construction cost—

"(I) 1.50 percent of the total loan amount if such downpayment is less than 10 percent of such price or cost; or

"(II) 1.25 percent of the total loan amount if such downpayment is 10 percent or more of such price or cost; and".

(2) Subparagraphs (A) and (B) of section 3725(c)(2) of such title are amended by inserting "(other than loans described in section 3729(a)(2)(D) of this title)" after "for each loan".

(c) REPORT.—The Secretary of Veterans Affairs shall transmit a report to the Committees on Veterans' Affairs of the Senate and House of Representatives no later than December 31, 1994, and annually thereafter. The report shall contain—

(1) a declaration of the number of veterans (as defined by section 3701(b)(5) of title 38, United States Code) who receive mortgage loans guaranteed by the Secretary as a result of the amendments made by subsection (a);

(2) a comparison of the default rate of veterans described in paragraph (1) with the default rate for all other veterans who have received loans guaranteed or insured by the Secretary; and

(3) a comparison of the proportion of veterans who receive mortgage loans guaranteed by the Secretary as a result of the amendments made by subsection (a) who are first time homebuyers with the proportion of all other veterans who receive mortgage loans guaranteed or insured by the Secretary and who are first time homebuyers.

**SEC. 3. ADJUSTABLE RATE MORTGAGE DEMONSTRATION PROGRAM.**

(a) IN GENERAL.—(1) Chapter 37 of title 38, United States Code, is amended by adding after section 3706 the following new section:

**"§ 3707. Adjustable rate mortgages**

"(a) The Secretary shall carry out a demonstration project under this section during fiscal years 1993, 1994, and 1995 for the purpose of guaranteeing loans in a manner similar to the manner in which the Secretary of Housing and Urban Development insures adjustable rate mortgages under section 251 of the National Housing Act.

"(b) Interest rate adjustment provisions of a mortgage guaranteed under this section shall—

"(1) correspond to a specified national interest rate index approved by the Secretary, information on which is readily accessible to mortgagors from generally available published sources;

"(2) be made by adjusting the monthly payment on an annual basis on the anniversary of the date on which the loan was closed;

"(3) be limited, with respect to any single annual interest rate adjustment, to a maximum increase or decrease of 1 percentage point; and

"(4) be limited, over the term of the mortgage, to a maximum increase of 5 percentage points above the initial contract interest rate.

"(c) The Secretary shall promulgate underwriting standards for loans guaranteed under this section, taking into account—

"(1) the status of the interest rate index referred to in subsection (b)(1) and available at the time an underwriting decision is made, regardless of the actual initial rate offered by the lender;

"(2) the maximum and likely amounts of increases in mortgage payments that the loans would require;

"(3) the underwriting standards applicable to adjustable rate mortgages insured under title II of the National Housing Act; and

"(4) such other factors as the Secretary finds appropriate.

"(d) The Secretary shall require that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of the adjustable rate mortgage, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first five years of the mortgage term.".

(2) The table of sections for chapter 37, of title 38, United States Code, is amended by inserting after the item relating to section 3706 the following new item:

"3707. Adjustable rate mortgages.".

(b) REPORT.—The Secretary shall transmit a report to the Committees on Veterans' Affairs of the Senate and House of Representatives no later than December 31, 1993, containing a description of the project carried out under section 3707 of title 38, United States Code (as added by subsection (a)), and shall continue to make annual reports to the Committees with respect to the default rate and other information concerning the loans guaranteed under such section. Such reports shall—

(1) compare the number of adjustable rate mortgages guaranteed under such section with the number of fixed rate loans guaranteed or insured under chapter 37 of such title and contrast this ratio with a corresponding ratio for loans for single family housing insured by the Secretary of Housing and Urban Development pursuant to the National Housing Act;

(2) compare the initial interest rate of the adjustable rate mortgages guaranteed under such section with the fixed interest rate on loans guaranteed or insured under chapter 37 of such title;

(3) describe the monthly mortgage payment savings to the veteran, if any, under an adjustable rate mortgage guaranteed under such section compared with the payments that would have been required if the loan bore interest at a maximum fixed rate established by the Secretary;

(4) discuss whether the market share for housing loans guaranteed under chapter 37 of such title has increased or decreased since the implementation of such section;

(5) compare the default rate on mortgages guaranteed under such section with the default rate of fixed-rate mortgages guaranteed or insured under chapter 37 of such title; and

(6) compare the number of first time homebuyers using adjustable rate mortgage loans under such section with the number of first time homebuyers using any other loan guaranteed under chapter 37 of such title.

**SEC. 4. ENHANCED LOAN ASSET SALE AUTHORITY.**

Section 3720(h)(2) of title 38, United States Code, is amended by striking out "December 31, 1992" and inserting in lieu thereof "December 31, 1995".

**SEC. 5. FEES FOR REFINANCING LOANS.**

Section 3729(a)(2) of title 38, United States Code (as amended by section 2(b) of this Act), is amended—

(1) in subparagraph (A), by inserting "(other than section 3712(a)(1)(F))" after "section 3712"; and

(2) by inserting after subparagraph (D) the following new subparagraph:

"(E) in the case of a loan guaranteed under section 3710(a)(8), 3710(a)(9)(B)(i), or 3712(a)(1)(F) of this title, the amount of such fee shall be 0.5 percent of the total loan amount.".

**SEC. 6. GUARANTY AMOUNT RELATIVE TO LOAN REFINANCINGS.**

Chapter 37 of title 38, United States Code, is amended—

(1) in section 3710(e), by amending paragraph (1)(D) to read as follows:

"(D) notwithstanding section 3703(a)(1) of this title, the amount of the guaranty of the loan may not exceed the greater of (i) the original guaranty amount of the loan being refinanced, or (ii) 25 percent of the loan;"; and

(2) in section 3712(a)(4), by amending subparagraph (A)(iv) to read as follows:

"(iv) notwithstanding section 3703(a)(1) of this title, the amount of the guaranty of the loan may not exceed the greater of (I) the original guaranty amount of the loan being refinanced, or (II) 25 percent of the loan;".

**SEC. 7. EXTENSION OF LENDER APPRAISAL PROGRAM.**

Section 3731(f)(3) of title 38, United States Code, is amended by striking out "1992" and inserting in lieu thereof "1995".

**SEC. 8. NATIVE AMERICAN VETERANS DIRECT HOUSING LOAN PILOT PROGRAM.**

(a) PROGRAM.—Chapter 37 of title 38, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER V—NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM

**"§ 3761. Pilot program**

"(a) The Secretary shall establish and implement a pilot program under which the Secretary may make direct housing loans to Native American veterans. The purpose of such loans is to permit such veterans to purchase, construct, or improve dwellings on trust land. The Secretary shall establish and implement the pilot program in accordance with the provisions of this subchapter.

"(b) In carrying out the pilot program under this subchapter, the Secretary shall, to the extent practicable, make direct housing loans to Native American veterans who are located in a variety of geographic areas and in areas experiencing a variety of economic circumstances.

"(c) No loans may be made under this subchapter after September 30, 1997.

**"§ 3762. Direct housing loans to Native American veterans**

"(a) The Secretary may make a direct housing loan to a Native American veteran if—

"(1) the Secretary has entered into a memorandum of understanding with respect to such loans with the tribal organization that has jurisdiction over the veteran; and

"(2) the memorandum is in effect when the loan is made.

"(b)(1) Subject to paragraph (2), the Secretary shall ensure that each memorandum of understanding that the Secretary enters into with a tribal organization shall provide for the following:

"(A) That each Native American veteran who is under the jurisdiction of the tribal organization and to whom the Secretary makes a direct loan under this subchapter—

"(i) holds, possesses, or purchases using the proceeds of the loan a meaningful interest in a lot or dwelling (or both) that is located on trust land; and

"(ii) will purchase, construct, or improve (as the case may be) a dwelling on the lot using the proceeds of the loan.

"(B) That each such Native American veteran will convey to the Secretary by an appropriate instrument the interest referred to in subparagraph (A) as security for a direct housing loan under this subchapter.

"(C) That the tribal organization and each such Native American veteran will permit the Secretary to enter upon the trust land of that organization or veteran for the purposes of carrying out such actions as the Secretary determines are necessary—

"(i) to evaluate the advisability of the loan; and

"(ii) to monitor any purchase, construction, or improvements carried out using the proceeds of the loan.

"(D) That the tribal organization has established standards and procedures that apply to the foreclosure of the interest conveyed by a Native American veteran pursuant to subparagraph (B), including—

"(i) procedures for foreclosing the interest; and

"(ii) procedures for the resale of the lot or the dwelling (or both) purchased, constructed, or improved using the proceeds of the loan.

"(E) That the tribal organization agrees to such other terms and conditions with respect to the making of direct loans to Native American veterans under the jurisdiction of the tribal organization as the Secretary may require in order to ensure that the pilot program established under this subchapter is implemented in a responsible and prudent manner.

"(2) The Secretary may not enter into a memorandum of understanding with a tribal organization under this subsection unless the Secretary determines that the memorandum provides for such standards and procedures as are necessary for the reasonable protection of the financial interests of the United States.

"(c)(1)(A) Except as provided in subparagraph (B), the principal amount of any direct housing loan made to a Native American under this section may not exceed $80,000.

"(B) The Secretary may make loans exceeding the amount specified in subparagraph (A) in a geographic area if the Secretary determines that housing costs in the area are significantly higher than average housing costs nationwide. The amount of such increase shall be the amount that the Secretary determines is necessary in order to carry out the pilot program under this subchapter in a manner that demonstrates the advisability of making direct housing loans to Native American veterans who are located in a variety of geographic areas and in geographic areas experiencing a variety of economic conditions.

"(2) Loans made under this section shall bear interest at a rate determined by the Secretary, which rate may not exceed the appropriate rate authorized for guaranteed loans under section 3703(c)(1) or section 3712(f) of this title, and shall be subject to such requirements or limitations prescribed for loans guaranteed under this title as the Secretary may prescribe.

"(3) Notwithstanding section 3704(a) of this title, the Secretary shall establish minimum requirements for planning, construction, improvement, and general acceptability relating to any direct loan made under this section.

"(d)(1) The Secretary shall establish credit underwriting standards to be used in evaluating loans made under this subchapter. In establishing such standards, the Secretary shall take into account the purpose of this program to make available housing to Native American veterans living on trust lands.

"(2) The Secretary shall determine the reasonable value of the interest in property that will serve as security for a loan made under this section and shall establish procedures for appraisals upon which the Secretary may base such determinations. The procedures shall incorporate generally the relevant requirements of section 3731 of this title, unless the Secretary determines that such requirements are impracticable to implement in a geographic area, on particular trust lands, or under circumstances specified by the Secretary.

"(e) Loans made under this section shall be repaid in monthly installments.

"(f) In connection with any loan under this section, the Secretary may make advances in cash to provide for repairs, alterations, and improvements and to meet incidental expenses of the loan transaction. The Secretary shall determine the amount of any expenses incident to the origination of loans made under this section, which expenses, or a reasonable flat allowance in lieu thereof, shall be paid by the veteran in addition to the loan closing costs.

"(g) Without regard to any provision of this chapter (other than a provision of this section), the Secretary may—

"(1) take any action that the Secretary determines to be necessary with respect to the custody, management, protection, and realization or sale of investments under this section;

"(2) determine any necessary expenses and expenditures and the manner in which such expenses and expenditures shall be incurred, allowed, and paid;

"(3) make such rules, regulations, and orders as the Secretary considers necessary for carrying out the Secretary's functions under this section; and

"(4) in a manner consistent with the provisions of this chapter and with the Secretary's functions under this subchapter, employ, utilize, and compensate any persons, organizations, or departments or agencies (including departments and agencies of the United States) designated by the Secretary to carry out such functions.

"(h) The Secretary shall carry out an outreach program to inform and educate tribal organizations and Native American veterans of the pilot program provided for under this subchapter and the availability of direct housing loans for Native American veterans who live on trust lands.

**"§3763. Housing loan program account**

"(a) There is hereby established in the Treasury of the United States an account known as the 'Native American Veteran Housing Loan Program Account' (hereafter in this subchapter referred to as the 'Account').

"(b) The Account shall be available to the Secretary to carry out all operations relating to the making of direct housing loans to Native American veterans under this subchapter, including any administrative expenses relating to the making of such loans. Amounts in the Account shall be available without fiscal year limitation.

**"§3764. Definitions**

"For the purposes of this subchapter—

"(1) The term 'trust land' means any land that—

"(A) is held in trust by the United States for Native Americans;

"(B) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands);

"(C) is owned by a Regional Corporation or a Village Corporation, as such terms are defined in section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively (43 U.S.C. 1602(g), (j)); or

"(D) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary.

"(2) The term 'Native American veteran' means any veteran who is a Native American.

"(3) The term 'Native American' means—

"(A) an Indian, as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d));

"(B) a native Hawaiian, as that term is defined in section 201(a)(7) of the Hawaiian Homes Commission Act, 1920 (Public Law 67-34; 42 Stat. 108);

"(C) an Alaska Native, within the meaning provided for the term 'Native' in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)); and

"(D) a Pacific Islander, within the meaning of the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.).

"(4) The term 'tribal organization' shall have the meaning given such term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)) and shall include the Department of Hawaiian Homelands, in the case of native Hawaiians, and such other organizations as the Secretary may prescribe.".

(b) CONSULTATION.—In carrying out the direct housing loan pilot program authorized under subchapter V of chapter 37 of title 38, United States Code (as added by subsection (a)), the Secretary of Veterans Affairs shall consider the views and recommendations, if any, of the Advisory Committee on Native-American Veterans established under section 19032 of the Veterans' Health-Care Amendments of 1986 (title XIX of Public Law 99-272; 100 Stat. 388).

(c) CONFORMING AMENDMENT.—The table of sections of such chapter is amended by adding at the end the following new matter:

"SUBCHAPTER V—NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM

"3761. Pilot program.
"3762. Direct housing loans to Native American veterans.
"3763. Housing loan program account.
"3764. Definitions.".

(d) ANNUAL REPORTS.—Not later than February 1 of each of 1994 through 1998, the Secretary of Veterans Affairs shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report relating to—

(1) the implementation of the Native American veterans direct housing loan pilot program established under subchapter V of chapter 37 of title 38, United States Code (as added by subsection (a)), during the period ending on September 30 of the year preceding the date of the report;

(2) the Secretary's exercise of the authority provided under section 3762(c)(1)(B) of such title (as so added) to make loans exceeding the maximum loan amount;

(3) the appraisals performed for the Secretary during that period under the authority of section 3732(d)(2) of such title (as so added), including a description of—

(A) the manner in which such appraisals were performed;

(B) the qualifications of the appraisers who performed such appraisals; and

(C) the actions taken by the Secretary with respect to such appraisals to protect the interests of veterans and the United States; and

(4) the Secretary's recommendations, if any, for legislation regarding the pilot program.

(e) AUTHORIZATION OF APPROPRIATIONS.—New direct loan obligations for Native American veteran housing loans under subchapter V of chapter 37 of title 38, United States Code (as added by subsection (a)), may be incurred only to the extent that appropriations of budget authority to cover the anticipated cost, as defined in section 502 of the Congressional Budget Act of 1974, for such loans are made in advance. There is authorized to be appropriated for such purpose

$5,000,000 for fiscal year 1993, which amount shall remain available without fiscal year limitation.

(f) CONFORMING FUNDING AMENDMENT.—Title I of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 is amended by striking out "direct loans authorized by" and all that follows through "Veterans' Affairs)" under the heading "NATIVE AMERICAN VETERAN HOUSING LOAN PROGRAM ACCOUNT" and inserting in lieu thereof "direct loans authorized by subchapter V of chapter 37 of title 38, United States Code".

**SEC. 9. ENERGY EFFICIENT MORTGAGES.**

(a) IN GENERAL.—Subsection (d) of section 3710 of title 38, United States Code, is amended to read as follows:

"(d)(1) The Secretary shall carry out a program to demonstrate the feasibility of guaranteeing loans for the acquisition of an existing dwelling and the cost of making energy efficiency improvements to the dwelling or for energy efficiency improvements to a dwelling owned and occupied by a veteran. A loan may be guaranteed under this subsection only if it meets the requirements of this chapter, except as those requirements are modified by this subsection.

"(2) The cost of energy efficiency measures that may be financed by a loan guaranteed under this section may not exceed the greater of—

"(A) the cost of the energy efficiency improvements, up to $3,000; or

"(B) $6,000, if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the energy efficiency improvements.

"(3) Notwithstanding the provisions of section 3703(a)(1)(A) of this title, any loan guaranteed under this subsection shall be guaranteed in an amount equal to the sum of—

"(A) the guaranty that would be provided under those provisions for the dwelling without the energy efficiency improvements; and

"(B) an amount that bears the same relation to the cost of the energy efficiency improvements as the guaranty referred to in subparagraph (A) bears to the amount of the loan minus the cost of such improvements.

"(4) The amount of the veteran's entitlement, calculated in accordance with section 3703(a)(1)(B) of this title, shall not be affected by the amount of the guaranty referred to in paragraph (3)(B).

"(5) The Secretary shall take appropriate actions to notify eligible veterans, participating lenders, and interested realtors of the availability of loan guarantees under this subsection and the procedures and requirements that apply to the obtaining of such guarantees.

"(6) For the purposes of this subsection:

"(A) The term 'energy efficiency improvement' includes a solar heating system, a solar heating and cooling system, or a combined solar heating and cooling system, and the application of a residential energy conservation measure.

"(B) The term 'solar heating' has the meaning given such term in section 3(1) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5502(1)) and, in addition, includes a passive system based on conductive, convective, or radiant energy transfer.

"(C) The terms 'solar heating and cooling' and 'combined solar heating and cooling' have the meaning given such terms in section 3(2) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5502(2)) and, in addition, include a passive system based on conductive, convective, or radiant energy transfer.

"(D) The term 'passive system' includes window and skylight glazing, thermal floors, walls, and roofs, movable insulation panels (when in conjunction with glazing), portions of a residential structure that serve as solar furnaces so as to add heat to the structure, double-pane window insulation, and such other energy-related components as are determined by the Secretary to enhance the natural transfer of energy for the purpose of heating or heating and cooling a residence.

"(E) The term 'residential energy conservation measure' means—

"(i) caulking and weatherstripping of all exterior doors and windows;

"(ii) furnace efficiency modifications limited to—

"(I) replacement burners, boilers, or furnaces designed to reduce the firing rate or to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

"(II) devices for modifying flue openings which will increase the efficiency of the heating system, and

"(III) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

"(iii) clock thermostats;

"(iv) ceiling, attic, wall, and floor insulation;

"(v) water heater insulation;

"(vi) storm windows and doors;

"(vii) heat pumps; and

"(viii) such other energy conservation measures as the Secretary may identify for the purposes of this subparagraph.

"(7) A loan may not be guaranteed under this subsection after December 31, 1995.".

(b) PURCHASE OR CONSTRUCTION WITH ENERGY EFFICIENCY IMPROVEMENTS.—(1) Section 3710(a)(7) of such title is amended to read as follows:

"(7) To improve a dwelling or farm residence owned by the veteran and occupied by the veteran as the veteran's home through energy efficiency improvements, as provided in subsection (d).".

(2) Section 3710(a) of such title is further amended by adding after paragraph (9) the following:

"(10) To purchase a dwelling to be owned and occupied by the veteran as a home and make energy efficiency improvements, as provided in subsection (d).".

(c) REPORTS.—Not later than 1 year after the date on which the Secretary of Veterans Affairs first exercises the authority to guarantee loans under section 3710(d) of title 38, United States Code (as added by subsection (a) of this section), and for each of the 3 years thereafter, the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the program under such section. Each such report shall contain information pertaining to—

(1) the number of mortgages guaranteed under such section;

(2) the average amount of money added to the mortgage to finance energy efficiency features;

(3) the types of energy efficiency features obtained with mortgages under such section; and

(4) the default rates on the mortgages guaranteed under such section compared with the default rates on all other types of mortgages guaranteed by the Secretary.

**SEC. 10. NEGOTIATED INTEREST RATES.**

(a) IN GENERAL.—Section 3703(c) of title 38, United States Code, is amended—

(1) in the first sentence of paragraph (1)—

(A) by striking "the Secretary of Housing and Urban Development considers necessary to meet the mortgage market for" and inserting "applicable to"; and

(B) by striking all that follows "(12 U.S.C. 1709(b))" and inserting a period; and

(2) by adding at the end the following:

"(4)(A) In guaranteeing or insuring loans under this chapter, the Secretary may elect whether to require that such loans bear interest at a rate that is—

"(i) agreed upon by the veteran and the mortgagee; or

"(ii) established under paragraph (1).

The Secretary may, from time to time, change the election under this subparagraph.

"(B) Any veteran, under a loan described in subparagraph (A)(i), may pay reasonable discount points in connection with the loan. Discount points may not be financed as part of the principal amount of a loan guaranteed or insured under this chapter.

"(C) Not later than 10 days after an election under subparagraph (A), the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a notification of the election, together with an explanation of the reasons therefor.

"(D) This paragraph shall expire on December 31, 1995.".

(b) REPORT.—Not later than December 31, 1993, and annually thereafter, the Secretary of Veterans Affairs shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on whether the Secretary has implemented the authority to guarantee and insure loans that bear negotiated interest rates and points under section 3703(c)(4) of title 38, United States Code (as added by subsection (a)). If the Secretary has implemented that authority, the Secretary shall include in the report—

(1) a comparison of the interest rates paid by veterans for loans that bear interest rates negotiated under section 3703(c)(4) of such title with interest rates allowable under mortgages for single family housing insured by the Secretary of Housing and Urban Development pursuant to the National Housing Act and interest rates charged under conventional mortgage loan programs for single family housing;

(2) a comparison of the negotiated interest rates being charged under paragraph 4 of section 3703(c) of such title with the interest rate that the Secretary would have established under paragraph (1) of such section during the same time period;

(3) a comparison of the number of discount points charged by the lender for mortgage loans that bear interest rates negotiated under section 3703(c)(4) of such title with the number of discount points charged for mortgages for single family housing insured by the Secretary of Housing and Urban Development pursuant to the National Housing Act and the number of discount points charged under conventional mortgage loan programs for single family housing;

(4) a discussion of the extent to which borrowers or sellers are paying the discount points on negotiated interest rate loans under section 3703(c)(4) of such title;

(5) a discussion of whether the market share for housing loans guaranteed under such title has increased or decreased since the implementation of the authority to guarantee and insure loans that bear negotiated interest rates under section 3703(c)(4) of such title, and a discussion of the extent to which any change in market share was the result of that authority;

(6) in claims paid following foreclosure, a discussion of the difference in the interest portion paid on loans guaranteed under section 3703(c)(4) of such title to what the interest portion would have been under the interest rate established under section 3703(c)(1) of such title; and

(7) the number of first time homebuyers using loans that bear negotiated interest rates under section 3703(c)(4) of such title.

**SEC. 11. ELIGIBILITY FOR FLAGS AND GRAVE MARKERS.**

(a) FLAGS.—Section 2301(a) of title 38, United States Code, is amended to read as follows:

"(a) The Secretary shall furnish a flag to drape the casket of each—

"(1) deceased veteran who—

"(A) was a veteran of any war, or of service after January 31, 1955;

"(B) had served at least one enlistment; or

"(C) had been discharged or released from the active military, naval, or air service for a disability incurred or aggravated in line of duty; and

"(2) deceased individual who at the time of death was entitled to retired pay under chapter 67 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.".

(b) HEADSTONES OR MARKERS.—Section 2306(a) of title 38, United States Code, is amended by adding at the end thereof the following:

"(5) Any individual who at the time of death was entitled to retired pay under chapter 67 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.".

**SEC. 12. TECHNICAL AMENDMENT.**

Section 5 of Public Law 102-54 (105 Stat. 268) is amended by striking out "3102" and inserting in lieu thereof "5302".

*Resolved*, That the House agree to the amendment of the Senate to the title of the bill.

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I urge final Senate action on legislation to improve VA's Home-Loan Guaranty Program. This legislation as it comes before the Senate today is derived from H.R. 939 as passed by the House on March 3, 1992; S. 3108 as passed by the Senate in H.R. 939 on October 1, 1992; H.R. 4368 as passed by the House on June 9, 1992; and S. 2528 as passed by the Senate on September 18, 1992.

This measure, which I will refer to as the compromise agreement, would breathe new life into the VA Home-Loan Program—a program that, for nearly half a century has made it possible for millions of veterans to realize the American dream of home ownership.

Specifically, the measure would, among other things, establish VA pilot programs providing VA-guaranteed loans with adjustable interest rates, allowing veterans to negotiate the interest rates and discount points on VA-guaranteed loans, providing direct home loans to Native American veterans living on trust lands, and making certain reservists eligible for VA-guaranteed home loans.

Mr. President, the House passed this compromise bill without opposition on a voice vote on October 5, 1992, and I hope the Senate shortly will do the same. The provisions in the compromise agreement will make significant improvements in veterans' programs.

At the conclusion of my remarks, I will submit for the RECORD a detailed explanatory statement prepared by the two Veterans' Affairs Committees that describes in detail the provisions in this measure. Thus, at this point, I will summarize briefly the provisions of the compromise agreement and then discuss certain provisions in the bill.

SUMMARY OF PROVISIONS

The provisions of the compromise agreement would:

ADJUSTABLE RATE MORTGAGES

First, establish a demonstration program, during FYs 1993 through 1995, of VA-guaranteed adjustable rate mortgages (ARMs).

Second, require annual adjustments in the interest rate on ARMs on the anniversary date of the loan closing based on a national interest rate index approved by the Secretary.

Third, limit the annual interest-rate adjustment on VA-guaranteed ARMs to no more than 1 percentage point higher or lower than the interest rate of the loan at the time of the adjustment.

Fourth, limit the maximum interest rate at any time during the term of the loan to no more than 5 percentage points above the initial rate.

Fifth, require the Secretary to promulgate underwriting standards specifically for VA-guaranteed ARMs.

Sixth, provide that VA must require the lender to provide to an applicant for a VA-guaranteed ARM a written explanation of the features of the ARM, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the loan.

Seventh, require the Secretary to report to the Committees on Veterans' Affairs by December 31, 1993, and annually thereafter, on the default rate and other information concerning VA-guaranteed ARMs.

NEGOTIATED INTEREST RATES

Eighth, require the Secretary, through December 31, 1995, to establish either (a) a uniform maximum interest rate and general prohibition on a borrower paying discount points, or (b) procedures for allowing interest on VA-guaranteed loans at rates negotiated between borrowers and lenders.

Ninth, authorize the Secretary to change between uniform maximum rates and negotiated rates at any time.

Tenth, provide that, if the Secretary allows negotiated interest rates, the Secretary shall allow a borrower to pay reasonable discount points on VA-guaranteed loans, as negotiated between the borrower, the seller, and the lender, but prohibit the discount points from being financed as part of the loan.

Eleventh, require the Secretary (a) to notify the Committees on Veterans' Affairs within 10 days after exercising the authority to provide for negotiated rates or after returning to a uniform maximum rate, and (b) to provide with the notification an explanation of the reasons for the change in policy.

Twelfth, require the Secretary to report to the Committees by March 1, 1994, on whether the Secretary has implemented negotiated interest rates under the authority of this legislation and, if so, various information and analyses regarding VA-guaranteed loans that bear a negotiated interest rate.

ENERGY EFFICIENT MORTGAGES

Thirteenth, establish a demonstration program of energy efficient mortgages (EEMs) during FYs 1993 through 1996.

Fourteenth, provide VA-guaranteed EEMs for eligible veterans to purchase an existing home and make energy efficiency improvements to it or to make energy efficiency improvements to it or to make energy efficiency improvements to a home owned and occupied by the veteran, provided that the financed cost of the energy efficiency improvements does not exceed the greater of (1) $3,000, or (2) $6,000 if the increase in monthly principal and interest payments does not exceed the likely reduction in monthly utility costs as a result of the improvements.

Fifteenth, provide that the portion of the guaranty attributable to energy efficiency measures may be in addition to the current applicable maximum guaranty and shall not affect the loan-guaranty entitlement to which the borrower otherwise is entitled.

Sixteenth, require VA to encourage participation in the program by notifying eligible veterans, participating lenders, and interested realtors about the availability of EEMs and the procedures and requirements to obtain the loans.

Seventeenth, require the Secretary to report to the Senate and House Committees on Veterans' Affairs on the program one year after VA guarantees the first EEM under the program and annually thereafter and to include information on the default rates for EEMs and the effects, if any, of the energy efficiency measures on resale values and home utility consumption and costs.

DIRECT HOME LOANS TO NATIVE AMERICAN VETERANS ON TRUST LANDS

Eighteenth, establish a five-year pilot program of direct loans to Native American veterans to purchase, construct, or improve dwellings on trust lands.

FEES FOR CERTAIN REFINANCING LOANS

Nineteenth, reduce the VA fee for VA-guaranteed interest rate reduction refinancing loans from as much as 1.25 percent of the loan to 0.5 percent.

MINIMUM GUARANTY RATIO FOR CERTAIN REFINANCING LOANS

Twentieth, provide that the guaranty for VA-guaranteed interest rate reduction refinancing loans always will be at least 25 percent of the new loan.

RESERVISTS' ELIGIBILITY FOR LOAN GUARANTIES

Twenty-first, establish a seven-year pilot program extending eligibility for VA-guaranteed home loans to individuals who have served in the Reserve or National Guard for a total of at least six years.

Twenty-second, require these individuals to pay VA a loan fee 0.75 of a percentage point above the fee that veterans pay.

Twenty-third, require the Secretary to report to the Senate and House Committees on Veterans' Affairs, by December 31, 1994, and annually thereafter, on reservists' participation in the program.

LENDER APPRAISAL PROCESSING PROGRAM

Twenty-fourth, extend, from December 31, 1992, to December 31, 1995, the lender appraisal processing program, under which the

Secretary may authorize qualified lenders to determine the reasonable value of the property based on an appraisal submitted by the appraiser directly to the lender, rather than to VA.

ENHANCED LOAN ASSET SALE AUTHORITY

Twenty-fifth, extend from December 31, 1992, to December 31, 1995, VA's authority under section 3720(h) of title 38 to provide a full-faith-and-credit government guaranty on the payment of securities backed by pools of VA vendee loans (direct loans to purchasers of properties acquired by VA upon foreclosure of a VA-guaranteed loan).

ELIGIBILITY OF RESERVISTS FOR FLAGS AND BURIAL MARKERS

Twenty-sixth, extend eligibility for flags to deceased individuals who at the time of death qualified for Reserved retired pay under chapter 67 of title 10 (or would have qualified if the individual was 60 years old).

Twenty-seventh, extend to these same individuals eligibility for VA-provided headstones or grave markers.

BACKGROUND

Mr. President, the declining share of the mortgage market occupied by VA-guaranteed loans reflects the declining value of this veterans benefit. Congress must act to reverse this trend and restore the value of this vital program—and the measure we are considering today would take several significant steps toward that goal.

Mr. President, I refer my colleagues and others interested in more background on the program and this legislation to the Veterans' Affairs Committee's report accompanying S. 3108 (S. Rept. No. 102-405) and to my statement in the RECORD of October 1, 1992, on the passage of the Senate bill, S. 3108, which I authored.

NEGOTIATED INTEREST RATES

Mr. President, I'm very pleased that the compromise agreement contains a provision from the Senate bill that will allow veterans to negotiate with lenders interest rates on VA-guaranteed loans. This step is long overdue.

The VA administered rate under current law is supposed to be a maximum interest rate, but in practice, it sets a single, nationwide interest rate for VA-guaranteed loans. Veterans are prohibited from paying discount points on a VA loan to obtain a lower interest rate. The prohibition against veterans paying points means that, when a veteran wants to use a VA-guaranteed loan, the seller must pay all of the points. That makes many sellers reluctant to sell their homes to veterans who plan to use VA-guaranteed loans.

Mr. President, for the next 3 years, this bill could put veterans on a level playing field with potential purchasers who plan to use conventional, FHA-insured, or other types of mortgage loans. Veterans would not start at a disadvantage when they bid for a house against other potential purchasers.

Mr. President, in the highly competitive mortgage lending industry, I believe that the interest-rate competition that this bill would allow ultimately will reduce veterans' costs for housing.

ADJUSTABLE RATE MORTGAGES

Mr. President, I also am pleased that the compromise includes Senate improvements to important House provisions providing—for the first time—authority for VA-guaranteed adjustable rate mortgages. VA-guaranteed loans are the only segment of the single-family mortgage market at does not offer adjustable rate mortgages.

I have been very cautious about pushing VA into guaranteeing this type of loan because ARM's inherently are more risky for the borrower. In the first years that adjustable rate mortgages were offered, abuses were rampant and default rates were high.

The market for ARM's has matured, however, and limitations placed on interest-rate adjustments have brought defaults down to reasonable levels, although ARM's still have default rates somewhat higher than fixed-rate mortgages. The safeguards added by the Senate amendments to the ARM's demonstration program represent a very conservative approach to expanding veterans' options for VA-guaranteed home loans.

During the committee's July 22, 1992, hearing on a draft measure of what became the Senate bill, I was pleased to hear the administration reverse its longstanding opposition to VA-guaranteed ARM's and support the demonstration program in our bill.

ENERGY EFFICIENT MORTGAGES

Mr. President, I am very pleased that the compromise includes an improved and expanded version of my proposal for VA-guaranteed energy efficient mortgages to encourage veterans who buy existing homes to incorporate energy-saving improvements into the home. I have been active for many years in efforts to encourage energy efficiency in housing, while maintaining housing affordability.

Under the compromise agreement, veterans could use a VA-guaranteed loan to finance energy efficiency improvements to a home they already own and occupy or to an existing home they plan to purchase with a VA-guaranteed loan. In these cases, VA would guarantee loans to finance up to $6,000 worth of energy improvements without the need for an appraisal of the improvements. VA would guarantee loans covering energy efficiency improvements that cost $3,000 to $6,000 only if the energy savings from the improvements are likely at least to offset the resulting increase in monthly principal and interest payments on the loan.

Mr. President, I note that neither VA's current EEM Program nor the improved program established by the compromise bill apply to newly constructed homes. Most modern homes already incorporate energy efficiency measures.

Mr. President, veterans should note that the additional amount of the guaranty would not count against the veteran's entitlement or against the regular guaranty limits.

For example, the VA guaranty on a $148,000 loan that does not include the cost of energy efficiency measures would be $46,000 under current law, or 25 percent of the loan amount. Under the EEM Program in the compromise bill, a qualified borrower could borrow an additional $6,000 for cost-effective energy efficiency improvements to the existing home that the veteran is purchasing. The $6,000 additional loan amount would be guaranteed in the same ratio as the underlying loan—25 percent in this example. Thus, the total loan would be $190,000 and the guaranty would be $46,000 plus $1,500 or a total of $47,500. Only $46,000 of the guaranty would apply against the veteran's entitlement.

In short, this legislation would create a streamlined process for obtaining an EEM in connection with the purchase or improvement of an existing home. If the energy savings are cost effective, in terms of the veteran's monthly out-of-pocket housing costs, there would be no need for an appraisal of the market value of the energy efficiency improvements. In short, these new EEMs would substitute an energy efficient standard for an appraised value standard for the portion of the loan that would finance the energy efficiency improvements.

CONCLUSION

Mr. President, I express my deep appreciation to the distinguished Ranking Republican Member of the Senate Committee, Mr. SPECTER, and all other members of the committee, as well as the chairman and ranking minority member of the House Committee on Veterans' Affairs, [Mr. MONTGOMERY] and [Mr. STUMP] and the House Subcommittee on Housing and Memorial Affairs, [Mr. STAGGERS] and [Mr. BURTON] for their cooperation on this measure.

Mr. President, I also express my deep gratitude to the staff members who worked on this legislation—on the minority staff in the Senate, Quentin Kinderman and Tom Roberts, and on the majority staff in the Senate, Neil Koren, Michael Cogan, Bill Brew, and Ed Scott—and on the House Committee on Veterans' Affairs staff, Cynthia Jones, Gloria Royce, Pay Ryan, and Mack Fleming for the majority and Stacy Coggin and Carl Commenator for the minority.

Mr. President, I also note the fine work of the staff of the two Offices of Legislative Counsel, Charlie Armstrong in the Senate and Wade Ballou in the House. They provided their usual excellent assistance as we prepared this legislation.

Mr. President, I urge the Senate to give its unanimous approval to this measure and I ask unanimous consent that the explanatory statement to which I referred earlier, and which was prepared in lieu of a joint explanatory statement accompanying a conference report, be printed in the RECORD.

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

EXPLANATORY STATEMENT FOR H.R. 939, THE PROPOSED "VETERANS HOME LOAN AMENDMENTS OF 1992"

H.R. 939, the proposed, "Veterans Home Loan Amendments of 1992" reflects a compromise agreement that the Senate and House of Representatives Committees on Veterans' Affairs have reached on four bills passed by the Senate and the House during the 102nd Congress. These are: H.R. 939 as passed by the House on March 3, 1992 (hereinafter referred to as "House bill"), H.R. 4368 as passed by the House on June 9, 1992 (hereinafter referred to as "H.R. 4368"), S. 3108 as passed by the Senate as a substitute amendment to H.R. 939 on October 1, 1992 (hereinafter referred to as "Senate amendment"), and S. 2528 as passed by the Senate on September 18, 1992, (hereinafter referred to as "S. 2528").

The Committees on Veterans' Affairs have prepared the following explanation of H.R. 939 as amended (hereinafter referred to as "compromise agreement"). Differences between the provisions contained in the compromise agreement and the related provisions in the bills listed above are noted in this document, except for clerical corrections and conforming changes made necessary by the compromise agreement, and minor drafting, technical, and clarifying changes.

ELIGIBILITY OF SELECTED RESERVE

*Current law:* Section 3702(a)(2) of title 38, United States Code, requires, as a condition of eligibility for VA-guaranteed loans, active-duty service of at least 180 consecutive days, or a total of 90 days if at least one day was during a designated wartime period. Section 5303A imposes an additional minimum-service requirement for VA benefits eligi-

bility. Under section 5303A, a person who originally enlists after September 7, 1980 (or enters active duty as an officer after October 16, 1981) generally must have served either two years of active-duty service or the length of the period for which he or she was called to active duty.

Section 3729 requires veterans to pay a loan fee of 1.25 percent of the loan for loans with no downpayment, 0.75 percent for loans with a downpayment of at least 5 percent, or 0.5 percent for loans with a downpayment of at least 10 percent. Veterans with compensable service-connected disabilities are exempt from paying the VA loan fee. Loans for manufactured housing require a VA fee of 1 percent.

*House bill:* Section 1(a) would amend section 3701(b) of title 38 to make eligible for VA-guaranteed loans individuals who have completed a total of six years of service in the Selected Reserve (as defined by section 286(b) of title 10) and continue serving in the Selected Reserve or, following the completion of service, are honorably discharged or transferred to the Standby Reserve or another element of the Selected Reserve after honorable service during the six-year period.

Section 1(b) would amend section 3729 of title 38 to require these individuals to pay a VA loan fee 0.75 percent higher than the equivalent fees for veterans.

*Senate amendment:* Section 6 is similar to the House provision, except that it would take effect October 1, 1992, and expire December 31, 1998. Section 6(d) would require the Secretary to report to the Senate and House Committees on Veterans' Affairs by September 30, 1997, on reservists' participation in the VA guaranteed home loan program.

*Compromise agreement:* Section 2 follows the House bill, except that the provisions would expire seven years after the date of enactment. Section 2(c) would require the Secretary to report annually to the Committees on Veterans' Affairs on reservists' participation in the home-loan program. The first report would be due by December 31, 1994.

ADJUSTABLE RATE MORTGAGES

*Current law:* Section 3703(c)(1) prohibits VA-guaranteed loans from bearing interest at a rate exceeding the rate that the Secretary finds the loan market demands. In setting this rate, the Secretary must consult with the Secretary of Housing and Urban Development to coordinate interest-rate policy on FHA-insured and VA-guaranteed loans.

*House bill:* Section 3 would require the Secretary of Veterans Affairs to establish a demonstration program, during FYs 1993 and 1994, of VA-guaranteed adjustable rate mortgages (ARMs) in a manner similar to the Federal Housing Administration (FHA) insured ARMs program under section 251 of the National Housing Act. The Secretary would be required to conduct the pilot program at not fewer than two nor more than 10 regional offices.

*Senate amendment:* Section 2(a) would establish a pilot program, during FY 1993 through FY 1997, of VA-guaranteed ARMs. Section 2(b) would require annual adjustments in the interest rate on the ARMs, on the anniversary date of the loan closing, based on an index specified in regulations promulgated by the Secretary. Information on the index would have to be readily accessible to mortgagors at any time from generally available, published sources. The annual interest-rate adjustment would be limited to no more than 1 percentage point higher or lower than the interest rate of the loan at the time of the adjustment, and the maximum interest rate at any time during the term of the loan would be limited to no more than 5 percentage points above the initial rate.

Section 2(c) would require the Secretary to promulgate underwriting requirements for these loans that take into account (a) the interest rate derived from the most recent VA-specified index available at the time the underwriting decision is made, regardless of the actual initial rate offered by the lender; (b) the maximum and likely increases in mortgage payments that the loans would require; (c) the underwriting standards that apply to FHA ARMs; and (d) any other factors specified by the Secretary.

Section 2(e) would limit the number of ARMs VA could guarantee each fiscal year to no more than 10 percent of the total number of all loans VA guaranteed during the previous fiscal year.

Section 2(f) would require the Secretary to submit to the Veterans' Affairs Committees five annual reports on the program, beginning one year after the date on which VA guarantees the first loan under this program. The reports would have to contain information about defaults, including comparisons with the default rates for fixed-rate VA-guaranteed home loans and both fixed- and adjustable-rate loans either insured by FHA or made under conventional terms for single-family homes.

*Compromise agreement:* Section 3 follows the House bill, except that it would incorporate the interest-rate limitations and underwriting guidelines in the Senate amendment. There would be no limitation on the number of ARMs VA could guarantee during a fiscal year.

Section 3(b) would require the Secretary to submit to the Senate and House Committees on Veterans' Affairs annual reports on the pilot program, with the first report due by December 31, 1993.

ENHANCED LOAN ASSET SALE AUTHORITY

*Current law:* Under section 3720(h) of title 38, VA is authorized to guarantee timely payment of principle and interest on securities backed by VA "vendee" loans. These are direct loans VA makes to those who purchase houses that VA acquired through the foreclosure of a VA-guaranteed loan. VA pools these loans and sells them to a trust that issues pass-through securities backed by the vendee-loan pool. VA's authority to guarantee such payment for certificates or other securities expires December 31, 1992.

*House bill:* Section 4 would make the authority permanent.

*Senate amendment:* Section 5 would extend the expiration date of section 3720(h) of title 38 from December 31, 1992, to December 31, 1995.

*Compromise agreement:* Section 4 follows the Senate amendment.

LOAN FEES FOR REFINANCING

*Current law:* Section 3710(a)(8) of title 38 requires VA to guaranty, under certain circumstances, loans to refinance an existing loan guaranteed, insured, or made by VA. Section 3710(e) requires that the interest rate on the refinancing loan be lower than the interest rate on the original loan and establishes several other requirements for such "interest-rate-reduction" refinancing loans.

Section 3710(a)(9) of title 38 requires VA to guarantee certain interest-rate-reduction refinancing loans for manufactured housing under generally the same conditions that apply to other interest-rate-reduction refinancing loans.

Section 3729 of title 38 requires those eligible for a VA-guaranteed home loan to pay a fee to VA, unless the borrower is a veteran with a compensable, service-connected disability or the surviving spouse of a veteran who died on active duty or as a result of a service-connected disability. The fee generally is 1.25 percent of the loan, but is reduced to 0.75 percent if the borrower makes a downpayment of at least 5 percent but not more than 10 percent of the purchase price, and reduced to 0.5 percent if the borrower makes a downpayment of at least 10 percent. VA-guaranteed loans for manufactured housing require a 1-percent VA loan fee.

*House bill:* Section 2 of H.R. 4368 would reduce the VA loan fee for VA-guarantee interest-rate-reduction refinancing loan to 0.5 percent of the loan. The reduced fee also would apply to all VA-guaranteed refinancing loans for manufactured housing, regardless of whether the interest rate is reduced by the new loan.

*Senate amendment:* No provision.

*Compromise agreement:* Section 5 follows the House bill, except that the reduced fee would not apply to refinancing loans for manufactured housing unless the interest rate is lower on the new loan.

GUARANTY AMOUNT RELATIVE TO LOAN REFINANCING

*Current law:* Under sections 3710(e) and 3712(a)(4) of title 38, interest-rate-reduction refinancing loans secured by a home or manufactured housing may include certain closing costs, fees, and discount points. These sections, however, limit the guaranty on the new home to no more than the amount of the guaranty on the loan being refinanced.

Section 3703(a) sets forth specific limits on the amount of the VA guaranty for loans of various amounts. The lowest guaranty-to-loan ratio specified in that section is 25 percent.

The maximum principal amount of an interest-rate-reduction refinancing loan is the sum of the principal balance of the original loan, plus closing costs, fees, and discount points. Since the guaranty cannot exceed the amount of the guaranty on the original loan, however, the guaranty-to-loan ratio can drop below the 25-percent level. This can require the borrower to make a downpayment on a portion of the new loan in order to meet the lender security requirements.

*House bill:* Section 3 of H.R. 4368 would ensure that the VA guaranty on interest-rate-reduction refinancing loans is at least 25 percent of the new loan, regardless of the amount of the guaranty on the original loan.

*Senate amendment:* No provision.

*Compromise agreement:* Section 6 follows the House bill.

EXTENSION OF LENDER APPRAISAL PROGRAM

*Current law:* Section 3710(b) of title 38 establishes limits on the amount of a VA-guaranteed home loan, based on the reasonable value of the property or construction being financed or refinanced. Section 3731 of title 38 sets forth the requirements for reasonable-value determinations and the appraisals upon which they are based.

Generally, under section 3731(c) of title 38, the appraiser forwards an appraisal directly to VA, which makes the determination of reasonable value and notifies the veteran and, upon request, to the lender proposing to make the VA-guaranteed loan.

Under section 3731(f), the Secretary may authorize qualified lenders to determine the reasonable value of the property based on an appraisal submitted by the appraiser directly to the lender, rather than to VA. The Secretary is required to monitor this lender appraisal processing program (LAPP) by re-

viewing lenders' determinations of reasonable value and the appraisals upon which the determinations are based.

The LAPP expires on December 31, 1992.

*House bill:* Section 4 of H.R. 4368 would extend LAPP through December 31, 1995.

*Senate amendment:* No provision.

*Compromise agreement:* Section 7 follows the House provision.

NATIVE AMERICAN VETERANS DIRECT HOUSING LOAN PILOT PROGRAM

*Current law:* Section 312 of the Veterans Home Loan Indemnity and Restructuring Act of 1989, title III of Public Law 101-237, required the Secretaries of Veterans Affairs and of the Interior jointly to conduct a study to determine the extent of participation in the VA-guaranteed home loan program by Native American veterans who live on trust lands; the reasons for any lower participation by these veterans, compared to other veterans; and the legislative, regulatory, and administrative actions necessary to improve the access of these Native American veterans to VA housing benefits. The Secretaries were required to report to the Senate and House Committees on Veterans' Affairs on the results of the study by June 1, 1990, and the Secretaries submitted the report to the Committees on August 8, 1991.

VA-guaranteed loans, which are made by private lenders and guaranteed by VA under chapter 37 of title 38, generally require clear title to the property in order to provide adequate security for the loan. Land on Indian reservations and other land held in trust for Native Americans are not freely alienable and generally cannot serve as security for a VA-guaranteed loan.

VA currently is authorized to make direct loans to veterans under two programs. Section 3711 of title 38 authorizes VA to make direct loans to veterans in "housing credit shortage areas," rural areas or small cities or towns in which the Secretary finds that private capital for housing loans is not generally available. Public Law 91-506 expanded the direct-loan program to allow loans for specially adapted housing for veterans with certain service-connected disabilities. Appropriations acts since 1981 have restricted VA direct loans to severely disabled veterans who require specially adapted housing.

*House bill:* No provision.

*Senate bill:* Section 2(a) of S. 2528 would amend chapter 37 of title 38 by adding a new subchapter V under which VA would conduct a five-year pilot program of direct loans to Native American veterans to purchase, construct, or improve dwellings on trust lands. The Secretary would be required, to the extent practicable, to make the loans to eligible veterans who are located in a variety of geographic areas and in areas experiencing a variety of economic circumstances.

Under proposed new section 3762 of title 38, before VA would be authorized to make a loan to a veteran, VA and the tribal organization having jurisdiction over the veteran would be required to enter into a memorandum of understanding providing that (a) the veteran would have a meaningful interest in the trust-land property on which the home is or will be located; (b) the veteran would convey to the Secretary by an appropriate instrument a security interest in the veteran's interest in the property as collateral for the loan; (c) VA would have access to trust lands in connection with the loan; (d) the tribal organization would be required to have established procedures for foreclosure and resale of the veteran's interest in the property in the event of default by the veteran; and (e) the tribal organization would agree to other terms and conditions the Secretary may require to carry out the loan program. The Secretary would be required to determine that the memorandum of understanding reasonably protects the financial interests of the United States.

Under proposed new section 3762(c) of title 38, VA would be authorized to make loans of up to $80,000, at an interest rate determined by the secretary (not to exceed the rate for VA-guaranteed loans), and the veteran would be required to pay closing costs and loan-origination expenses or a fee representing these expenses. The Secretary would be authorized to exceed the $80,000 loan limit in areas with high housing costs.

Under proposed new section 3762(d) of title 38, the Secretary would be required to establish special credit underwriting standards that take into account the purpose of the pilot program, which is to make housing available to Native American veterans living on trust lands. VA would be allowed to accept the appraisal of qualified, but not necessarily VA-approved, appraisers.

Under proposed new subsection (f) of section 3762 of title 38, the Secretary would be authorized to make cash advances in connection with construction or home-improvement loans.

Under proposed new subsection (h) of section 3762 of title 38, the Secretary would be required to conduct outreach and education to increase the awareness of tribal governments and Native American veterans of the availability of direct housing loans for veterans living on tribal trust lands.

Proposed new section 3763 of title 38 would establish a Native American Veterans Housing Loan program account in the Treasury to provide the funding mechanism necessary to carry out the pilot program.

Proposed new section 3764 of title 38 would define "trust land" as any land that is (a) held in trust by the United States for Native Americans; (b) subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands); (c) owned by a Regional Corporation or a Village Corporation, as those terms are defined in the Alaska Native Claims Settlement Act; or (d) on any island in the Pacific Ocean if the land is, by cultural tradition (as determined by the Secretary), communally owned land.

The term "Native American" would be defined as (a) an Indian, as defined in the Indian Self-Determination and Education Assistance Act; (b) a native Hawaiian, as defined in the Hawaiian Homes Commission Act; (c) an Alaska Native, within the meaning provided for the term "Native" in the Alaska Native Claims Settlement Act; and (d) a Pacific Islander, within the meaning of the Native American Programs Act of 1974.

The term "tribal organization" would be defined as having the meaning given to that term in the Indian Self-Determination and Education Assistance Act, and would include the Department of Hawaiian Homelands, in the case of Native Hawaiians, and such other organizations as the Secretary may prescribe.

Under proposed section 3764(b) of title 38, the Secretary would be required, in carrying out the pilot program, to consider the views and recommendations of the Advisory Committee on Native American Veterans.

Section 3 of S. 2528 would require the Secretary to submit to the Senate and House Committees on Veterans' Affairs on February 1 of 1994 through 1998, reports on implementation of the pilot program, including any recommendations by the Secretary for legislation regarding the pilot program.

Section 4 of S. 2528 would authorize appropriations during FY 1993 of $5 million for loans made under the pilot program.

*Compromise agreement:* Section 8 contains the Senate provision. The conference report on H.R. 5679, the VA, HUD, and Independent Agencies Appropriations Act for FY 1993, appropriates $5 million for the pilot program.

ENERGY EFFICIENT MORTGAGES

*Current law:* Section 3710(a)(7) provides a VA guaranty on loans to improve a dwelling or farm residence owned and occupied by the veteran through installation of a solar heating system, or a combined solar heating and cooling system or through the application of a residential energy conservation measure. Subsection (d) of that section defines these terms and includes in the definition of "residential energy conservation measure" a subparagraph authorizing the Secretary to identify additional energy conservation measures that would qualify for energy efficient mortgages under subsection (a)(7).

*House bill:* No provision.

*Senate amendment:* Sections 3(a) and (e) would establish a pilot program of energy efficient mortgages (EEMs) under which the Secretary would be authorized to guarantee not more than a total of 1,250 EEMs during FYs 1993 and 1994 in at least five, but not more than 10, States.

Section 3(b) would allow the new EEMs only for existing homes for which the energy efficiency measures being financed are likely to reduce monthly energy costs by at least as much as they would increase the borrower's monthly payments of principal and interest on the EEM.

Section 3(b) and (c) would require VA to guarantee the loan for the energy efficiency improvements in the same proportion as the guaranty that VA would provide for the underlying loan without the energy efficiency improvements, provided that the cost of the energy efficiency measures is no more than the greater of (a) $4,000, or (b) 5 percent of the value of the home without the energy efficiency improvements, not to exceed $8,000.

Section 3(c) would provide that the portion of the guaranty attributable to energy efficiency measures may be in addition to the current applicable maximum guaranty and shall not affect the loan-guaranty benefit to which the borrower otherwise is entitled.

Section 3(f) would require VA to encourage participation in the program by notifying eligible veterans, participating lenders, and interested realtors in the States in which the pilot program would be carried out about the availability of loan guaranties under the pilot program and the procedures and requirements to obtain these loans.

Section 3(g) would provide the Secretary with authority to halt the demonstration project if the Secretary estimates that the total incremental costs (government subsidy) attributable to the two-year pilot program will exceed $2 million.

Section 3(h) would require the Secretary to report to the Committees on Veterans' Affairs on the program one year after VA guarantees the first EEM under the program and annually thereafter for five more years. The reports would be required to include information on the default rates for EEMs and the effects, if any, of the energy efficiency measures on resale values and home utility consumption and costs.

Section 3(i) would provide that the pilot program would not affect the VA EEM program currently operated under the authority of section 3710(a)(7) of title 38.

*Compromise agreement:* Section 9 would amend chapter 37 of title 38 to modify the

current EEM program by (a) allowing EEMs for improvements to a veteran's current home or to finance the combined cost of acquiring an existing dwelling and making energy efficiency improvements to the dwelling; (b) allowing veterans to finance the cost of energy efficiency measures that do not exceed the greater of (1) $3,000 or (2) $6,000, if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the improvements; (c) requiring VA to guarantee the EEM in the same proportion as the guaranty VA would have provided for the underlying loan without the energy efficiency improvements; (d) providing that the portion of the guaranty attributable to energy efficiency measures may be in addition to the guaranty limits set forth in section 3703(a)(1)(A) and would not affect the veteran's maximum loan-guaranty entitlement; and (e) requiring the Secretary to take appropriate actions to notify eligible veterans, participating lenders, and interested realtors of the availability of VA-guaranteed EEMs and the procedures and requirements to obtain these loans. The Secretary would be required to report to the Senate and House Committees on Veterans' Affairs on the EEM program no later than one year after guaranteeing the first EEM under the amendments made by section 8 and for each of the three years thereafter.

NEGOTIATED INTEREST RATES

*Current law:* Section 3703(c)(1) of title 38 requires VA-guaranteed loans to bear interest at a rate that does not exceed such rate as the Secretary may from time to time find the loan market demands. In setting this rate, the Secretary must consult with the Secretary of Housing and Urban Development to coordinate interest-rate policy on loans insured by the Federal Housing Administration and VA-guaranteed loans.

Section 3703(c)(3) allows a veteran to pay discount points on loans guaranteed under chapter 37 of title 38 if the loan is for a purpose specified in that section. The specified loans do not include loans to purchase or construct a dwelling or purchase a farm residence or condominium.

*House bill:* No provision.

*Senate amendment:* Section 4(a) would, during FY 1993 and FY 1994, require the Secretary to establish either (a) a uniform maximum interest rate and general prohibition on a borrower paying discount points, as required under current section 3703(c) of title 38, or (b) procedures for allowing interest on VA-guaranteed loans at rates negotiated between borrowers and lenders. The Secretary would be authorized to change between uniform maximum rates and negotiated rates at any time.

If the Secretary allows negotiated interest rates, the Secretary would be required to allow a borrower to pay reasonable discount points on the loan, as negotiated between the borrower, the seller, and the lender. Veterans would be prohibited from financing the discount points as part of the VA-guaranteed loan.

The Secretary would be required to notify the Committees on Veterans' Affairs within 10 days after exercising the authority to provide for negotiated rates and discount points or returning to a uniform maximum rate and to provide with the notification an explanation of the reasons for the change in policy.

Section 4(b) would require the Secretary to report to the Committees on Veterans' Affairs no later than March 1, 1994, on whether the Secretary has implemented negotiated interest rates and discount points under the authority of this legislation and, if so, the effects of this policy on borrowers' ability to obtain VA-guaranteed loans and on the interest rates at which borrowers were able to obtain the loans.

*Compromise agreement:* Section 10 follows the Senate provisions, except that the pilot program would expire on December 31, 1995, and reports would be by December 31, 1993, and annually thereafter.

The Committees expect the Secretary to exercise the authority to allow negotiated interest rates and discount points, but has provided a mechanism for returning to an administered rate at any time if experience with negotiated rates indicates that the policy is harming veterans.

ELIGIBILITY FOR FLAGS AND GRAVE MARKERS

*Current law:* Under section 2402(2) of title 38, members of any Reserve component of the Armed Forces, the Army National Guard, or the Air National Guard are eligible for burial in any open national cemetery in the National Cemetery System only if the member's death occurs under honorable conditions while the member is hospitalized or undergoing treatment, at the expense of the United States, for an injury or disease contracted or incurred under honorable conditions while the member is performing active duty for training, inactive duty training, or undergoing hospitalization or treatment at the expense of the United States. Section 2402(6) of title 38 authorizes the Secretary to designate other persons or classes of persons eligible for burial in any open national cemetery.

Section 2301 of title 38 requires the Secretary to furnish a flag to drape over the casket of certain deceased veterans and deceased persons buried in a national cemetery by virtue of eligibility under section 2402(6) of title 38 for such burial.

Under section 2306 of title 38, deceased members of the Reserves are eligible for headstones or grave markers only if they are eligible for burial in a national cemetery.

*House bill.* Section 1 of H.R. 4368 would extend eligibility for burial in a national cemetery and burial flags to individuals who have 20 years of service that counts toward retired pay as members of a Reserve component of the Armed Forces.

*Senate amendment:* No provision.

*Compromise agreement:* Section 11 would make eligible for a headstone or grave marker, and a flag to drape the casket of, a person who, at the time of death, was entitled to retired pay under chapter 67 of title 10, United States Code, or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

Mr. FORD. Mr. President, I move that the Senate concur in the amendments of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

## VETERANS' RADIATION EXPOSURE AMENDMENTS

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 775.

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

*Resolved,* That the bill from the Senate (S. 775) entitled "An Act to improve the compensation of certain veterans for exposure to ionizing radiation, to improve the administration of veterans benefits programs, and for other purposes," do pass with the following amendments:

Strike out all after the enacting clause, and insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Veterans' Radiation Exposure Amendments of 1992".*

***SEC. 2. EXPANSION OF LIST OF DISEASES PRESUMED TO BE SERVICE-CONNECTED FOR CERTAIN RADIATION-EXPOSED VETERANS AND ELIMINATION OF LATENCY-PERIOD LIMITATIONS.***

*(a) IN GENERAL.—Section 1112(c) of title 38, United States Code, is amended—*

*(1) in paragraph (1), by striking out "to a degree" and all that follows through "subsection)";*

*(2) in paragraph (2), by adding at the end the following new subparagraphs:*

*"(N) Cancer of the salivary gland.*

*"(O) Cancer of the urinary tract.";*

*(3) by striking out paragraph (3); and*

*(4) by redesignating paragraph (4) as paragraph (3).*

*(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1992.*

***SEC. 3. IDENTIFICATION OF CERTAIN ACTIVITIES RELATING TO EXPOSURE TO IONIZING RADIATION.***

*The Veterans' Dioxin and Radiation Exposure Compensation Standards Act (38 U.S.C. 1154 note) is amended by adding at the end the following new section:*

*"IDENTIFICATION OF ACTIVITIES INVOLVING EXPOSURE BEFORE JANUARY 1, 1970*

*"SEC. 10. (a) IN GENERAL.—(1) In order to determine whether activities (other than the tests or occupation activities referred to in section 5(a)(1)(B)) resulted in the exposure of veterans to ionizing radiation during the service of such veterans that occurred before January 1, 1970, and whether adverse health effects have been observed or may have resulted from such exposure in a significant number of such veterans, the Advisory Committee established under section 6 shall—*

*"(A) review all available scientific studies and other relevant information relating to the exposure of such veterans to ionizing radiation during such service;*

*"(B) identify any activity during which significant numbers of veterans received exposure; and*

*"(C) on the basis of such review, submit to the Secretary of Veterans Affairs a report containing the recommendation of the Advisory Committee on the feasibility and appropriateness for the purpose of the determination under this paragraph of any additional investigation with respect to any activity of such veterans during such service.*

*"(2) Upon the request of the Advisory Committee, the Secretary of Veterans Affairs (after seeking such assistance from the Secretary of Defense as is necessary and appropriate) shall make available to the Advisory Committee records and other information relating to the service referred to in paragraph (1) that may assist the Advisory Committee in carrying out the review and recommendation referred to in that paragraph.*

*"(3) The Advisory Committee shall submit to the Secretary of Veterans Affairs the report referred to in paragraph (1)(C) not later than August 1, 1993.*

*"(b) INVESTIGATION PLAN AND REPORT.—(1) Upon receipt of the report referred to in subparagraph (C) of subsection (a)(1), the Secretary of Veterans Affairs shall—*

*"(A) identify which of the activities referred to in that subparagraph, if any, that the Sec-*

*retary intends to investigate more fully for the purpose of making the determination referred to in that subsection; and*

*"(B) prepare a plan (including a deadline for the plan) to carry out that investigation and make that determination.*

*"(2) Not later than December 1, 1993, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—*

"(A) a list of the activities identified by the Secretary pursuant to paragraph (1)(A) and the basis of such identification;

"(B) a copy of the report of the Advisory Committee referred to in subsection (a)(1)(C); and

"(C) the plan referred to in paragraph (1)(B).".

**SEC. 4. REVIEW OF BRONCHIO-ALVEOLAR CARCINOMA.**

(a) ADVISORY COMMITTEE REVIEW.—The Secretary of Veterans Affairs shall direct the Advisory Committee on Environmental Hazards to review pertinent scientific data relating to bronchio-alveolar carcinoma to determine whether such disease entity should be considered to be radiogenic. Based on its review, the Advisory Committee shall report its findings to the Secretary.

(b) DECISION BY SECRETARY.—The Secretary, based on the Advisory Committee's findings, shall, not later than April 1, 1993, submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report setting forth the Secretary's decision as to whether such disease entity should be presumed to be service connected if suffered by a radiation-exposed veteran (as defined by section 1112(c)(4)(A) of title 38, United States Code).

Amend the title so as to read: "An Act to improve the program of compensation for veterans exposed to ionizing radiation while in military service.".

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I am very pleased that the Senate is about to take final action on S. 775, the proposed Veterans' Radiation Exposure Amendments of 1992. This measure makes several improvements in compensation for veterans who develop illnesses as a result of their exposure to ionizing radiation during military service. It will update landmark 1988 legislation which provided compensation for certain cancers in veterans who were exposed to radiation during atmospheric nuclear tests or during the wartime occupation of Japan. It also will begin a process of examining other types of military service that might have exposed veterans to harmful radiation.

Mr. President, I have been working on the issues addressed in this bill for over 2 years, beginning in the 101st Congress when I introduced S. 2556. The provisions of S. 2556 eventually were included, with some modifications, in S. 775, the fiscal year 1992 VA compensation-COLA bill, which was reported by our committee on August 2, 1991, and passed by the Senate, with further modifications, by unanimous voice vote on November 20, 1991. I refer my colleagues to our committee report, (S. Rept. No. 102-39) and my floor statement on Senate passage of S. 775, which appears in the November 20, 1991, RECORD beginning on page S17148.

The measure as it comes before us today reflects a compromise agreement that the House and Senate Committees on Veterans' Affairs have reached with regard to the radiation provisions in S. 775 and the provisions of H.R. 3236, a companion measure that the House passed on August 4, 1992. The House passed the compromise agreement as an amendment to S. 775 by a unanimous voice vote on September 23, 1992, and I urge the Senate to do the same.

Mr. President, because the details of this measure are described in an explanatory statement developed with our colleagues on the House Veterans' Affairs Committee, which I will place in the RECORD at the conclusion of my remarks, I will just summarize the provisions of the bill and comment on a few of the provisions.

SUMMARY OF PROVISIONS

Mr. President, the provisions of the compromise agreement would:

First, effective October 1, 1992, repeal the requirement that, to be presumed service connected, diseases listed in section 1112(c) of title 38, United States Code, of veterans who participated in certain radiation-risk activities must become at least 10-percent disabling within 40 years after the veteran's last military exposure to radiation.

Second, effective October 1, 1992, add to the list of diseases in section 1112(c) cancer of the salivary gland and cancer of the urinary tract.

Third, amend the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Public Law 98-542, to establish a mechanism to determine whether military activities that occurred before 1970 that are not listed as radiation-risk activities under current law may have exposed veterans to ionizing radiation and whether adverse health effects have been observed or may have resulted from that exposure in a significant number of veterans. Specifically, the VA Advisory Committee on Environmental Hazards would be required to review all available scientific and other relevant information concerning exposure to radiation during these activities and to identify those activities during which a significant number of veterans were exposed to radiation. The Advisory Committee would report to the Secretary by August 1, 1993, on the feasibility and appropriateness of additional investigation to determine whether a significant number of veterans suffer from radiation-related disabilities from exposure to radiation from these activities.

Fourth, require the Secretary, upon request of the Advisory Committee and after seeking any necessary assistance from the Secretary of Defense, to submit to the Advisory Committee information the Advisory Committee needs to carry out its review and make its recommendations.

Fifth, require the Secretary first, upon receiving the Advisory Committee's report, to identify which of the activities the Secretary intends to investigate more fully to determine whether these veterans suffer from radiation-related disabilities, and second, to prepare a plan for carrying out any additional investigation and making a determination, including a deadline for completing the plan.

Sixth, require the Secretary to submit to the Senate and House Committees on Veterans' Affairs by December 1, 1993, a report listing the activities the Secretary intends to investigate further and containing the plan for investigation and required determination.

Seventh, require the Secretary first, to direct the Advisory Committee to review pertinent scientific evidence to determine, and report to the Secretary, whether bronchio-alveolar carcinoma should be considered radiogenic, second, to decide, based on the Advisory Committee's report, whether bronchio-alveolar carcinoma should be presumed to be service connected for radiation-exposed veterans, and third report to Congress on this decision by April 1, 1993.

BACKGROUND

Mr. President, I am extremely pleased that I am able to bring a compromise agreement on this important measure before the Senate today.

The compromise agreement is similar to the bill I introduced in the 101st Congress. During Senate consideration of S. 775, I agreed to modify the provision requiring investigation of pre-1970 military activities that might have exposed veterans to radiation but which are not considered radiation-risk activities under current law. The House now has agreed to the Senate-passed provisions with only minor technical changes. I am extremely pleased that the final version of this legislation includes this provision. In particular, I expect VA's examination would include, but not be limited to, service aboard nuclear-powered ships or ships carrying nuclear waste, flight crews, and radiation technicians. The House also added a new provision—requiring close examination of whether bronchio-alveolar carcinoma in radiation-exposed veterans should be presumed to be service connected—which I think is an improvement of the bill.

VALIDITY OF PRIOR STUDY ON EFFECTS OF RADIATION EXPOSURE

Mr. President, this is an appropriate time to discuss a separate, radiation-related matter. I was very disturbed by the findings of recent reports I requested from the General Accounting Office and the Office of Technology Assessment that confirmed that the Defense Nuclear Agency continued to distribute the results of a 1985 National Academy of Sciences study, entitled "Mortality of Nuclear Weapons Test Participants," after DNA itself acknowledged that data underlying the

report's conclusion were seriously flawed.

The 1985 report concluded generally that veterans' participation in five atmospheric nuclear tests in the 1950's did not increase their risk of developing cancer. The errors contained in the date—which were provided by NAS by DNA—cast significant doubt on the validity of this conclusion.

Mr. President, I congratulate the National Academy of Sciences' Military Follow-Up Agency for its scientific integrity in raising appropriate concerns about the validity of the study's findings after MFUA learned of the flaws in data provided by DNA and the military services.

DNA, VA, and others have cited the 1985 report to bolster claims that service members, participation in atmospheric nuclear tests do not increase those individuals' risk of cancer or other illnesses. Unfortunately, DNA's continuing reliance on the 1985 report after it knew about the errors indicated a continuing attitude of denial and misinformation on the part of the Department of Defense which is the agency assigned lead responsibility for dealing with questions affecting radiation-exposed veterans.

Mr. President, I have written to the Secretary of Defense asking him to notify those who received the flawed report about the new doubts concerning its conclusions.

Mr. President, I ask unanimous consent that a copy of that letter be printed in the RECORD.

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

U. S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
*Washington, DC, September 9, 1992.*

Hon. DICK CHENEY,
*Secretary of Defense, The Pentagon, Washington, DC.*

DEAR DICK: As Chairman of the Committee on Veterans' Affairs, I am writing to you about the 1985 National Academy of Sciences report, entitled Mortality of Nuclear Weapons Test Participants, of a study performed by the NAS Medical Follow-Up Agency under contract to the Defense Nuclear Agency and the Department of Energy. The report concluded that the mortality rate from cancer (including leukemia, which was of particular concern) among the combined military participants at five nuclear-weapons test sites was less than the rate expected for the general population.

DNA, VA, and other government agencies have cited the 1985 report to bolster claims that servicemembers' participation in atmospheric nuclear tests did not increase those individuals' risk of cancer or other illnesses. However, over three years ago, DNA identified major errors in the data that the various military services and DNA itself had supplied to MFUA, which formed the basis of the study. The errors cast significant doubt on the validity of the reported results.

Last year, I asked two congressional agencies—the Office of Technology Assessment and the General Accounting Office—to investigate the inaccuracies in the data upon which the 1985 NAS report was based. I asked OTA to examine the accuracy of the data, the effect of any errors on the validity of the 1985 study and report, and the effect of the study's failure to include a control population. I asked GAO to review when and how any inaccuracies occurred and were discovered and what actions had been taken to inform those who might have relied upon the study of the potential flaws in it, to correct the data, and to update the study.

OTA and GAO have completed their reviews, copies of which are enclosed. As you can see, both GAO, in its report entitled "NUCLEAR HEALTH AND SAFETY: Mortality Study of Atmospheric Nuclear Test Participants Is Flawed" GAO/RCED-92-182 (1992), and OTA, in its review entitled "A Discussion of Questions About the 1985 NAS Report Mortality of Nuclear Weapons Test Participants" (Aug. 1992), concluded that errors in the data provided to MFUA for the 1985 study invalidate the conclusions of the study.

GAO reported that DNA continued to distribute the NAS report after DNA had identified the errors in 1989—without providing any indication that the report contained flawed data or that its conclusions were in doubt—and only stopped distributing the report in August 1991, apparently as a result of the GAO inquiry I had initiated.

OTA stated that, although DNA's initial estimates of the number of errors in data used for the 1985 report were overstated, "[e]ven the lower numbers [of errors] are substantial and the inaccuracies may have affected the results of the study." OTA also noted, "The dose information on the current roster [of participants] also has been updated and differs substantially from that used for the 1985 study, and these dose changes could affect analyses looking at cancer risks by exposure levels (dose-response analyses), which formed part of the original report."

Hearings, investigations, and other oversight and legislative efforts by our Committee since the late 1970s demonstrated an apparently pervasive attitude of denial by DOD, especially through DNA, and other government agencies of the dangers to which our nation's veterans were exposed, sometimes with government knowledge of the risks, in connection with the nuclear-weapons test program. I had hoped that the government had moved beyond such a counterproductive attitude and faced up to its responsibilities to these veterans, in light of the evidence provided by reports such as GAO's 1985 report of its investigation of Operation CROSSROADS, entitled "OPERATION CROSSROADS: Personnel Radiation Exposure Estimates Should Be Improved" (GAO/RCED-86-15), and its 1987 report entitled "NUCLEAR HEALTH AND SAFETY: Radiation Exposures for Some Cloud-Sampling Personnel Need to Be Reexamined" (GAO/RCED-87-134).

Unfortunately, the actions DNA took or failed to take in connection with the discovery of flawed data in the 1985 report indicate a continuing attitude of denial and misinformation on the part of the DOD agency assigned lead responsibility for dealing with questions affecting radiation-exposed veterans.

I was pleased to see that DOD comments on GAO's draft report indicate that DNA has agreed to "notify the approximately 700 institutions and the Department of Veterans' Affairs Regional Offices, which previously received copies of the study, and the Veterans' Service Organizations (and through them their constituent veterans) of the limitations in the 1985 Mortality Study and the update to that report. * * * The Defense Nuclear Agency expects to complete these actions by September 30, 1992."

However, the GAO report also indicated that DNA provided the 1985 study to "all state libraries and libraries located in large cities" and sent information concerning the study, including the press release [summarizing the study], to about 45,000 veterans of the atmospheric nuclear weapons testing program." In addition, GAO and OTA identified six scientific papers that cited the 1985 report. I believe that DOD should make every effort to inform these other recipients of the original report, and the authors of the scientific papers, about the questionable validity of the 1985 report, and I would like to know whether you plan to take steps to provide the information to these other recipients of the reports.

GAO also reported that DNA expected to sign a contract, by the end of July 1992, with NAS for MFUA to update the 1985 study. What is the status of this contract and what is the status of the notices DNA expected to send out by the end of September?

I would appreciate receiving your reply to these questions by September 17, 1992. I also would appreciate receiving copies of all notices, letters, or similar materials you have sent or intend to use to inform interested individuals or institutions about the problems with the 1985 report.

With warm regards,

Cordially,

ALAN CRANSTON,
*Chairman.*

Mr. CRANSTON. Mr. President, I express my appreciation to the distinguished ranking Republican member of our committee, Mr. SPECTER, and all other members of the committee, as well as the chairman and ranking Republican member of the House Committee on Veterans' Affairs, Mr. MONTGOMERY and Mr. STUMP, for their cooperation on this measure.

Mr. President, I also express my deep gratitude to the committee staff members who worked on this legislation—on the minority staff, Quent Kinderman and Tom Roberts, and on the majority staff, Neil Koren, Susan Thaul, Michael Cogan, Bill Brew, and Ed Scott—and the House Committee on Veterans' Affairs staff—John Brizzi, Pat Ryan, and Mack Fleming for the majority and Sue Forrest and Carl Commentator for the minority.

Mr. President, I urge the Senate to give its unanimous approval to this measure.

Mr. President, I ask unanimous consent that the explanatory statement to which I referred earlier, and which the Veterans' Affairs Committees have prepared in lieu of a joint explanatory statement accompanying a conference report, be printed in the RECORD at this point.

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

EXPLANATORY STATEMENT ON S. 775

S. 775 reflects a compromise agreement that the Senate and House of Representatives Committees on Veterans' Affairs have reached on certain bills considered in the Senate and the House of Representatives

during the 102d Congress. These are S. 775, which the Senate passed on November 20, 1991 (hereinafter referred to as "Senate bill") and H.R. 3236, which the House passed on August 4, 1992 (hereinafter referred to as "House bill").

The Committees on Veterans' Affairs of the Senate and House of Representatives have prepared the following explanation of S. 775 as amended (hereinafter referred to as the "compromise agreement"). Differences between the provisions contained in the compromise agreement and the related provisions in the above-mentioned bills are noted in this document, except for clerical corrections, conforming changes made necessary by the compromise agreement, and minor drafting, technical, and clarifying changes.

EXPANSION OF LIST OF DISEASES PRESUMED TO BE SERVICE CONNECTED FOR CERTAIN RADIATION-EXPOSED VETERANS AND ELIMINATION OF LATENCY-PERIOD LIMITATIONS

Current law: Section 1112(c) of title 38, United States Code, provides a presumption of service connection for 13 diseases in veterans who participated in a radiation-risk activity. These disease are: Leukemia (other than chronic lymphocytic leukemia), multiple myeloma, lymphomas (except Hodgkin's disease), primary liver cancer (except if cirrhosis or hepatitis B is indicated), and cancers of the thyroid, breast, pharynx, esophagus, stomach, small intestine, pancreas, bile ducts, and gall bladder. Section 1112(c)(4) defines "radiation-risk activity" as participation onsite at an atmospheric nuclear weapons test; participation in the occupation of Hiroshima or Nagasaki, Japan, during World War II from August 6, 1945, to July 1, 1946; or internment as a prisoner of war in Japan during World War II, or service on active duty in Japan following such internment, resulting in an opportunity for exposure to radiation.

Senate bill: Section 5, effective May 1, 1992, would, (a) repeal the requirement that, to be presumed service connected, diseases listed in section 1112(c) of veterans who participated in radiation-risk activities become at least 10-percent disabling within a specified time after the veterans' last exposure to radiation, and (b) add to the list of diseases cancer of the salivary gland and cancer of the urinary tract.

House bill: Section 2 is substantively identical to the Senate provision, except it would take effect October 1, 1992.

Compromise agreement: Section 2 contains this provision with the October 1, 1992, effective date.

IDENTIFICATION OF CERTAIN ACTIVITIES RELATING TO EXPOSURE TO IONIZING RADIATION

Current law: Section 6 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act of 1984, Public Law 98-542, established the Veteran's Advisory Committee on Environmental Hazards. The Agent Orange Act of 1991, Public Law 102-4, modified the Advisory Committee's responsibilities to include only the review and evaluation of scientific studies on the health effects of exposure to ionizing radiation. The Advisory Committee submits to the Secretary recommendations concerning administrative and legislative actions the Advisory Committee considers appropriate to recognize disabilities possibly related to exposure to radiation during veterans' participation in an atmospheric nuclear weapons test or the occupation of Hiroshima or Nagasaki during World War II.

As noted above, section 1112(c) of title 38 provides a presumption of service connection for 13 radiogenic diseases that applies to veterans who participated in "radiation-risk" activities, which include atmospheric nuclear weapons tests, the occupation of Hiroshima or Nagasaki during World War II, or internment in Japan during the war, or service in Japan following such internment, that resulted in an opportunity for exposure to radiation.

Senate bill: Section 6 would amend Public Law 98-542 to establish a mechanism to determine whether veterans who participated in activities not considered "radiation-risk" activities under current law suffer from disabilities as a result of exposure to radiation during active duty prior to January 1, 1970. It would require the Advisory Committee to review all available scientific and other relevant information concerning these veterans' exposure to radiation during their service and, by September 30, 1992, report to the Secretary on its recommendations on the feasibility and appropriateness of additional investigation to determine whether the veterans suffer from radiogenic disabilities.

The Secretary would be required, upon request of the Advisory Committee and after seeking the assistance of the Secretary of Defense, to submit to the Advisory Committee information that would assist the Advisory Committee in carrying out its review and making its recommendations.

The Secretary, after receiving the Advisory Committee's report, would be required to identify which activities, if any, the Secretary intends to investigate more fully to determine whether these veterans suffer from radiogenic disabilities. The Secretary also would be required to prepare a plan for carrying out the additional investigation and making the required determination, including a deadline for completing the plan. The Secretary would be required to submit a report to the Veterans' Affairs Committees by April 1, 1993, listing the activities the Secretary intends to investigate further and containing the plan for the investigation and required determination.

House bill: Section 3 is similar to the Senate provision, except that the Secretary would be required to determine whether there are activities that could have resulted in radiation exposure without the benefit of monitoring systems during pre-1970 military service, rather than determining whether there are veterans who suffer from disabilities from such exposure. The Advisory Committee would be required to identify activities during which significant numbers of veterans received unmonitored exposure to radiation.

The Advisory Committee would report to the Secretary by April 1, 1993, and the Secretary would report to the Committees on Veterans' Affairs by August 1, 1993. The Secretary's report would be required to include a copy of the Advisory Committee's report to the Secretary.

Compromise agreement: Section 3 contains a provision derived from these provisions which would amend the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542). The Advisory Committee would be required to identify any activity during which significant numbers of veterans were exposed to radiation. The Secretary would be required to identify which, if any, of those activities the Secretary intends to investigate more fully in order to determine whether the identified activities (other than those currently considered radiation-risk activities) resulted in the exposure of veterans to ionizing radiation during pre-1970 military service and whether adverse health effects have been observed or may have resulted from the exposure in a significant number of these veterans.

The Advisory Committee would report to the Secretary by August 1, 1993, and the Secretary would report to the Committees on Veterans' Affairs by December 1, 1993. The report also would be required to include a copy of the Advisory Committee's report to the Secretary.

REVIEW OF BRONCHIO-ALVEOLAR CARCINOMA

Current law: There is no presumption of service connection for bronchio-alveolar cancer in current law.

Senate bill: No provision.

House bill: Section 4 would require the Secretary to direct the Advisory Committee on Environmental Hazards to review pertinent scientific evidence to determine whether bronchio-alveolar carcinoma should be considered radiogenic and to report its findings to the Secretary. The Secretary would be required, by April 1, 1993, to report to the Committees on Veterans' Affairs on the Secretary's decision whether, based on the Advisory Committee's report, bronchio-alveolar carcinoma should be presumed to be service connected for radiation-exposed veterans.

Compromise agreement: Section 4 contains the House provision.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

## INTERMODAL SAFE CONTAINER TRANSPORTATION ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3598, the Intermodal Safe Container Transportation Act just received from the House; that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table. Further, that a statement by Senator EXON appear in the RECORD at the appropriate place as if read.

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

The bill was deemed read the third time and passed.

Mr. EXON. Mr. President, as chairman of the Surface Transportation Subcommittee, I am pleased that the Senate is considering the Intermodal Safe Container Transportation Act of 1992 as passed by the House of Representatives on October 4, 1992. I introduced this legislation in the Senate to address the problem of overweight shipping containers which has become acute for the Nation's trucking industry. The bill represents a consensus among the shipping community and the trucking, rail, and maritime industries, and I am pleased that Senators GORTON, PRESSLER, and INOUYE are cosponsors.

For several years, the trucking, rail, maritime, and shipping industries have sought compromise legislation to address the problem of transporting containerized cargo safely when the hauling capacity of many containers exceeds the weights that can be legally transported over U.S. highways. Overweight containers raise key safety concerns for truckers and the motoring public through increased truck-stopping distances, decreased vehicle control, and increased mechanical stress on critical truck parts.

Although overweight intermodal shipments are illegal, trucking companies in particular have had no control over the weight and loading of containers and trailers and have faced fines and penalties when their loads are determined to be overweight. This problem has become more acute as intermodal transportation has grown through steady increases in international trade and containerization of both overseas and domestic freight.

The legislation being considered today is an amendment in the nature of a substitute to H.R. 3598, the Intermodal Safe Container Transportation Act, introduced on October 22, 1991, by Congresswoman HELEN BENTLEY. I would like to thank my colleagues in the House for their important contribution on this issue, as well as the various parties to the negotiations, including the motor-carrier, railroad, steamship, public port industries, and the shipping community. In summary, this legislation seeks to distribute equitably the responsibilities and liabilities of overweight intermodal shipments among all parties to an intermodal movement—shippers and carriers—and ensures that cargo weights and descriptions are provided by the tenderer of the load prior to highway transportation of the freight.

I urge my colleagues to pass this important legislative initiative.

## THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION AND THE LAND REMOTE SENSING POLICY ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration en bloc to the following bills just received from the House. H.R. 6135, the National Aeronautics and Space Administration authorization, and H.R. 6133, the Land Remote Sensing Policy Act; that the bills be deemed read three times, passed, and the motion to reconsider laid upon the table en bloc, that any statements relative to this measure be placed in the RECORD at the appropriate place.

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

The bills (H.R. 6135, and H.R. 6133) were deemed read the third time and passed.

Mr. HOLLINGS. Mr. President, I am pleased to bring to the Senate the fiscal year 1933 authorization bill for the National Aeronautics and Space Administration [NASA]. I urge my colleagues to join me in passing this bill.

The legislation before us today, which is a 1-year authorization, provides a total of $14.892 billion for NASA for fiscal year 1993. This is above the amount provided in the Veterans Affairs, HUD, and independent agencies appropriations bill, which because of constrained allocations was forced to freeze NASA at fiscal year 1992 levels. However, in developing this authorization bill, every effort has been made to establish priorities for NASA that will strengthen the Nation's civil space program and, correspondingly, the American aerospace community. In this regard, for example, the bill makes over $600 million in reductions to the President's request in a number of nonessential programs, while preserving funding for higher priority programs such as the advanced solid rocket motor.

H.R. 6135 also authorizes funds for our other civil space agencies, including the National Space Council, the Department of Transportation's Office of Commercial Space Transportation, and the Office of Space Commerce in the Department of Commerce. It also includes a series of policy initiatives that will help NASA and the Nation's civil space and aeronautics research and technology development program.

The bill is the culmination of work done by the Committee on Commerce, Science, and Transportation, and in particular the distinguished chairman of the Science, Technology, and Space Subcommittee, Senator GORE. Also, this bill represents a compromise with our colleagues in the House of Representatives.

I urge passage of H.R. 6135. I ask unanimous consent that, following my statement, there be printed in the CONGRESSIONAL RECORD a spread sheet outlining the changes made to the President's fiscal year 1993 budget request for NASA, as well as a brief summary of the bill.

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

H.R. 6135 NASA AUTHORIZATION ACT, FISCAL YEAR 1993

TITLE I—NASA AUTHORIZATION

Authorizes $14.892 billion in FY 1993 for the National Aeronautics and Space Administration (NASA). This represents a $539.3 million over FY 1992 funding levels (3.8 percent increase).

Summary Table 1993

[Dollars in billions]

| | 1992 appropriation | Present request | Proposed authorization |
|---|---|---|---|
| R&D | $6.851 | $7.731 | $7.224 |
| Space flight | 5.385 | 5.267 | 5.519 |
| Const/facil. | .525 | .319 | .479 |

Summary Table 1993—Continued

[Dollars in billions]

| | 1992 appropriation | Present request | Proposed authorization |
|---|---|---|---|
| R&PM | 1.578 | 1.660 | 1.654 |
| IG | .015 | .016 | .016 |
| NASA total | 14.353 | 14.993 | 14.892 |

TITLE II—GENERAL PROVISIONS

Authorizations. Authorizes $1.598 million in FY 1993 for the activities of the National Space Council; 4.9 million for the Office of Commercial Space Transportation in the Department of Transportation; and $515,000 for the Department of Commerce's Office of Space Commerce.

Budget Estimates. Directs the NASA Administrator to submit annually a five-year budget on the development costs of major NASA programs, including the Space Station, as well as an estimate of the life-cycle costs associated with each program.

International Space Year. Expresses the sense of the Congress that the Space Agency Forum on International Space Year (SAFISY) should maintain its role in the coordinating Earth and space science research findings, and that NASA and the National Oceanic and Atmospheric Administration (NOAA) should implement the proposals for long-term multilateral cooperation that were developed during the International Space Year. Directs NASA to submit to Congress its plan for continuing SAFISY.

Russian Space Cooperation. Directs the President to report to the Congress on 1) opportunities for increased space related trade with the independent states of the former Soviet Union; 2) a technology procurement plan for evaluating unique space hardware, technology, and services available to the U.S., and 3) any barriers or anticompetitive issues that might inhibit space-related trade between the two countries. Requires any Federal agency which denies a license or other approval that may be needed to conduct discussions on space-related matters with the former Soviet Union to notify the Congress of such denial, along with justification.

Launch Technology Studies. Directs the NASA Administrator to submit to the Congress an independent analysis of the Single Stage Rocket Technology program and the potential application of this launch technology to the civil space program. Also directs the National Space Council to submit to the Congress a national aerospace transportation technology plan.

National Aerospace Plane Reprogramming. Authorizes the NASA Administrator to reprogram up to $45 million of the funds authorized for the Research and Development appropriation account for continued development of the National Aerospace Plane.

TITLE III—EPSCOR PROGRAM

Establish NASA EPSCoR Program. Directs the NASA Administrator to establish an Experimental Program to Simulate Research (EPSCoR) in Space and Aeronautics.

Merit Grant Competition. Directs NASA to conduct a merit grant competition among the 18 eligible EPSCoR States and Puerto Rico in areas of research important to NASA, including space science and applications, aeronautical research and technology, and space research and technology programs.

Funding. Encourages the NASA Administrator to ensure that $10 million from the appropriations authorized for Research and Development is used for the NASA, EPSCoR program.

TITLE IV—HIGH RISK R&D CONTRACT ADMINISTRATION

Acquisition Policy Assessment. Directs the NASA Administrator to carry out an assessment of the allocation of risk between NASA and its contractors in future R&D contracts for the correction of defects in materials and workmanship or other failures.

Promulgation of Regulations. Requires NASA, within 180 days after completion of the acquisition policy assessment, to initiate a rulemaking proceeding on the administration of R&D contracts which propose changes to NASA procurement regulations.

TITLE V—COMMERCIAL SPACE COMPETITIVENESS

Space Transportation Infrastructure Grant Program. Authorizes the Secretary of Transportation to establish a program to make grants for the development of commercial space transportation infrastructure. Authorizes $10 million in FY 1993 for this program. Limits the Federal share to 50 percent of the total project costs, while requiring that there be at least 10 percent private sector contribution before any grant is awarded.

Launch Voucher Demonstration Program. Establishes within NASA's Office of Commercial Programs a demonstration program enabling the award of vouchers for the payment of commercial launch services, both orbital and suborbital, and payload integration services.

Commercial Launch Indemnification. Extends until the year 2000 the requirement in current law which makes the Federal government responsible for public liability claims, above private insurance and not to exceed $1.5 billion, that may result from an accident related to a commercial launch.

Technology Transfer. Authorizes the NASA Administrator to protect against the dissemination of certain information resulting from R&D activities conducted under an agreement entered into by NASA. The protection would be for a period of up to 5 years after the development of that information and would apply to any trade secret or commercial or financial information that is privileged or confidential, if obtained from a non-Federal party participating in such agreements.

Anchor Tenancy/Termination Liability. Authorizes the Administrators of NASA and NOAA, subject to appropriations, to enter into multi-year anchor tenancy contracts to purchase a good or service, provided that it meets the agency mission requirements; commercial procurement is cost-effective; it is procured through a competitive process; there are other existing or potential customers other than the Federal government; and private capital is at risk. These contracts may provide for termination liability payments in the event that the government terminates such contracts.

Use of Government Facilities. Authorizes the use of Federal space-related facilities by non-Federal parties on a reimbursable basis.

Commercial Space Achievement Award. Creates a Commercial Space Achievement Award which the Secretary of Commerce is to award to individuals or businesses substantially engaged in commercial space activities.

TITLE VI—BIOMEDICAL RESEARCH IN SPACE

Biomedical Research Joint Working Group. Directs the NASA Administrator and the Director of the National Institutes of Health (NIH) to establish a joint working group to coordinate biomedical research activities in areas where a microgravity environment may contribute to significant progress in the understanding and treatment of diseases and other medical conditions.

Research Grants/Fellowships. Directs NASA and NIH to establish a joint program of biomedical research grants where research requires access to a microgravity environment, as well as a joint program of graduate research fellowships.

Former Soviet Union. Directs the NASA Administrator, in consultation with the Director of NIH, to submit to the Congress a Plan for the conduct of joint biomedical research activities by the republics of the former Soviet Union and the U.S., including the use of the Space Shuttle and former Soviet orbiting facilities, such as the Mir space station.

Electronic Data Archive. Directs NASA to create and maintain a national electronic data archive for biomedical research data obtained from space-based experiments.

Funding. Encourages the NASA Administrator to ensure that $3.75 million from the appropriations authorized for Research and Development is used for funding programs established under this Title.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION BUDGET SUMMARY

[In millions of dollars]

| | Fiscal year— | | | |
|---|---|---|---|---|
| | 1992 appropriations | 1993 President's request | 1993 Authoritative compromise | |
| Research and development | 6,850.8 | 7,731.4 | 7,224.0 | |
| Space station | 2,028.9 | 2,225.0 | 2,100.0 | (−150) |
| Space transportation capability development | 719.5 | 863.7 | 733.7 | |
| Upper stages | 61.7 | | | |
| Spacelab | 99.2 | 122.6 | 122.6 | |
| Engineering and Technical base | 215.8 | 224.2 | 221.7 | (−2.5) |
| Payload operations and supp. equip | 119.1 | 153.6 | 143.6 | (−10) |
| Tethered satellite system | 16.4 | 3.4 | 3.4 | |
| Advanced programs | 34.7 | 57.7 | 41.2 | (−16.5) |
| New launch system | 28.0 | 125.0 | 30.0 | (−95) |
| Research operations support | 144.6 | 177.2 | 171.2 | (−6) |
| Space science and applications | 2,728.8 | 2,985.0 | 2,852.0 | |
| Physics and astronomy | 1,047.3 | 1,113.5 | 1,095.0 | |
| General Reduction | | | (22.0) | (−22) |
| Advanced x-ray astrophysics facility | 151.0 | 174.0 | 169.0 | (−5) |
| Global geospace science | 75.3 | 60.1 | 60.1 | |
| Shuttle/spacelab payload mission mgmt | 88.0 | 101.1 | 101.1 | |
| Payload and instrument development | 116.5 | 78.2 | 100.2 | (+22) |
| Explorer development | 105.0 | 112.5 | 112.5 | |
| Mission operation and data analysis | 380.8 | 440.9 | 428.4 | (−12.5) |
| Research and analysis | 70.5 | 81.4 | 81.4 | |
| Suborbital program | 60.2 | 65.3 | 65.3 | |
| Life sciences | 148.9 | 177.2 | 153.7 | |
| Research and analysis | 64.2 | 69.1 | 53.1 | (−16) |
| Flight Experiments | 84.7 | 108.1 | 100.6 | (−7.5) |
| Planetary exploration | 534.5 | 487.2 | 472.2 | |
| Mars observer | 76.9 | 0.0 | 0.0 | |
| Mars balloon relay experiment | 1.2 | 0.0 | 0.0 | |
| Cassini | 210.7 | 210.0 | 195.0 | (−15) |
| Massion operations and data analysis | 155.0 | 170.3 | 180.3 | (+10) |
| Research and analysis | 90.7 | 106.9 | 96.9 | (−10) |
| Space applications | 998.1 | 1,207.1 | 1,130.1 | |
| Earth science and applications | 747.5 | 868.5 | 838.5 | |
| General reduction | | | (10.) | (−10) |
| Earth observing system (EOS) | 188.4 | 308.4 | 288.4 | (−20) |
| EOS data and information system | 82.6 | 82.6 | 82.6 | |
| Earth probes | 92.8 | 88.9 | 88.9 | |
| Airborn science and applications | 20.3 | 22.9 | 22.9 | |
| Ocean topography experiment | 59.9 | 0.0 | 0.0 | |
| Payload and instrument development | 39.6 | 49.4 | 49.4 | |
| Missions operations and data analysis | 88.8 | 142.1 | 142.1 | |
| Research and analysis | 175.1 | 174.2 | 174.2 | |
| Materials processing | 120.8 | 195.3 | 155.3 | (−40) |
| Communications | 12.5 | 4.6 | 4.6 | |
| Information systems | 35.0 | 40.7 | 40.7 | |
| Space science research operations support | 82.3 | 89.0 | 91.0 | (−7) |
| Commercial programs | 147.6 | 171.6 | 156.6 | |
| General reduction | | | (15.0) | (−15) |
| Technology utilization | 32.5 | 31.7 | 31.7 | |
| Commercial use of space | 115.1 | 139.9 | 139.9 | |
| Aeronautical research and technology | 784.3 | 890.2 | 885.2 | (−5) |
| Transatmospheric res. and tech. (NASP) | 5.0 | 80.0 | 45.0 | (−35) |

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION BUDGET SUMMARY—Continued

[In millions of dollars]

| | Fiscal year— | | | |
|---|---|---|---|---|
| | 1992 appropriations | 1993 President's request | 1993 Authoritative compromise | |
| Space research and technology | 314.3 | 332.0 | 308.5 | |
| General reduction | | | (5.0) | (−5) |
| Research and technology base | 157.9 | 173.8 | 173.8 | |
| Civil space technology initiative | 151.4 | 158.2 | 139.7 | (−18.5) |
| Exploration mission studies | 5.0 | | | |
| Space exploration activities | (5.0) | 31.8 | 15.9 | (−15.9) |
| Safety reliability and qual. assurance | 33.6 | 32.5 | 32.5 | |
| Academic programs | 66.8 | 71.4 | 71.4 | |
| Tracking and data advanced systems | 22.0 | 23.2 | 23.2 | |
| Space Flight, Control and Data Com. | 5,384.8 | 5,266.5 | 5,519.0 | |
| Shuttle production and ops. cap. | 1,327.8 | 1,012.8 | 1,315.8 | |
| Orbiter operational capability | 246.1 | 305.5 | 325.5 | (+20) |
| Propulsion systems | 715.4 | 357.7 | 664.7 | (+307) |
| Launch and mission support | 261.7 | 210.7 | 210.7 | |
| Assured shuttle availability | 104.6 | 138.9 | 114.9 | (−24) |
| Space transportation enhancement | | | 7.0 | (+7) |
| Space shuttle operations | 2,943.4 | 3,115.2 | 3,085.2 | |
| General reduction | | | (25.0) | (−25) |
| Flight operations | 790.3 | 740.4 | 740.4 | |
| Flight hardware | 1,297.1 | 1,455.3 | 1,455.3 | |
| Launch and landing operations | 628.3 | 639.9 | 739.9 | |
| Research operations support | 227.7 | 279.6 | 274.6 | (−5) |
| Launch services | 195.3 | 217.5 | 207.5 | (−10) |
| Space and ground networks com. | 918.3 | 921.0 | 903.5 | |
| General reduction | | | (17.5) | (−17.5) |
| Space network | 353.9 | 298.2 | 298.2 | |
| Ground network | 283.0 | 314.6 | 314.6 | |
| Comunications and data systems | 281.4 | 308.2 | 308.2 | |
| Construction of facilities | 525.0 | 319.2 | 479.2 | |
| Construction projects | | | 484.2 | (+165) |
| General reduction | | | (5.0) | (−5) |
| Research and program management | 1,577.6 | 1,660.0 | 1,654.0 | (−6) |
| Inspection genral | 14.6 | 15.9 | 15.9 | |
| Total | 14,352.8 | 14,993.0 | 14,892.1 | (−100.9) |

SETI FUNDING/NASA AUTHORIZATION BILL

Mr. BRYAN. Mr. President, in most respects, I am pleased to support the pending legislation the NASA authorization bill for fiscal year 1993.

There is one issue related to this legislation, however, that concerns me. During the Commerce Committee's markup of H.R. 4364, I offered an amendment to delete $13.5 million in funding for a program called the Search for Extraterrestrial Intelligence [SETI]. In my view, and in the view of the majority of Commerce Committee members, the limited potential benefits of the SETI program do not justify funding under today's tight budget constraints.

The House of Representatives agrees with this assessment, and has also deleted funding for the SETI program as part of the NASA authorization. The House also deleted funding for SETI in its VA/HUD appropriations bill.

Unfortunately, the Senate Appropriations Committee disagreed, and restored funding for SETI. The Senate position prevailed in the Conference Committee, and, in spite of language to the contrary that will be included in the authorization bill, SETI will be funded for fiscal year 1993. During consideration of the appropriations bill, I withheld from offering an amendment to delete funding for SETI, assuming that the language in the authorizing legislation would be sufficient to terminate the program. Unfortunately, this is not the case.

With great media hype, the SETI program, renamed in order to avoid the restrictions included in this bill, will begin surveying the skies for signs of extraterrestrials next Monday.

Mr. President, I am not opposed to scientific research. I simply believe that we must establish some system of priorities for Federal spending. While the amount of funding in question is small by Federal standards, $13.5 million during fiscal year 1993 could have a large impact if directed to other, more important programs. For example, $13.5 million could purchase 115 new homes in Las Vegas, pay the tuition of more that 10,000 students at UNLV, or provide day care for 1 year for 3,700 toddlers.

I am pleased that the $13.5 million reduction in authorization for NASA programs remains in this legislation, but am distressed that a program with so little support in Congress will be allowed to continue.

FY 1993 NASA AUTHORIZATION BILL

Mr. DANFORTH. Mr. President, as the ranking Republican member of the Commerce Committee, I urge my colleagues to join me in support of H.R. 4364, the NASA authorization bill for fiscal year 1993. At a time of heightened concern about U.S. competitiveness, the United States stands as the undisputed leader in civil space. In 1990, the United States experienced a $101 billion deficit, but the aerospace industry showed a $27.3 billion surplus. The bill seeks to maintain our leadership in space by funding a robust and balanced mix of activities in such areas as space exploration, space science, and aeronautics.

The bill authorizes $14.89 billion for NASA in fiscal year 93. This authorization is a two percent increase over fiscal year 92 funding levels, and only a two percent decrease from the President's budget request of $14.99 billion. This funding level will enable NASA to continue its current core programs, including its most ambitious initiatives: space station *Freedom* and "Mission to Planet Earth."

Mr. President, the bill supports most space programs at the levels recommended in the President's budget request. For instance, the substitute authorizes $2.1 billion of the $2.2 billion requested for space station. Space station is a joint project involving the United States and its international partners: Canada, Western Europe, and Japan. As research and development projects become increasingly complex and expensive, cooperative efforts like space station will be more important. For our Nation's part, tens of thousands of Americans in over 35 States, including my State of Missouri, are working hard to make space station *Freedom* a reality. If past NASA missions are any indication, in its quest to expand our understanding of the universe, space station may also generate important breakthroughs in such areas as biomedicine and materials research that will boost our economy and improve the quality of lives.

Mr. President, the bill continues full support for "Mission to Planet Earth" and related Earth science programs. This year, the Commerce Committee heard alarming testimony about the climate threats such as global warming and ozone depletion. It is vital for us and for future generations that we apply our satellite and computer technology to understand the scope and im-

pact of these global climate changes. Mission to Planet Earth will provide scientists with the information to analyze these environmental threats so that policy makers can fashion appropriate remedies.

The bill authorizes $45 million for the National Aerospace Plane [NASP], $40 million more than the $5.0 million appropriated for fiscal year 1992. If successful, this program may eventually produce a plane that is capable of taking off from a runway, vaulting into orbit at Mach 25, and landing conventionally. Regrettably, however, the fiscal year 1993 appropriations legislation for NASA did not fund this program. This decision is shortsighted. Even its critics concede that NASP holds the promise of revolutionizing not just access to space, but commercial and military aviation as well. The bill seeks to provide NASA with flexibility in handling the program by authorizing NASA to reprogram up to $45 million from its research and development account to fund NASP.

The bill also provides full funding for NASA's other space transportation, space science and core activities. This past year NASA's programs were distinguished by several notable successes. For example, this May, the importance of manned space flight was dramatically demonstrated by the shuttle rescue of a wayward communications satellite by the crew of the Space Shuttle *Endeavour* in its maiden mission. The crews courage, resourcefulness, and grace under pressure were an inspiration to us all. Similarly, in September, NASA successfully launched its Mars observer spacecraft on its 11-month, 450-million-mile voyage to the Red Planet. The spacecraft will map the surface of the planet and analyze its atmosphere to lay the groundwork for any future manned missions to Mars.

Mr. President, with the end of the cold war, it is incumbent upon the United States and the former Soviet Union to seize this opportunity to share knowledge and resources to enhance our space programs. To this end, the bill directs the National Space Council, in consultation with NASA, to evaluate and prepare a plan for increased cooperation with the former Soviet Union. To their credit, the two nations are already developing joint projects. I understand that NASA and the former Soviet Union are already considering flying a cosmonaut on the Shuttle; flying an astronaut to the Russian space station *Mir*; and docking the shuttle at Mir. NASA is also looking at using the Soyuz vehicle as a possible rescue vehicle for space station *Freedom* rather than developing a new billion dollar vehicle. These kinds of cooperative efforts with our former space rival can only strengthen the space programs, as well as the economies, of both nations.

Mr. President, one of the ways to enhance U.S. competitiveness is to stimulate and create new markets. Commercial space may be the next high-tech global marketplace. The market for developing, building, and launching commercial and government spacecraft already generates billions of dollars for firms in the United States, Western Europe, China, the former Soviet Union and other countries. To help U.S. firms compete in this arena, the bill authorizes the Secretary of Transportation to provide up to $10 billion in matching funds to construct and improve the Nation's launch pads and other infrastructure needed for commercial space launches.

Mr. President, the bill contains a provision that I sponsored which would establish an Institute for Aviation Weather Prediction in Kansas City, MO. This institute would build on the existing aviation weather unit located within the National Severe Storms Forecast Center in the city. The institute is aimed at providing up-to-date weather watches, warnings and forecasts that are vital to the safety of the aviation community. The provision merely codifies existing National Weather Services plans in connection with its comprehensive modernization initiative. I would like to thank the National Weather Service for its work with the committee on this provision.

Mr. President, investment in our space program is an investment in our future. I strongly urge my colleagues to continue our leadership in civil space by voting for H.R. 4364.

## BENJAMIN FRANKLIN COMMEMORATIVE MEDAL

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2448, a bill to provide for the minting of medals in commemoration of Benjamin Franklin and to enact a fair service bill of rights just received from the House, that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table, that any statement on passage of this bill appear at the appropriate place in the RECORD.

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

Mr. BIDEN. Mr. President, I am pleased to rise today in support of H.R. 2448, the Benjamin Franklin commemorative medal bill. Volunteer and career firefighters are the beneficiaries of the legislation before us. The bill will be a tremendous help to the one million men and women in the fire service community, 80 percent of whom risk life and limb as volunteers. It is clear there is far more that we should do to assist our Nation's firefighters, but passage of this bill will help in many important ways.

As this country enters into its third century, we need the kind of sacrifice and commitment represented by firefighters more than ever. America's firefighters keep this commitment alive in the face of incredible odds—fighting not only fires, but also finances and fatigue to keep their companies well-equipped and ready to respond.

The basic outline of the bill is quite simple. The bill authorizes the minting of commemorative medals honoring Ben Franklin, who founded our Nation's first fire company. Proceeds from the sale of the medals will support programs in the following areas: firefighter health, education, and training; burn research; scholarships for fire science and for survivors of fallen firefighters; arson prevention; and education programs for low-income areas that are especially hard hit by fires.

This bill is similar to S. 1451, legislation which Senator ROTH and I introduced and has 46 bipartisan cosponsors. H.R. 2448 has been amended in the House to authorize a commemorative medal instead of a commemorative coin. This alternative is a unique and less costly option, while still providing an important source of revenue to these crucial firefighter initiatives.

No cost to the taxpayer is involved with this bill. Financial assurances in the bill assure the Federal Government's recovery of design, minting, and marketing expenses. Additionally, funds granted through the program cannot be used to pay administrative costs. The proceeds from the sale of the medals will go to the men and women working in the dangerous—and sometimes deadly—battle against fire.

The battle against fire claims more than 6,000 victims and causes over $10 billion in property damage each year. More than one hundred of those victims were men and women who were at the site fighting the fire, trying to prevent further damage and destruction. Another 100,000 are injured saving children trapped in burning bedrooms, preventing a hazardous chemical from destroying a small town, or averting an explosion that could wipe out a city block. That is why the training is important and why I have supported efforts to improve the equipment rural and urban companies have to put out the flames.

My home State of Delaware, with approximately 4,000 firefighters, is not atypical in its need for increased resources. Of the 60 fire companies in Delaware, 58 are volunteer, depending heavily on contributions from local supporters to meet their financial requirements. For while they often contribute their time and effort, Delaware's firefighters face skyrocketing costs and rising demands.

Each call response costs a fire company at least $1,500, with or without a fire. Protective gear worn by the firefighters can cost in excess of $2000 per

person. Replacing trucks and other heavy equipment easily clears $250,000 on some vehicles.

Those costs are compounded by the increase in emergency calls. In Delaware in 1980, 15,000 emergency calls were made. Ten years later, that figure had nearly tripled to 40,000. My State's population has grown only 13 percent during that period. The demands on firefighters are outstripping their resources.

I would like to make clear the special benefit of volunteer fire services to communities both large and small. A recent report from the Delaware State Auditor's office assessed the value of their efforts. The report found that in the absence of volunteer fire and ambulance services in Delaware, taxpayers would have to pay nearly $70 million for comparable services.

Those who serve in career fire departments face a somewhat different but equally difficult challenge. With smaller and fewer companies spread further and further apart, with inner cities posing dangers that seemed unimaginable jut a few years ago, and with crumbling city finances, it has become much more demanding for career fire departments to keep their equipment up-to-date and well-maintained and to keep response times down.

All firefighters—volunteer and career alike—day after day, night after night, in narrow, crowded city streets or far out along lonely country roads, meet fire and disaster head on with great skill and courage. Appropriately, the bill we are about to send to the President recognizes the vital role of all firefighters to our Nation. The foundations funded by this bill support programs to give firefighters better training and equipment, to educate the public about the threat of fire, and to help develop better ways to treat the victims of fire.

Almost 20 years ago, the landmark report entitled "America Burning" opened the Nation's eyes to the extent of destruction caused by fire. Since then, tremendous progress has been made—but there is much more to be done. I know from personal experience how important fire service companies are to individuals and communities facing emergencies. This legislation is an important step toward regaining the initiative on reducing deaths, injuries, and damage from fire, and it has the strong support of the fire service community. Therefore, Mr. President, I'm pleased the Senate and Congress today has taken this step by passing the Benjamin Franklin Fire Service Bill of Rights Act.

Finally, as my colleagues know, this legislation's success in the Senate was built on the fine work of our late colleague, John Heinz, who introduced the firefighter bill in the 101st Congress. With the persistence of the originator of this proposal, Congressman CURT WELDON, we have not lost this opportunity to support America's firefighters.

I would also like to thank the chairman and ranking member of the Senate Banking Committee, Senators RIEGLE and GARN, for the attention they have given this legislation and for expediting its consideration and passage.

The bill (H.R. 2448) was deemed read the third time and passed.

## JUVENILE ARTHRITIS RESEARCH EXCELLENCE ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3371, a bill introduced earlier today by Senator SHELBY providing for research with respect to juvenile arthritis; that the bill be read a third time, passed, the motion to reconsider be laid upon the table, and any statements thereon appear in the RECORD at the appropriate place as though read.

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

The bill (S. 3371) was deemed read the third time, and passed, as follows:

S. 3371

*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 "Juvenile Arthritis Research Excellence Act".

**SEC. 2. JUVENILE ARTHRITIS.**

(a) PURPOSE.—Section 435 of the Public Health Service Act (42 U.S.C. 285d) is amended by inserting before "sports-related disorders" the following: "the effect of these diseases on children and".

(b) PROGRAMS.—Section 436 (42 U.S.C. 285d-1) is amended—

(1) in subsection (a), by inserting after the second sentence, the following: "The plan shall place particular emphasis upon expanding research into better understanding the causes and the development of effective treatments for arthritis affecting children."; and

(2) in subsection (b)—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(5) research into the causes of arthritis affecting children and the development, trial, and evaluation of techniques, drugs and devices used in the diagnosis, treatment (including medical rehabilitation), and prevention of arthritis in children.".

(c) CENTERS.—Section 441 of the Public Health Service Act (42 U.S.C. 286d-6) is amended by adding at the end thereof the following new subsection:

"(f) The Director shall, subject to appropriations, establish a multipurpose arthritis and musculoskeletal disease center for the purpose of expanding the level of research into the cause, diagnosis, early detection, prevention, control, and treatment of, and rehabilitation of children with arthritis and musculoskeletal diseases.".

(d) ADVISORY BOARD.—Section 442 of the Public Health Service Act (42 U.S.C. 285d-7) is amended—

(1) in subsection (b)—

(A) by striking "eighteen" in the matter immediately preceding paragraph (1) and inserting "twenty"; and

(B) in paragraph (1)(B)—

(i) by striking "six" and inserting "eight"; and

(ii) by inserting before the period the following: ", and two members who are parents of children with arthritis."; and

(2) in subsection (j)—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(5) contains recommendations for expanding the Institute's funding of research directly applicable to the cause, diagnosis, early detection, prevention, control, and treatment of, and rehabilitation of children with arthritis and musculoskeletal diseases.".

## PROVIDING FOR THE CONVENING OF THE 1ST SESSION OF THE 103D CONGRESS

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Joint Resolution 563, a joint resolution relating to the convening of the 103d Congress, now at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 563) providing for the convening of the First Session of the One Hundred Third Congress.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. Without objection, the joint resolution is considered read three times and passed.

The joint resolution (H.J. Res. 563) was deemed read the third time and passed.

Mr. FORD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

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

The motion to lay on the table was agreed to.

Mr. FORD. I might announce that that sets the first day of the 103d Congress, on Tuesday, January 5, 1993, at noon.

## CONGRESSIONAL AWARD ACT AMENDMENTS OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6049, the Congressional Award Act amendments of 1992, just received from the House, that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table.

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

So the bill (H.R. 6049) was deemed read the third time and passed.

## RELEASE OF RESTRICTIONS ON CERTAIN LANDS

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1183.

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

*Resolved*, That the bill from the Senate (S. 1183) entitled "An Act to reduce the restrictions on the lands conveyed by deed to the city of Kaysville, Utah, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

*S. 1183*

### *TITLE I—UTAH LANDS*

***SEC. 101. AMENDMENT.***

*Section 2 of the Act of June 8, 1926 (ch. 498; 44 Stat. 708), is amended by striking "States." at the end of the first sentence and inserting in lieu thereof the following: "States, except that these restrictions on conveyances and uses shall not apply to those lands upon which communications facilities were located as of November 1, 1991, or prevent reasonable ingress and egress for the repair, maintenance, or improvement of such facilities, nor shall these restrictions on conveyances and uses prohibit the use of the lands described in the first section of this Act for recreational purposes so long as such recreational use is consistent both with the protection of the watershed and water supply system of the city and with the management objectives for adjacent National Forest System lands. Any improvements of the lands described in the first section of this Act for recreational purposes shall be undertaken only in consultation with and the approval of the Secretary of Agriculture.".*

***SEC. 102. BEAR RIVER EXCHANGE.***

*(a) IN GENERAL.—If, within 5 years after the date of enactment of this Act, the State of Utah transfers to the Secretary of the Interior all right, title, and interest of the State of Utah in and to the State lands in exchange for Federal lands, the Secretary of the Interior, within 18 months after such transfer, shall transfer to the State of Utah all right, title, and interest in and to so much of the Federal lands as the Secretary determines to be equal in fair market value to the State lands.*

*(b) STATE LANDS.—As used in this section, the term "State lands" means approximately 700.70 acres of land located in the State of Utah, as generally depicted as State lands on the map entitled "Bear River Migratory Bird Refuge", map numbered 1, and more particularly described as:*

*The South half of the Northwest Quarter and Lots 5, 6, 7, and 8, all in Section 4, and also, Lots 7 and 8, Section 5, township 8 North, Range 2 West, Salt Lake Base and Meridian.*

*All property below the surveyed meander line and North of the Bear River Bird Refuge North Boundary in Sections 4 and 9 and in the East one-half of Sections 5 and 8, Township 8 North, Range 2 West, Salt Lake Base and Meridian.*

*(c) FEDERAL LANDS.—As used in this section, the term "Federal lands" means approximately 1,365.14 acres of land located in the State of Utah, as generally depicted as Federal lands on the map entitled "Fingerpoint ", map numbered 2, and the map entitled "Rozel Point", map numbered 3, and more particularly described as:*

*Township 7 North, Range 10 West, Salt Lake Base & Meridian*

*Section 5: Lots 1–6, W½SW¼*

*Section 6: Lots 1–7, W½SE¼*

*Section 7: Lots 1–6*

*Section 8: Lots 1–4, W½*

*Section 17: Lots 1–5*

*Section 18: Lots 1–3*

*Township 8 North, Range 7 West, Salt Lake Base & Meridian*

*Section 8: Lots 1–12, E½NE¼*

*(d) ADMINISTRATION.—The lands transferred to the United States under this section shall be added to and administered as part of the Bear River Migratory Bird Refuge.*

### *TITLE II—COLORADO MILITARY LANDS*

***SEC. 201. SHORT TITLE.***

*This title may be cited as the "Fort Carson-Pinon Canyon Military Lands Withdrawal Act".*

***SEC. 202. WITHDRAWAL AND RESERVATION OF LANDS AT FORT CARSON MILITARY RESERVATION.***

*(a) WITHDRAWAL.—Subject to valid existing rights and except as otherwise provided in this title, the lands at the Fort Carson Military Reservation that are described in subsection (c) are hereby withdrawn from all forms of appropriation under the public land laws including the mining laws and the mineral and geothermal leasing laws.*

*(b) RESERVATION.—The lands withdrawn under subsection (a) are reserved for use by the Secretary of the Army—*

*(1) for military maneuvering, training and weapons firing; and*

*(2) for other defense related purposes consistent with the uses specified in paragraph (1).*

*(c) LAND DESCRIPTION.—The lands referred to in subsection (a) comprise 3,133.02 acres of public land and 11,415.16 acres of federally-owned minerals in El Paso, Pueblo and Fremont Counties, Colorado, as generally depicted on the map entitled "Fort Carson Proposed Withdrawal—Fort Carson Base", dated February 1992, and filed in accordance with section 204.*

***SEC. 203. WITHDRAWAL AND RESERVATION OF LANDS AT PINON CANYON MANEUVER SITE.***

*(a) WITHDRAWAL.—Subject to valid existing rights and except as otherwise provided in this title, the lands at the Pinon Canyon Maneuver Site that are described in subsection (c) are hereby withdrawn from all forms of appropriation under the public land laws including the mining laws and the mineral and geothermal leasing laws.*

*(b) RESERVATION.—The lands withdrawn under subsection (a) are reserved for use by the Secretary of the Army—*

*(1) for military maneuvering and training; and*

*(2) for other defense related purposes consistent with the uses specified in paragraph (1).*

*(c) LAND DESCRIPTION.—The lands referred to in subsection (a) comprise 2,517.12 acres of public lands and 130,139 acres of federally-owned minerals in Las Animas County, Colorado, as generally depicted on the map entitled "Fort Carson Proposed Withdrawal—Fort Carson Maneuver Area—Pinon Canyon site", dated February 1992, and filed in accordance with section 204.*

***SEC. 204. MAPS AND LEGAL DESCRIPTIONS.***

*(a) PREPARATION.—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall—*

*(1) publish in the Federal Register a notice containing the legal description of the lands withdrawn and reserved by this title; and*

*(2) file maps and a legal description of the lands withdrawn and reserved by this title with the Committee on Energy and Natural Resources of the United States Senate and with the Committee on Interior and Insular Affairs of the United States House of Representatives.*

*(b) LEGAL EFFECT.—Such maps and legal descriptions shall have the same force and effect as if they were included in this title, except that the Secretary of the Interior may correct clerical and typographical errors in such maps and legal descriptions.*

*(c) LOCATION OF COPIES.—Copies of such maps and legal descriptions shall be available for public inspection in the offices of the Colorado State Director and the Canon City District Manager of the Bureau of Land Management, and the Commander, Fort Carson, Colorado.*

*(d) COSTS.—The Secretary of the Army shall reimburse the Secretary of the Interior for the costs of implementing this section.*

***SEC. 205. MANAGEMENT OF WITHDRAWN LANDS.***

*(a) MANAGEMENT GUIDELINES.—(1) Except as provided in section 206, during the period of withdrawal, the Secretary of the Army shall manage for military purposes the lands covered by this title and may authorize use of the lands by the other military departments and agencies of the Department of Defense, and the National Guard, as appropriate.*

*(2) When military operations, public safety, or national security, as determined by the Secretary of the Army, require the closure of roads and trails on the lands withdrawn by this title commonly in public use, the Secretary of the Army is authorized to take such action, except that such closures shall be limited to the minimum areas and periods required for the purposes specified in this subsection. Appropriate warning notices shall be kept posted during closures.*

*(3) The Secretary of the Army shall take necessary precautions to prevent and suppress brush and range fires occurring within and outside the lands as a result of military activities and may seek assistance from the Bureau of Land Management in suppressing such fires. The memorandum of understanding required by this section shall provide for Bureau of Land Management assistance in the suppression of such fires, and for a transfer of funds from the Department of the Army to the Bureau of Land Management as compensation for such assistance.*

*(b) MANAGEMENT PLAN.—The Secretary of the Army, with the concurrence of the Secretary of the Interior, shall develop a plan for the management of acquired lands and lands withdrawn under sections 202 and 203 for the period of withdrawal. The plan shall—*

*(1) be consistent with applicable law;*

*(2) include such provisions as may be necessary for proper resource management and protection of the natural, cultural, and other resources and values of such lands;*

*(3) identify those withdrawn and acquired lands, if any, which are to be open to mining or mineral and geothermal leasing, including mineral materials disposal; and*

*(4) be developed not later than 5 years after the date of enactment of this Act.*

*(c) LISTING OF LANDS SUITABLE FOR MINING.—On completion of the management plan prepared pursuant to subsection (b), the Secretary of the Interior shall publish a notice in the Federal Register listing the lands determined under such subsection to be suitable for opening to mining, and mineral and geothermal leasing, including mineral materials disposal, and specifying the opening date.*

*(d) IMPLEMENTATION OF MANAGEMENT PLAN.—(1) The Secretary of the Army and the Secretary of the Interior shall enter into a memorandum of understanding to implement the management plan described in subsection (b).*

*(2) The duration of any such memorandum of understanding shall be the same as the period of withdrawal under section 208.*

*(3) The memorandum of understanding may be amended by agreement of both Secretaries.*

*(e) REEXAMINATION OF LANDS FOR SUITABILITY FOR MINING.—At least every five years after the initial identification of lands suitable for opening to mining required by subsection (b)(3), the Secretary of the Army and the Secretary of the Interior shall determine those withdrawn lands, if any, which the Secretaries consider suitable for opening to mining, mineral and geothermal leasing, or mineral material disposal, and those acquired lands, if any, which the Secretaries consider suitable for opening to mineral and geothermal leasing or mineral material disposal. The Secretary of the Interior shall publish a notice in the Federal Register listing the lands determined suitable for opening and specifying the opening date.*

*(f) USE OF CERTAIN RESOURCES.—The Secretary of the Army is authorized to utilize sand, gravel, or similar mineral or mineral material resources when the use of such resources is required for construction needs of the Fort Carson Reservation or Pinon Canyon Maneuver Site.*

***SEC. 206. MANAGEMENT OF WITHDRAWN AND ACQUIRED MINERAL RESOURCES.***

*(a) AUTHORITY OF SECRETARY OF THE INTERIOR.—Notwithstanding any other provision of law, and except as provided in section 205 of this title, the Secretary of the Interior shall manage all withdrawn and acquired mineral resources contained within the boundaries of the Fort Carson Reservation and Pinon Canyon Maneuver Site.*

*(b) EFFECT OF IDENTIFICATION OF LANDS AS SUITABLE FOR MINING.—On the day specified by the Secretary of the Interior in the notice published in the Federal Register pursuant to subsections (c) and (e) of section 205, the land identified as suitable for opening to the operation of the mining, mineral, and geothermal leasing and the mineral material disposal laws shall automatically be open to the operation of such laws without the necessity for further action by either the Secretary of the Interior or the Congress.*

*(c) EXCEPTION FROM CERTAIN LAWS.—No deposit of minerals or materials of the types identified by section 3 of the Act of July 23, 1955 (30 U.S.C. 611; 69 Stat. 368), whether or not included in the term "common varieties" in that Act, shall be subject to location under the Act of May 10, 1872 (commonly known as the Mining Law of 1872) (30 U.S.C. 22 et seq.), on lands described in sections 202 and 203.*

*(d) REGULATIONS.—On lands identified for opening to mining, mineral, and geothermal leasing or mineral material disposal by section 205(b)(3), or by subsequent amendments to the management plan described in section 205, all minerals contained in those lands shall be subject to mining, mineral, and geothermal leasing or mineral material disposal under such rules and regulations as the Secretary of the Interior may promulgate pursuant to the terms and conditions of section 12 of the Military Lands Withdrawal Act of 1986 (Public Law 99-606; 100 Stat. 3466).*

*(e) CLOSURE OF LANDS UNDER CERTAIN CIRCUMSTANCES.—In the event of a national emergency or for purposes of national defense or security, the Secretary of the Interior, at the request of the Secretary of the Army, shall close any lands that have been opened to mining, mineral, and geothermal leasing or mineral material disposal pursuant to this section.*

*(f) MINING CLAIMS.—(1) Except as otherwise provided in this title, mining claims located pursuant to this title shall be subject to the provisions of the Act of May 10, 1872 (commonly known as the Mining Law of 1872) (30 U.S.C. 22 et seq.). In the event of a conflict between that law and this title, this title shall prevail.*

*(2) All mining claims located under the terms of this title shall be subject to the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).*

*(g) PATENTS FOR LOCATABLE MINERALS.—(1) Patents issued pursuant to this title for locatable minerals shall convey title to the locatable minerals only, and shall be issued together with an appropriate authorization for use of so much of the surface as may be necessary for purposes incident to mining under the guidelines for such use established by the Secretary of the Interior by regulation.*

*(2) All such patents shall contain a reservation to the United States of the surface of all lands patented and of all nonlocatable minerals on those lands.*

*(3) For the purposes of this section, all minerals subject to location under the Act of May 10, 1872 (commonly known as the Mining Law of 1872) (30 U.S.C. 22 et seq.), are referred to as "locatable minerals".*

***SEC. 207. HUNTING, FISHING, AND TRAPPING.***

*All hunting, fishing, and trapping on the lands withdrawn and reserved by this title shall be conducted in accordance with section 2671 of title 10, United States Code.*

***SEC. 208. TERMINATION OF WITHDRAWAL AND RESERVATION AND EFFECT OF CONTAMINATION.***

*(a) TERMINATION DATE.—The withdrawal and reservation established by this title shall terminate 15 years after the date of enactment of this Act.*

*(b) DETERMINATION OF CONTINUING MILITARY NEED.—(1) At least three years prior to the termination under subsection (a) of the withdrawal and reservation established by this title, the Secretary of the Army shall advise the Secretary of the Interior as to whether or not the Department of the Army will have a continuing military need for any of the lands after the termination date.*

*(2) If the Secretary of the Army concludes under paragraph (1) that there will be a continuing military need for any of the lands after the termination date established by subsection (a), the Secretary of the Army, in accordance with applicable law, shall evaluate the environmental effects of renewal of such withdrawal and reservation, shall hold at least one public hearing in Colorado concerning such evaluation, and shall thereafter file an application for extension of the withdrawal and reservation of such lands in accordance with the regulations and procedures of the Department of the Interior applicable to the extension of withdrawals for military uses. The Secretary of the Interior shall notify the Congress concerning such filing and thereafter may take necessary steps, in accordance with applicable law, to prevent uses inconsistent with such extension for a period not in excess of 2 years after the termination of the withdrawal and reservation made by this title.*

*(3) If the Secretary of the Army concludes under paragraph (1) that prior to the termination date established by subsection (a), there will be no military need for all or any of the lands withdrawn and reserved by this title, or if, during the period of withdrawal, the Secretary of the Army decides to relinquish any or all of the lands withdrawn and reserved under this title, the Secretary of the Army shall file a notice of intention to relinquish with the Secretary of the Interior.*

*(c) DETERMINATION OF CONTAMINATION.—Prior to the filing of a notice of intention to relinquish pursuant to subsection (b)(3), the Secretary of the Army shall prepare a written determination as to whether and to what extent the lands are contaminated with explosive, toxic, or other hazardous materials. A copy of the determination made by the Secretary of the Army shall be supplied with the notice of intention to relinquish. Copies of both the notice of intention to relinquish and the determination concerning the contaminated state of the lands shall be published in the Federal Register by the Secretary of the Interior.*

*(d) EFFECT OF CONTAMINATION.—(1) If any land which is the subject of a notice of intention to relinquish under subsection (b)(3) is contaminated, and the Secretary of the Interior, in consultation with the Secretary of the Army, determines that decontamination is practicable and economically feasible, taking into consideration the potential future use and value of the land, and that upon decontamination, the land could be opened to the operation of some or all of the public land laws, including the mining laws, the Secretary of the Army shall decontaminate the land to the extent that funds are appropriated for such purpose.*

*(2) If the Secretaries of the Army and the Interior conclude either that decontamination of any or all of the lands proposed for relinquishment is not practicable or economically feasible, or that the lands cannot be decontaminated sufficiently to allow them to be opened to the operation of the public land laws, or if Congress declines to appropriate funds for decontamination of the lands, the Secretary of the Interior shall not be required to accept the lands proposed for relinquishment.*

*(3) If, because of their contaminated state, the Secretary of the Interior declines under paragraph (2) to accept jurisdiction of the lands proposed for relinquishment, or if at the expiration of the withdrawal made by this title the Secretary of the Interior determines that some of the lands withdrawn by this title are contaminated to an extent which prevents opening such contaminated lands to operation of the public land laws—*

*(A) the Secretary of the Army shall take appropriate steps to warn the public of the contaminated state of such lands and any risks associated with entry onto such lands;*

*(B) after the expiration of the withdrawal, the Secretary of the Army shall undertake no activities on such lands except in connection with decontamination of such lands; and*

*(C) the Secretary of the Army shall report to the Secretary of the Interior and to the Congress concerning the status of such lands and all actions taken in furtherance of the subsection.*

*(4) If the lands are subsequently decontaminated, upon certification by the Secretary of the Army that the lands are safe for all nonmilitary uses, the Secretary of the Interior shall reconsider accepting jurisdiction over the lands.*

*(e) PROGRAM OF DECONTAMINATION.—Throughout the duration of the withdrawal and reservation made by this title, the Secretary of the Army, to the extent funds are made available, shall maintain a program of decontamination of the lands withdrawn by this title at least at the level of effort carried out during fiscal year 1992.*

*(f) ACCEPTANCE OF LANDS PROPOSED FOR RELINQUISHMENT.—Notwithstanding any other provision of law, the Secretary of the Interior, upon deciding that it is in the public interest to accept jurisdiction over the lands proposed for relinquishment, is authorized to revoke the withdrawal and reservation established by this title as it applies to the lands proposed for relinquishment. Should the decision be made to revoke the withdrawal and reservation, the Secretary shall publish in the Federal Register an appropriate order which shall—*

*(1) terminate the withdrawal and reservation;*

*(2) constitute official acceptance of full jurisdiction over the lands by the Secretary of the Interior; and*

*(3) state the date upon which the lands will be opened to the operation of the public land laws, including the mining laws if appropriate.*

***SEC. 209. DELEGATION.***

*The functions of the Secretary of the Army under this title may be delegated. The functions*

*of the Secretary of the Interior under this title may be delegated, except that the order referred to in section 208(f) may be approved and signed only by the Secretary of the Interior, the Deputy Secretary of the Interior, or an Assistant Secretary of the Department of the Interior.*

**SEC. 210. HOLD HARMLESS.**

*The United States and all departments or agencies thereof shall be held harmless and shall not be liable for any injuries or damages to persons or property suffered in the course of any mining, mineral, or geothermal leasing activity conducted on lands comprising the Fort Carson Reservation or Pinon Canyon Maneuver Site.*

**SEC. 211. AMENDMENT TO MILITARY LANDS WITHDRAWAL ACT OF 1986.**

*Section 3(f) of the Military Lands Withdrawal Act of 1986 (Public Law 99-606, 100 Stat. 3461) is amended by adding at the end a new paragraph (2) as follows:*

*"(2) The Secretary of the military department concerned may utilize sand, gravel, or similar mineral or material resources when the use of such resources is required for construction needs on the respective lands withdrawn by this Act.".*

**SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

*There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.*

## TITLE III—TARGHEE AND KANIKSU NATIONAL FORESTS

**SEC. 301. SHORT TITLE.**

*This title may be cited as the "Targhee and Kaniksu Land Exchange Act of 1992".*

**SEC. 302. TARGHEE NATIONAL FOREST BOUNDARY ADJUSTMENT.**

*(a) IN GENERAL.—The boundaries of the Targhee National Forest are adjusted as generally depicted on the map entitled "Targhee National Forest Proposed Boundary Changes" and dated March 1, 1991.*

*(b) MAP AND LEGAL DESCRIPTION.—*

*(1) PUBLIC ACCESS.—The map described in subsection (a) and a legal description of the lands depicted on the map shall be on file and available for public inspection in the Regional Office of the Intermountain Region of the Forest Service.*

*(2) TECHNICAL CORRECTIONS.—The map and legal description shall have the same force and effect as if included in this Act, except that the Secretary of Agriculture (referred to in this title as the "Secretary") may correct clerical and typographical errors.*

*(c) RULE OF CONSTRUCTION.—For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-9), the boundaries of the Targhee National Forest, as adjusted by this Act, shall be considered to be the boundaries of the Forest as of January 1, 1965.*

**SEC. 303. CLARK FORK LAND EXCHANGE.**

*(a) FINDINGS.—Congress finds that, over the past 10 years—*

*(1) the University of Idaho has utilized the Clark Fork Ranger Station within the Kaniksu National Forest as the Clark Fork Field Campus, under a Granger-Thye permit; and*

*(2) the University of Idaho has made substantial improvements in order to maintain and utilize the buildings as a campus facility.*

*(b) LAND EXCHANGE.—*

*(1) CONVEYANCE BY THE SECRETARY.—*

*(A) IN GENERAL.—In exchange for the conveyance described in paragraph (2) and subject to easements that are considered necessary by the Secretary for public and administrative access and to valid existing rights, the Secretary shall convey to the Regents of the University of Idaho all right, title, and interest of the United States to Parcel A.*

*(B) PARCEL A.—As used in this section, the term "Parcel A" means the approximately 35.27 acres comprising the Clark Fork Ranger Station within the Kaniksu National Forest, as depicted on the map entitled "Clark Fork Land Exchange—Parcel A" and dated July 1, 1991.*

*(2) CONVEYANCE BY THE REGENTS OF THE UNIVERSITY OF IDAHO.—*

*(A) IN GENERAL.—In exchange for the conveyance described in paragraph (1) and subject to valid existing rights of record acceptable to the Secretary, the Regents of the University of Idaho shall convey to the Secretary, by general warranty deed in accordance with Department of Justice title standards, all right, title, and interest to Parcel B.*

*(B) PARCEL B.—As used in this section, the term "Parcel B" means the approximately 40 acres depicted on the map entitled "Clark Fork Land Exchange—Parcel B" and dated July 1, 1991.*

*(3) MAPS AND LEGAL DESCRIPTIONS.—*

*(A) PUBLIC ACCESS.—The maps described in paragraphs (1)(B) and (2)(B) and the legal descriptions of the lands depicted on the maps shall be on file and available for public inspection in the Regional Office of the Northern Region of the Forest Service.*

*(B) TECHNICAL CORRECTIONS.—The maps and legal descriptions shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors.*

*(c) LAND VALUATION.—*

*(1) IN GENERAL.—Subject to paragraph (2), if the lands exchanged between the United States and the Regents of the University of Idaho, as authorized by subsection (b), are not of equal value, the values shall be equalized in accordance with section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).*

*(2) EXCEPTION.—The value of the improvements made by the University of Idaho on Parcel A under the Granger-Thye permit shall be excluded from consideration in a valuation conducted pursuant to paragraph (1).*

*(d) NATIONAL FOREST BOUNDARY ADJUSTMENT.—*

*(1) IN GENERAL.—Upon acquisition of Parcel B by the United States, the boundaries of the Kaniksu National Forest shall be adjusted to include Parcel B.*

*(2) RULE OF CONSTRUCTION.—For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-9), the boundaries of the Kaniksu National Forest, as adjusted by this title, shall be considered to be the boundaries of the Forest as of January 1, 1965.*

## TITLE IV—RIGHTS-OF-WAY

**SEC. 401. SUNRISE MOUNTAIN UTILITY CORRIDOR.**

*(a) ESTABLISHMENT.—*

*(1) There is established a right-of-way corridor of approximately one mile in width within the lands known as Sunrise Mountain (Natural Area) Inventory Unit NV-050-0420 (referred to in this Act as the "corridor").*

*(2) The corridor shall be located and administered by the Secretary of the Interior (referred to in this Act as the "Secretary") pursuant to sections 202 and 503 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712 and 1763). Effective on the filing of the legal description of the corridor by the Secretary, lands so described shall not be subject to section 603 of such Act.*

*(3)(A) Subject to subparagraph (B), the exact location and width of the corridor shall be as established in the map and legal description filed by the Secretary pursuant to subsection (b).*

*(B) The center line of the corridor shall be approximately the center line of the Navajo-McCullough 500 kilovolt transmission line in the lands described in paragraph (1) as in existence on the date of enactment of this Act.*

*(b) MAP AND LEGAL DESCRIPTION.—*

*(1) As soon as practicable after the date of enactment of this Act, a map and legal description of the corridor shall be filed by the Secretary with the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.*

*(2) The map shall have the same force and effect as if included in this Act.*

*(3) Copies of the map shall be on file and available for public inspection in the office of the Director of the Bureau of Land Management of the Department of the Interior, and in each appropriate office of the Bureau of Land Management in Nevada.*

*(c) RIGHTS-OF-WAY.—*

*(1) The Secretary may grant not more than six rights-of-way over, upon, under, or through the corridor for systems and facilities compatible with each other and consistent with title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.) (including rights-of-way to be used or useful for the construction, operation, and maintenance of single- or double-circulated electric transmission lines), of which—*

*(A) one right-of-way shall be used for the Intermountain Power Project transmission line;*

*(B) one right-of-way shall be used for the Navajo-McCullough transmission line referred to in subsection (a)(3)(B); and*

*(C) the remaining four rights-of-way may be granted only for the construction, operation, and maintenance of open-access transmission lines.*

*(2) Each right-of-way within the corridor shall be located so that the right-of-way causes the least practicable visual and physical impact on the environment, the corridor, Rainbow Gardens, and Desert Wetlands Park, that is consistent with good engineering practices.*

*(d) CONSTRUCTION.—Nothing in this section shall be construed as authorizing the issuance of any rights-of-way for electrical transmission lines or other purposes that would be inconsistent with applicable zoning or other requirements of State or local governments.*

**SEC. 402. CLAIMED RIGHTS-OF-WAY.**

*The Federal Land Policy and Management Act of 1976 is hereby amended by adding at the end of title III the following new sections 319 and 320:*

**"SEC. 319. RECORDATION OF CLAIMED RIGHTS-OF-WAY.**

*"(a) FILING REQUIREMENTS.—(1) Any party claiming to be a holder of a right-of-way across public or other Federal lands for the construction of a highway pursuant to a grant made by Revised Statutes section 2477 (43 U.S.C. 932) that became operative before repeal of such section on October 21, 1976, shall, on or before January 1, 1994, file for record in the office or offices of the Bureau of Land Management responsible for management of public lands within the State or States wherein such claimed right-of-way is located either a notice of intent to hold and maintain the right-of-way or a notice of abandonment of such party's claim to be the holder of such right-of-way. A notice of intent to hold and maintain such a right-of-way shall be accompanied by information concerning the actual construction, maintenance, and public use on which such party bases its claim to have established such a right-of-way, and by such other information regarding the uses, location, and extent of such claimed right-of-way as the Secretary of the Interior may require. The Secretary may allow information already in the possession of the Bureau of Land Management to be included by reference to the documents in which such information is recorded.*

*"(2) A party filing a notice pursuant to paragraph (1) shall also simultaneously file a copy*

*thereof in the appropriate office of any other agency responsible for management of any Federal lands traversed by the claimed right-of-way, and shall give public notice of the party's intention to hold and maintain or to abandon the claimed right-of-way by publication of information concerning such intention in one or more newspapers of general circulation in the areas where the affected lands are located.*

*"(b) EFFECT.—(1) The failure of any party subject to the requirements of subsection (a) to file the notices or to publish the information required to be filed and published by such subsection within the time specified by such subsection shall be conclusively deemed to constitute an abandonment and relinquishment of a right-of-way with respect to which such filing and publication is required by such subsection.*

*"(2) Recordation pursuant to this section shall not, of itself, render valid any claim which would not otherwise be valid under applicable law or provide a basis for changing the scope, alignment, or character or extent of use of any claimed right-of-way; and nothing in this section shall be construed as waiving, altering, or otherwise affecting any terms or conditions applicable to any right-of-way under this Act or any other applicable law.*

*"(c) INVESTIGATIONS.—(1) Upon receipt of a notice filed pursuant to subsection (a) that a party intends to hold and maintain a claimed right-of-way involving any lands specified in paragraph (2) of this subsection, the Secretary of the Interior, acting through an appropriate officer of the Bureau of Land Management or (if any portion of a claimed right-of-way covered by this subsection is located within a unit of the National Park System) of the National Park Service, shall conduct an investigation to determine the validity of each such claimed right-of-way. The Secretary shall provide an opportunity for the public to contest or request an investigation of the validity of any other claimed right-of-way.*

*"(2)(A) The Secretary shall investigate the validity of each claimed right-of-way any portion of which involves—*

*"(i) any lands within the National Park System, the National Wild and Scenic River System, or the National Wilderness Preservation System; or*

*"(ii) any lands being managed so as to preserve their suitability for designation as wilderness, pursuant to section 603 of this Act or any other provision of law or regulation; or*

*"(iii) any area of critical environmental concern; or*

*"(iv) any other lands whose use for highway purposes would be inconsistent with the land-use plans for those lands.*

*"(B) The Secretary shall also investigate any claimed right-of-way not involving lands specified in subparagraph (A) but with respect to which a challenge is filed that states grounds which, if proved or confirmed, would constitute reason to doubt the validity of such claimed right-or-way or any portion thereof.*

*"(3) If any portion of such claimed right-of-way is on Federal lands managed by an agency other than the Bureau of Land Management or the National Park Service, the investigating officer shall request the comments of such agency with respect to the validity of such right-of-way.*

*"(4) Appropriate notice to the public, including the owners of any non-Federal lands affected by the claimed right-of-way, shall be provided with respect to initiation of each investigation carried out pursuant to this paragraph, and the investigating officer shall provide an opportunity for the public to submit comments concerning the subject of the investigation.*

*"(5) If information or comments submitted to the investigating officer demonstrate that there is a dispute as to any relevant facts with respect to the validity of a right-of-way subject to an investigation under this paragraph, the parties to such dispute shall be afforded an adjudicatory hearing on the record with respect to such disputed issues of fact. Any such adjudicatory hearing shall be before a qualified administrative law judge whose findings shall govern disposition of such issues of fact in any determination concerning the validity of a claimed right-of-way, subject to administrative and judicial review under applicable provisions of law.*

*"(6) If after an investigation pursuant to this paragraph, the investigating officer finds either that a claimed right-of-way or portion thereof is valid or that there is reason to doubt the validity of such claimed right-of-way or portion thereof, notice of such finding and the reasons therefor shall be provided to the party claiming the right-of-way and to all other affected parties, including the public.*

*"(7) For purposes of this section, if any portion of a claimed right-of-way includes lands managed pursuant to section 603 of this Act, that fact shall constitute a reason to doubt the validity of such portion of such right-of-way.*

*"(d) APPEALS.—(1) Any claimed right-of-way or portion thereof with respect to which it is found, pursuant to subsection (c), that there is reason to doubt the validity, shall be deemed to be invalid unless, within 30 days after such finding the party claiming the right-of-way has filed with the Secretary of the Interior an appeal of such finding, and the Secretary thereafter determines the right-of-way to be valid. Any party other than the party claiming the right-of-way, may intervene in any appeal filed under this paragraph in support of the finding of invalidity by filing with the Secretary a notice of such intervention within the period allowed for filing of the appeal.*

*"(2) Any finding by the investigating officer with regard to the validity or invalidity of a claimed right-of-way or portion thereof valid shall become final unless within 30 days after such finding a notice of appeal of such finding is filed with the Secretary of the Interior.*

*"(3) Any decision by the Secretary with regard to an appeal under this subsection shall be made after the party claiming or contesting a right-of-way has been provided with the evidence upon which the investigating officer's finding regarding its validity or invalidity was based and has been given an opportunity to respond, including an adjudicatory hearing on the record with respect to any disputed issues of fact.*

*"(4)(A) Pending a final determination of validity with respect to a claimed right-of-way that is subject to an appeal under this subsection, the Federal land covered by such claimed right-of-way shall be managed in accordance with applicable law (including this Act) and management plans as if such right-of-way did not exist, except that such lands may continue to be used for lawful transportation, access, and related purposes of the same nature and to the same extent as was properly permitted by the Secretary on the date of enactment of this section. Any such continued uses shall be subject to appropriate regulations to protect the resources and values of the affected lands.*

*"(B) Upon a final determination of invalidity with respect to a claimed right-of-way subject to an appeal under paragraph (3), Federal lands covered by such claimed right-of-way shall be managed in accordance with applicable law and management plans.*

*"(C) A determination by an investigating officer as to the validity or invalidity of a claimed right-of-way may be appealed to the Secretary by any person, provided such appeal is made no later than 30 days after the determination of the investigating officer. Any person filing such an appeal shall be afforded an adjudicatory hearing on the record with regard to any disputed issue of fact. Any decision of the Secretary regarding such an appeal shall be subject to judicial review.*

*"(5) Any decision by the Secretary pursuant to this subsection shall be subject to judicial review under applicable provisions of law, but nothing in this subsection shall be construed as affording any right to seek or participate in any judicial proceeding by any party not otherwise entitled to seek or participate in such proceeding.*

*"(e) CHANGE IN USE.—Any change in the scope, alignment, or character of use of a valid right-of-way established pursuant to Revised Statutes section 2477 shall be subject to terms and conditions required by section 505 of this Act or other applicable law.*

*"(f) SAVINGS CLAUSE.—Nothing in this section shall be construed as increasing or diminishing the requirements of any applicable law with respect to establishment, construction, or maintenance of a highway for purposes of obtaining a valid right-of-way pursuant to Revised Statutes section 2477 prior to its repeal.*

***"SEC. 320. RIGHT-OF-WAY IN ALASKA CONSERVATION SYSTEM UNITS.***

*"Nothing in this Act shall be construed as exempting any proposal for any construction on or change in the scope, alignment, or character or extent of use of any portion of any right-of-way claimed to have been established pursuant to Revised Statutes section 2477 on any lands within any conservation system unit in Alaska from the requirements of title XI of the Alaska National Interest Lands Conservation Act.".*

## *TITLE V—"IN LIEU" LAND CLAIMS*

***SEC. 501. FINDINGS AND PURPOSE.***

*(a) FINDINGS.—Congress finds the following:*

*(1) Pursuant to the invitation and requirements contained in the 15th paragraph under the heading "Surveying the Public Lands" in the Act of June 4, 1897 (30 Stat. 11, 36), as amended or supplemented by the Acts of June 6, 1900 (31 Stat. 588, 614), March 4, 1901 (31 Stat. 1010, 1037), and September 22, 1922 (42 Stat. 1067), certain landowners or entrymen within forest reserves acted to transfer their lands to the United States as the basis for an in lieu selection of other Federal lands (hereafter in this Act referred to as "lieu lands") in exchange for such lands within such reserves (hereafter in this Act referred to as "base lands").*

*(2) By the Act of March 3, 1905 (33 Stat. 1264), Congress repealed the in lieu selection provisions of the Act of June 4, 1897, as amended, and terminated the right to select lieu lands, but expressly preserved the rights of land owners who had valid pending applications for in lieu selections, most of which have subsequently been granted.*

*(3) Other persons affected by the Acts cited in paragraphs (1) and (2) who acted to transfer base lands, or their successors in interest, have never obtained either (A) a patent to the lieu lands or any other consideration for their relinquishment, or (B) a quitclaim of their base lands, notwithstanding relief legislation enacted in 1922 and 1930.*

*(4) By the Act of July 6, 1960 (74 Stat. 334), Congress established a procedure to compensate persons affected by the Acts cited in paragraphs (1) and (2) who had not received appropriate relief under prior legislation. However, no payments of such compensation were made under that Act.*

*(5) Section 4 of the Act of July 6, 1960, further provided that lands with respect to which compensation under that Act were or could have been made, and not previously disposed of by the United States, shall be a part of any national forest, national park, or other area with-*

*drawn from the public domain wherein they are located.*

*(6) Absent further legislation, lengthy and expensive litigation will be required to resolve existing questions about the title to lands covered by section 4 of the 1960 Act.*

*(b) PURPOSE.—The purpose of this title is to resolve the status of the title to base lands affected by the past legislation cited in subsection (a).*

***SEC. 502. IDENTIFICATION AND QUITCLAIM OF FEDERAL INTEREST IN BASE LANDS.***

*(a) QUITCLAIM.—Except as otherwise provided by this Act, and subject to valid existing rights, but notwithstanding any other provision of law, the United States hereby quitclaims to the listed owner or entryman, his heirs, devisees, successors, and assigns, all right, title, and interest of the United States in and to the base lands described on a final list published pursuant to subsection (d)(1), effective on the date of publication of such list.*

*(b) PREPARATION OF INITIAL LISTS.—(1) Not later than 6 months after the date of enactment of this Act, the Secretary of the Interior, with respect to lands under such Secretary's jurisdiction, and the Secretary of Agriculture with respect to National Forest System lands, shall each prepare an initial list of all parcels of base lands that were relinquished to the United States pursuant to the Act of June 4, 1897 (as amended), and for which selection or other rights under that Act or supplemental legislation were not realized or exercised.*

*(2) The initial lists prepared under paragraph (1) shall be based on information in the actual possession of the Secretaries of the Interior and Agriculture on the date of enactment of this Act, including information submitted to Congress pursuant to the directive contained in Senate Report No. 98–578, issued for the Fiscal Year 1985 Interior and Related Agencies Appropriation, as revised and updated. The initial lists shall be published and distributed for public review in accordance with procedures adopted by the Secretary concerned.*

*(3) For a period of 180 days after publication of a list pursuant to paragraph (2), persons asserting that particular parcels omitted from such a list should have been included may request the Secretary concerned to add such parcels to the appropriate list. The Secretary concerned shall add to the list any such parcels which the Secretary determines meet the conditions specified in paragraph (1).*

*(c) NATIONALLY SIGNIFICANT LANDS.—(1) During preparation or revision of an initial list under subsection (b), the Secretary concerned shall identify those listed lands which are located wholly or partially within any conservation system unit and all other listed lands which Congress has designated for specific management or which the Secretary concerned decides, in the concerned Secretary's discretion, should be retained in order to meet public, resource protection, or administrative needs. For purposes of this paragraph, the term "conservation system unit" means any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, or National Wilderness Preservation System, a national forest monument, or a national conservation area, a national recreation area, or any lands being studied for possible designation as part of such a system or unit.*

*(2) The provisions of subsection (a) shall not apply to any lands identified by the Secretary concerned pursuant to paragraph (1). The Secretary concerned shall not include any such lands on any list prepared pursuant to subsection (d). Subject to valid existing rights arising from factors other than those described in subsection (b)(1), any right, title, and interest in and to lands identified pursuant to paragraph (1) and not previously vested in the United States is hereby vested and confirmed in the United States.*

*(3) In the same manner as the initial list was published and distributed pursuant to subsection (b)(2), the Secretary concerned shall publish and distribute an identification of all lands in which right, title, and interest is vested and confirmed in the United States by paragraph (2).*

*(d) FINAL LISTS.—(1) As soon as possible after considering any requests made pursuant to subsection (b)(3) and the identification of lands pursuant to subsection (c), the Secretary of the Interior and the Secretary of Agriculture shall each publish a final list, consisting of lands included on each Secretary's initial list not identified pursuant to subsection (c)(1). Unless a Secretary has published a final list on or before the date 18 months after the date of publication, pursuant to subsection (b)(2), of such Secretary's initial list, the initial list prepared by such Secretary shall be deemed on such date to be the final list required to be published by such Secretary, and thereafter no lands included on such initial list shall be excluded from operation of subsection (a).*

*(2) If a court makes a final decision that a parcel of land was arbitrarily and capriciously excluded from operation of subsection (a), such parcel shall be deemed to have been included on a final list published pursuant to paragraph (1), unless such parcel is located wholly or partially inside a conservation system unit or any other area which Congress has designated for specific management, in which case such parcel shall be subject to the provisions of subsection (c)(2).*

*(e) ISSUANCE OF INSTRUMENTS.—(1) Except as otherwise provided in this title, no later than 6 months after the date on which the Secretary concerned publishes a final list of lands pursuant to subsection (d), the Secretary concerned shall issue deeds confirming the quitclaim made by subsection (a) of this section of all right, title, and interest of the United States in and to the lands included on such final list, subject to valid existing rights arising from factors other than a relinquishment to the United States of the type described in subsection (b). Each such confirmatory deed shall operate to estop the United States from making any claim of right, title, or interest of the United States in and to the base lands described in the deed, shall be made in the name of the listed owner or entryman, his heirs, devisees, successors, and assigns, and shall be in a form suitable for recordation and shall be filed and recorded by the United States with the recorder of deeds or other like official of the county or counties within which the lands covered by such confirmatory deed are located so that the title to such lands may be determined in accordance with applicable State law.*

*(2) The United States shall not adjudicate and, notwithstanding any provision of law to the contrary, does not consent to be sued in any suit instituted to adjudicate the ownership of, or to quiet title to, any base land included in a final list and described in a confirmatory deed.*

*(3) Neither the Secretary of the Interior nor the Secretary of Agriculture shall be required to inspect any lands included on a final list nor to inform any member of the public regarding the condition of such lands prior to the issuance of the confirmatory deeds required by this subsection, and nothing in this Act shall be construed as affecting any valid rights with respect to lands covered by a confirmatory deed issued pursuant to this subsection that were in existence on the date of issuance of such confirmatory deed.*

*(f) WAIVER OF CERTAIN CLAIMS AGAINST THE UNITED STATES.—Any person or entity accepting the benefits of this Act or failing to act to seek such benefits within the time allotted by this Act with respect to any base or other lands shall be deemed to have waived any claims against the United States, its agents or contractors, with respect to such lands, or with respect to any revenues received by the United States from such lands prior to the date of enactment of this Act. All non-Federal, third party rights granted by the United States with respect to base lands shall remain effective subject to the terms and conditions of the authorizing document. The United States may reserve any rights-of-way currently occupied or used for Government purposes.*

***SEC. 503. OTHER CLAIMS.***

*(a) JURISDICTION AND DEADLINE.—(1) Subject to the requirements and limitations of this section, a party claiming right, title, or interest in or to land vested in the United States by section 502(c)(2) of this title may file in the United States Claims Court a claim against the United States seeking compensation based on such vesting. Notwithstanding any other provision of law, the Claims Court shall have exclusive jurisdiction over such claim.*

*(2) A claim described in paragraph (1) shall be barred unless the petition thereon is filed within 1 year after the date of publication of a final list pursuant to section 502(d) of this title.*

*(3) Nothing in this title shall be construed as authorizing any claim to be brought in any court other than a claim brought in the United States Claims Court based upon the vesting of right, title, and interest in and to the United States made by section 502(c)(2) of this title.*

*(b) LIMITATIONS, DEFENSES, AND AWARDS.—(1) Nothing in this Act shall be construed as diminishing any existing right, title, or interest of the United States in any lands covered by section 502(c), including but not limited to any such right, title, or interest established by the Act of July 6, 1960 (74 Stat. 334).*

*(2) Nothing in this title shall be construed as precluding or limiting any defenses or claims (including but not limited to defenses based on applicable statutes of limitations, affirmative defenses relating to fraud or speculative practices, or claims by the United States based on adverse possession) otherwise available to the United States.*

*(3) Nothing in this title shall be construed as entitling any party to compensation from the United States. However, in the event of a final judgment of the United States Claims Court in favor of a party seeking such compensation, or in the event of a negotiated settlement agreement made between such a party and the Attorney General of the United States, the United States shall pay such compensation from the permanent judgment appropriation established pursuant to section 1304 of title 31, United States Code.*

*(c) SAVINGS CLAUSE.—This title does not include within its scope selection rights required to be recorded under the Act of August 5, 1955 (69 Stat. 534), regardless of whether compensation authorized by the Act of August 31, 1964 (78 Stat. 751) was or was not received.*

***SEC. 504. AUTHORIZATION OF APPROPRIATIONS.***

*There are authorized to be appropriated such sums as may be necessary to carry out this title.*

***SEC. 505. TIME EXTENSION.***

*Section 103(c) of the Wildfire Disaster Recovery Act of 1989 (16 U.S.C. 551 note) is amended in the first sentence by striking out "1991" and inserting in lieu thereof "1992".*

***TITLE VI—SNAKE RIVER BIRDS OF PREY NATIONAL CONSERVATION AREA***

***SEC. 601. FINDINGS.***

*The Congress finds the following:*

*(1) The public lands managed by the Bureau of Land Management in the State of Idaho within the Snake River Birds of Prey Area con-*

*tain one of the densest known nesting populations of eagles, falcons, owls, hawks, and other birds of prey (raptors) in North America.*

*(2) These public lands constitute a valuable national biological and educational resource since birds of prey are important components of the ecosystem.*

*(3) These public lands also contain important historic and cultural resources as well as other resources and values, all of which should be protected and appropriately managed.*

*(4) A military training area within the Snake River Birds of Prey Area, known as the Orchard Training Area, has been used since 1953 by reserve components of the Armed Forces. Military use of this area is currently governed by a Memorandum of Understanding between the Bureau of Land Management and the State of Idaho Military Division, dated May 1985. Operating under this Memorandum of Understanding, the Idaho National Guard has provided valuable assistance to the Bureau of Land Management with respect to fire control and other aspects of management of the Orchard Training Area and the other lands in the Snake River Birds of Prey Area. Military use of the lands within the Orchard Training Area should continue in accordance with such Memorandum of Understanding (or extension or renewal thereof), to the extent consistent with section 604(e) of this title, because this would be in the best interest of training of the reserve components (an important aspect of national security) and of the local economy.*

*(5) Protection of the conservation area as a home for raptors can best and should be accomplished by the Secretary of the Interior, acting through the Bureau of Land Management, under a management plan that—*

*(A) emphasizes management, protection, and rehabilitation of habitat for these raptors and of other resources and values of the area;*

*(B) provides for continued military use, consistent with the requirements of section 604(e) of this title, of the Orchard Training Area by reserve components of the Armed Forces;*

*(C) addresses the need for public educational and interpretive opportunities;*

*(D) allows for diverse appropriate uses of lands in the area to the extent consistent with the maintenance and enhancement of raptor populations and habitats and protection and sound management of other resources and values of the area; and*

*(E) demonstrates management practices and techniques that may be useful to other areas of the public lands and elsewhere.*

*(6) There is established near the conservation area a facility, the World Center for Birds of Prey operated by The Peregrine Fund, Inc., where research, public education, recovery, and reestablishment operations exist for endangered raptor species. There is also established at Boise State University a raptor study program which attracts national and international graduate and undergraduate students.*

*(7) The Bureau of Land Management and Boise State University, together with other State, Federal, and private entities, have formed the Raptor Research and Technical Assistance Center to be housed at Boise State University, which provides a unique adjunct to the conservation area for raptor management, recovery, research, and public visitation, interpretation, and education.*

*(8) Consistent with requirements of sections 202 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712 and 1732), the Secretary has developed a comprehensive management plan and, based on such plan, has implemented a management program for the public lands included in the conservation area established by this title.*

*(9) Additional authority and guidance must be provided to assure that essential raptor habitat remains in public ownership, to facilitate sound and effective planning and management, to provide for effective public interpretation and education, to ensure continued study of the relationship of humans and these raptors, to preserve the unique and irreplaceable habitat of the conservation area, and to conserve and properly manage the other natural resources of the area in concert with maintenance of this habitat.*

*(10) An ongoing research program funded by the Bureau of Land Management and the National Guard is intended to provide information to be used in connection with future decision-making concerning management of all uses, including continued military use, of public lands within the Snake River Birds of Prey Area.*

*(11) The public lands in the Snake River Birds of Prey Conservation area have been used for domestic livestock grazing for more than a century. Appropriate protection and sound management of raptor habitat and the other resource values of this land would not preclude continuation of this use which has provided major economic contributions and stability to the local and State economies.*

*(12) Hydroelectric facilities for the generation and transmission of electricity exist within the Snake River Birds of Prey Area pursuant to a license(s) issued by the Federal Energy Regulatory Commission, or its predecessor, the Federal Power Commission.*

***SEC. 602. DEFINITIONS.***

*As used in this title:*

*(1) The term "Secretary" means the Secretary of the Interior.*

*(2) The term "conservation area" means the Snake River Birds of Prey National Conservation Area established by section 603.*

*(3) The term "raptor" or "raptors" means individuals or populations of eagles, falcons, owls, hawks, and other birds of prey.*

*(4) The term "raptor habitat" includes the habitat of the raptor prey base as well as the nesting and hunting habitat of raptors within the conservation area.*

*(5) The term "Memorandum of Understanding" means the Memorandum of Understanding #ID-237, dated May 1985, between the State of Idaho Military Division and the Bureau of Land Management.*

*(6) The term "Orchard Training Area" means that area generally so depicted on the map referred to in section 603(b), and as described in the Memorandum of Understanding as well as the air space over the same.*

*(7) The term "Impact Area" means that area which was used for the firing of live artillery projectiles and is used for live fire ranges of all types and, therefore, poses a danger to public safety and which is generally so depicted on the map referred to in section 603(b).*

*(8) The term "Artillery Impact Area" means that area within the Impact Area into which live projectiles are fired, which is generally described as that area labeled as such on the map referred to in section 603(b).*

*(9) The term "the plan" means the comprehensive management plan developed for the conservation area, dated August 30, 1985, together with such revisions thereto as may be required in order to implement this title.*

*(10) The term "hydroelectric facilities" means all facilities related to the generation, transmission, and distribution of hydroelectric power and which are subject to, and authorized by, a license(s), and any and all amendments thereto, issued by the Federal Energy Regulatory Commission.*

***SEC. 603. ESTABLISHMENT OF NATIONAL CONSERVATION AREA.***

*(a) PURPOSES AND ESTABLISHMENT.—In order to provide for the conservation, protection, and enhancement of raptor populations and habitats, and the natural and environmental resources and values associated therewith, and of the scientific, cultural, and educational resources and values of the public lands in the conservation area, there is hereby established the Snake River Birds of Prey National Conservation Area.*

*(b) AREA INCLUDED.—The conservation area shall consist of approximately 482,457 acres of federally owned lands and interests therein managed by the Bureau of Land Management as generally depicted on the map entitled "Snake River Birds of Prey National Conservation Area", dated November 1991.*

*(c) MAP AND LEGAL DESCRIPTION.—As soon as is practicable after enactment of this Act, the map referred to in subsection (b) and a legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Each such map shall have the same force and effect as if included in this title; except that the Secretary may correct clerical and typographical errors in such map and legal description. Each such map shall have the same force and effect as if included in this title; except that the Secretary may correct clerical and typographical errors in such map and legal description. Each such map shall be on file and available for public inspection in the office of the Director and the Idaho State Director of the Bureau of Land Management of the Department of the Interior.*

*(d) WITHDRAWALS.—Subject to valid existing rights, the Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal (except as provided in paragraph (3)) under the public land laws; and from entry, application, and selection under the Act of March 3, 1877 (Ch. 107, 19 Stat. 377, 43 U.S.C. 321 et seq.; commonly referred to as the "Desert Lands Act"), section 4 of the Act of August 18, 1894 (Ch. 301, 28 Stat. 422; 43 U.S.C. 641; commonly referred to as the "Carey Act"), the Act of July 3, 1890 (Ch. 656, 26 Stat. 215; commonly referred to as the "State of Idaho Admissions Act"), section 2275 of the Revised Statutes, as amended (43 U.S.C. 851), and section 2276 of the Revised Statutes, as amended (43 U.S.C. 852). The Secretary shall return to the applicants any such applications pending on the date of enactment of this Act, without further action. Subject to valid existing rights, as of the date of enactment of this Act, lands within the Birds of Prey Conservation Area are withdrawn from location under the general mining laws, the operation of the mineral and geothermal leasing laws, and the mineral material disposal laws.*

***SEC. 604. MANAGEMENT AND USE.***

*(a) IN GENERAL.—(1)(A) Within 1 year after the date of enactment of this Act, the Secretary shall finalize a management plan that is in conformance with the requirements of this title.*

*(B) Thereafter, the Secretary shall review the plan at least once every 4 years and shall make such revisions as may be necessary or appropriate.*

*(C) In reviewing and revising the plan, the Secretary shall provide for appropriate public participation.*

*(2) Except as otherwise specifically provided in subsections (d), (e), and (f) of this section, the Secretary shall allow only such uses of lands in the conservation area as the Secretary determines will further the purposes for which the Conservation Area is established.*

*(b) MANAGEMENT GUIDANCE.—After each review pursuant to subsection (a), the Secretary shall make such revisions as may be needed so that the plan and management program to implement the plan include, in addition to any other necessary or appropriate provisions, provisions for—*

*(1) protection for the raptor populations and habitats and the scientific, cultural, and educational resources and values of the public lands in the conservation area;*

*(2) identifying levels of continued military use of the Orchard Training Area compatible with paragraph (1) of this subsection;*

*(3) public use of the conservation area consistent with the purposes of this title;*

*(4) interpretive and educational opportunities for the public;*

*(5) a program for continued scientific investigation and study to provide information to support sound management in accordance with this title, to advance knowledge of raptor species and the resources and values of the conservation area, and to provide a process for transferring to other areas of the public lands and elsewhere this knowledge and management experience;*

*(6) such vegetative enhancement and other measures as may be necessary to restore or enhance prey habitat;*

*(7) the identification of levels, types, timing, and terms and conditions for the allowable nonmilitary uses of lands within the conservation area that will be compatible with the protection, maintenance, and enhancement of raptor populations and habitats and the other purposes for which the conservation area is established; and*

*(8) assessing the desirability of imposing appropriate fees for public uses (including, but not limited to, recreational use) of lands in the conservation area, which are not now subject to fees, to be used to further the purposes for which the conservation area is established.*

*(c) VISITORS CENTER.—The Secretary, acting through the Director of the Bureau of Land Management, is authorized to establish, in cooperation with other public or private entities as the Secretary may deem appropriate, a visitors center designed to interpret the history and the geological, ecological, natural, cultural, and other resources of the conservation area and the biology of the raptors and their relationships to man.*

*(d) VISITORS USE OF AREA.—In addition to the Visitors Center, the Secretary may provide for visitor use of the public lands in the conservation area to such extent and in such manner as the Secretary considers consistent with the protection of raptors and raptor habitat, public safety, and the purposes for which the conservation area is established. To the extent practicable, the Secretary shall make available to visitors and other members of the public a map of the conservation area and such other educational and interpretive materials as may be appropriate.*

*(e) NATIONAL GUARD USE OF THE AREA.—(1) Pending completion of the ongoing research concerning military use of lands in the conservation area, or until the date 5 years after the date of enactment of this Act, whichever is the shorter period, the Secretary shall permit continued military use of those portions of the conservation area known as the Orchard Training Area in accordance with the Memorandum of Understanding, to the extent consistent with the use levels identified pursuant to subsection (b)(2) of this section.*

*(2) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall review the management plan and make such additional revisions therein as may be required to assure that it meets the requirements of this title.*

*(3) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall submit to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report of the results of such research.*

*(4) Nothing in this title shall preclude minor adjustment of the boundaries of the Orchard Training Area in accordance with provisions of the Memorandum of Understanding.*

*(5) After completion of the ongoing research concerning military use of lands in the Orchard Training Area or after the date 5 years after the date of enactment of this Act, whichever first occurs, the Secretary may continue to permit military use of such lands, but only to the extent the Secretary, on the basis of such research, determines such use is compatible with the purposes set forth in section 603(a). Any such use thereafter shall be permitted in accordance with the Memorandum of Understanding, which may be extended or renewed by the Secretary so long as such use continues to meet the requirements of subsection (b)(2) of this section.*

*(6) In accordance with the Memorandum of Understanding, the Secretary shall require the State of Idaho Military Division to insure that military units involved maintain a program of decontamination.*

*(7) Nothing in this title shall be construed as by itself precluding the extension or renewal of the Memorandum of Understanding, or the construction of any improvements or buildings in the Orchard Training Area so long as the requirements of this subsection are met.*

*(f) LIVESTOCK GRAZING.—Notwithstanding section 604(a)(2) of this title, domestic livestock grazing can occur on public lands within the conservation area, to the extent the Secretary determines such use of such lands is compatible with the purposes for which the conservation area is established. Any such grazing, and activities the Secretary determines necessary to carry out proper and practical grazing management programs (such as animal damage control activities) shall be managed in accordance with the Act of June 28, 1934 (43 U.S.C. 315 et seq.; commonly referred to as the "Taylor Grazing Act"), section 402 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752), other laws applicable to such use and programs on the public lands, and the management plan for the conservation area.*

*(g) COOPERATIVE AGREEMENTS.—The Secretary is authorized to provide technical assistance to, and to enter into such cooperative agreements and contracts with, the State of Idaho and with local governments and private entities as the Secretary deems necessary or desirable to carry out the purposes and policies of this title.*

*(h) AGRICULTURAL PRACTICES.—Nothing in this title shall be construed as constituting a grant of authority to the Secretary to restrict recognized agricultural practices or other activities on private land adjacent to or within the conservation area boundary.*

*(i) HYDROELECTRIC FACILITIES.—Notwithstanding any provision of this title, or regulations and management plans undertaken pursuant to its provisions, the Federal Energy Regulatory Commission shall retain its current jurisdiction concerning all aspects of the continued and future operation of hydroelectric facilities, licensed or relicensed under the Federal Power Act (16 U.S.C. 791a et seq.), located within the boundaries of the conservation area.*

***SEC. 605. ADDITIONS.***

*(a) ACQUISITIONS.—(1) The Secretary is authorized to acquire lands and interests therein within the boundaries of the conservation area by donation, purchase with donated or appropriated funds, exchange, or transfer from another Federal agency, except that such lands or interests owned by the State of Idaho or a political subdivision thereof may be acquired only by donation or exchange.*

*(2) Any lands located within the boundaries of the conservation area that are acquired by the United States on or after the date of enactment of this Act shall become a part of the conservation area and shall be subject to this title.*

*(b) PURCHASE OF LANDS.—In addition to the authority in section 318(d) of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1748) and notwithstanding section 7(a) of the Land and Water Conservation Fund Act of 1964 (16 U.S.C. 4601-9(a)), monies appropriated from the Land and Water Conservation Fund may be used as authorized in section 5(b) of the Endangered Species Act of 1973 (16 U.S.C. 1534(b)), for the purposes of acquiring lands or interests therein within the conservation area for administration as public lands as a part of the conservation area.*

*(c) LAND EXCHANGES.—The Secretary shall within 4 years of enactment, study, identify, and initiate voluntary land exchanges which would resolve ownership related land use conflicts within the conservation area.*

***SEC. 606. OTHER LAWS AND ADMINISTRATIVE PROVISIONS.***

*(a) OTHER LAWS.—(1) Nothing in this title shall be construed to supersede, limit, or otherwise affect administration and enforcement of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or to limit the applicability of the National Trails System Act to any lands within the conservation area.*

*(2) Except as otherwise specifically provided in this title, nothing in this title shall be construed as limiting the applicability to lands in the conservation area of laws applicable to public lands generally, including but not limited to the National Historic Preservation Act, the Archaeological Resources Protection Act of 1979, or the Native American Graves Protection and Repatriation Act.*

*(3) Nothing in this title shall be construed as by itself altering the status of any lands that on the date of enactment of this Act were not managed by the Bureau of Land Management.*

*(4) Nothing in this title shall be construed as prohibiting the Secretary from engaging qualified persons to use public lands within the conservation area for the propagation of plants (including seeds) to be used for vegetative enhancement of the conservation area in accordance with the plan and in furtherance of the purposes for which the conservation area is established.*

*(b) RELEASE.—The Congress finds and directs that the public lands within the Snake River Birds of Prey Natural Area established as a natural area in October 1971 by Public Land Order 5133 have been adequately studied and found unsuitable for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act of 1976. Such lands are hereby released from further management pursuant to section 603(c) of such an Act and shall be managed in accordance with other applicable provisions of law, including this title.*

*(c) EXISTING ADMINISTRATIVE WITHDRAWAL TERMINATED.—Public Land Orders 5133 dated October 12, 1971, and 5777 dated November 21, 1980, issued by the Secretary are hereby terminated.*

*(d) WATER RIGHTS.—(1) Nothing in this title or any action taken pursuant thereto shall constitute either an expressed or implied reservation of water or water rights for any purpose.*

*(2) Nothing in this title shall be construed as effecting a relinquishment or reduction of any of the water rights held or claimed by the United States within the State of Idaho or elsewhere on or before the date of enactment of this Act.*

*(3)(A) The Congress finds that the United States is currently a party in an adjudication of rights to waters of the Snake River, including water rights claimed by the United States on the basis of the reservation of lands for purposes of conservation of fish and wildlife.*

*(B) The Secretary and all other officers of the United States shall take all steps necessary to*

*protect all water rights claimed by the United States in the Snake River adjudication now pending in the district court of the State of Idaho in which the United States is joined under section 208 of the Act of July 10, 1952 (66 Stat. 560; 43 U.S.C. 666; commonly referred to as the "McCarran Amendment").*

*(e) ENFORCEMENT.—Any person who violates any regulation promulgated by the Secretary to implement the provisions of this title shall be subject to a fine in accordance with applicable provisions of title 18, United States Code, imprisonment of not more than 1 year, or both.*

***SEC. 607. MOSCOW MOUNTAIN LANDS.***

*(a) ACQUISITION.—If the State of Idaho offers to transfer to the United States the lands described in subsection (c), the Secretary of the Interior, on behalf of the United States, shall accept such lands.*

*(b) MANAGEMENT.—(1) If transferred to the United States, the lands described in subsection (c) shall be managed by the Secretary of the Interior, through the Director of the Bureau of Land Management, in the same manner as lands which on the date of enactment of this Act were subject to section 603(c) of the Federal Land Policy and Management Act of 1976.*

*(2) Effective upon their transfer to the United States, the lands described in subsection (c) are withdrawn from entry and patent under the mining laws of the United States and from the operation of the geothermal and mineral leasing laws of the United States.*

*(3) If the lands described in subsection (c) are transferred to the United States, the Secretary of the Interior, pursuant to section 206 of the Federal Land Policy and Management Act of 1976, shall convey to the State of Idaho public lands identified, pursuant to such Act, as suitable for disposal by exchange or otherwise that are equal to value to the value of the lands described in subsection (c).*

*(c) LANDS AFFECTED.—The lands referred to in subsections (a) and (b) are:*

*Township 40 North, Range 4 West, B.M. (East Moscow Mountain)*

*Section 16: Lots 1-4, S½S½NW¼, N½SW¼, that portion of the NW¼SE¼ lying south and west of the mid-line running from the parcel's NW¼ corner to its SE¼ corner, containing 295.6 acres, more or less.*

*(d) ADDITIONAL AUTHORITY.—Notwithstanding subsection (a), the Secretary of the Interior may transfer the lands described in subsection (c) to the County of Latah, Idaho, in return for lands of equal value in Idaho acceptable to the Secretary for management pursuant to the Federal Land Policy and Management Act of 1976 if such county enters into a binding agreement with the Secretary under which the county agrees to manage such lands in the same manner as provided in subsection (b)(1).*

***SEC. 608. AUTHORIZATION OF APPROPRIATIONS.***

*There are authorized to be appropriated such sums as may be necessary to carry out this title.*

AMENDMENT NO. 3432

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment with an amendment that I now send to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. BUMPERS, proposes an amendment numbered 3432.

Strike all after the enacting clause and insert the following:

TITLE I—KAYSVILLE, UTAH COMMUNICATION FACILITIES.

**SEC. 101. AMENDMENT.**

Section 2 of the Act of June 8, 1926 (ch. 498; 44 Stat. 708), is amended by striking 'States.' at the end of the first sentence and inserting in lieu thereof the following: 'States, except that these restrictions on conveyances and uses shall not apply to those lands upon which communications facilities were located as of November 1, 1991, or prevent reasonable ingress and egress for the repair, maintenance, or improvement of such facilities, nor shall these restrictions on conveyances and uses prohibit the use of the lands described in the first section of this Act for recreational purposes so long as such recreational use is consistent both with the protection of the watershed and water supply system of the city and with the management objectives for adjacent National Forest System lands. Any improvements of the lands described in the first section of this Act for recreational purposes shall be undertaken only in consultation with and the approval of the Secretary of Agriculture.'.

TITLE II—AUTHORIZATION OF BUREAU OF LAND MANAGEMENT.

**SEC. 201. AUTHORIZATION.**

There are hereby authorized to be appropriated such sums as may be necessary for programs, functions, and activities of the Bureau of Land Management, Department of the Interior (including amounts necessary for increases in salary, pay, retirements, and other employee benefits authorized by law, and for other nondiscretionary costs), during fiscal years beginning on October 1, 1992, and ending September 30, 1996.

TITLE III—TARGHEE AND KANIKSU NATIONAL FORESTS.

**SEC. 301. SHORT TITLE.**

This title may be cited as the 'Targhee and Kaniksu Land Exchange Act of 1992'.

**SEC. 302. TARGHEE NATIONAL FOREST BOUNDARY ADJUSTMENT.**

(a) IN GENERAL.—The boundaries of the Targhee National Forest are adjusted as generally depicted on the map entitled 'Targhee National Forest Proposed Boundary Changes' and dated March 1, 1991.

(b) MAP AND LEGAL DESCRIPTION.—

(1) PUBLIC ACCESS.—The map described in subsection (a) and a legal description of the lands depicted on the map shall be on file and available for public inspection in the Regional Office of the Intermountain Region of the Forest Service.

(2) TECHNICAL CORRECTIONS.—The map and legal description shall have the same force and effect as if included in this title, except that the Secretary of Agriculture (referred to in this title as the 'Secretary') may correct clerical and typographical errors.

(c) RULE OF CONSTRUCTION.—For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of the Targhee National Forest, as adjusted by this title, shall be considered to be the boundaries of the Forest as of January 1, 1965.

**SEC. 303. CLARK FORK LAND EXCHANGE.**

(a) FINDINGS.—Congress finds that, over the past 10 years—

(1) the University of Idaho has utilized the Clark Fork Ranger Station within the Kaniksu National Forest as the Clark Fork Field Campus, under a Granger-Thye permit; and

(2) the University of Idaho has made substantial improvements in order to maintain and utilize the buildings as a campus facility.

(b) LAND EXCHANGE.—

(1) CONVEYANCE BY THE SECRETARY.—

(A) IN GENERAL.—In exchange for the conveyance described in paragraph (2) and subject to easements that are considered necessary by the Secretary for public and administrative access and to valid existing rights, the Secretary shall convey to the Regents of the University of Idaho all right, title, and interest of the United States to Parcel A.

(B) PARCEL A.—As used in this section, the term 'Parcel A' means the approximately 35.27 acres comprising the Clark Fork Ranger Station within the Kaniksu National Forest, as depicted on the map entitled 'Clark Fork Land Exchange—Parcel A' and dated July 1, 1991.

(2) CONVEYANCE BY THE REGENTS OF THE UNIVERSITY OF IDAHO.—

(A) IN GENERAL.—In exchange for the conveyance described in paragraph (1) and subject to valid existing rights of record acceptable to the Secretary, the Regents of the University of Idaho shall convey to the Secretary, by general warranty deed in accordance with Department of Justice title standards, all right, title, and interest to Parcel B.

(B) PARCEL B.—As used in this section, the term 'Parcel B' means the approximately 40 acres depicted on the map entitled 'Clark Fork Land Exchange—Parcel B' and dated July 1, 1991.

(3) MAPS AND LEGAL DESCRIPTIONS.—

(A) PUBLIC ACCESS.—The maps described in paragraphs (1)(B) and (2)(B) and the legal descriptions of the lands depicted on the maps shall be on file and available for public inspection in the Regional Office of the Northern Region of the Forest Service.

(B) TECHNICAL CORRECTIONS.—The maps and legal descriptions shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors.

(c) LAND VALUATION.—

(1) IN GENERAL.—Subject to paragraph (2), if the lands exchanged between the United States and the Regents of the University of Idaho, as authorized by subsection (b), are not of equal value, the values shall be equalized in accordance with section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

(4) By the Act of July 6, 1960 (74 Stat. 334), Congress established a procedure to compensate persons affected by the Acts cited in paragraphs (1) and (2) who had not received appropriate relief under prior legislation. However, no payments of such compensation were made under that Act.

(5) Section 4 of the Act of July 6, 1960, further provided that lands with respect to which compensation under that Act were or could have been made, and not previously disposed of by the United States, shall be a part of any national forest, national park, or other area withdrawn from the public domain wherein they are located.

(6) Absent further legislation, lengthy and expensive litigation will be required to resolve existing questions about the title to lands covered by section 4 of the 1960 Act.

(b) PURPOSE.—The purpose of this title is to resolve the status of the title to base lands affected by the past legislation cited in subsection (a).

**SEC. 502. IDENTIFICATION AND QUITCLAIM OF FEDERAL INTEREST IN BASE LANDS.**

(a) QUITCLAIM.—Except as otherwise provided by this Act, and subject to valid existing rights, but notwithstanding any other provision of law, the United States hereby

quitclaims to the listed owner or entryman, his heirs, devisees, successors, and assigns, all right, title, and interest of the United States in and to the base lands described on a final list published pursuant to subsection (d)(1), effective on the date of publication of such list.

(b) PREPARATION OF INITIAL LISTS.—(1) Not later than 6 months after the date of enactment of this Act, the Secretary of the Interior, with respect to lands under Secretary's jurisdiction, and the Secretary of Agriculture with respect to National Forest System lands, shall each prepare an initial list of all parcels of base lands that were relinquished to the United States pursuant to the Act of June 4, 1897 (as amended), and for which selection or other rights under that act or supplemental legislation were not realized or exercised.

(2) The initial lists prepared under paragraph (1) shall be based on information in the actual possession of the Secretaries of the Interior and Agriculture on the date of enactment of this Act, including information submitted to Congress pursuant to the directive contained in Senate Report No. 98-578, issued for the Fiscal Year 1985 Interior and Related Agencies Appropriation, as revised and updated. The initial lists shall be published and distributed for public review in accordance with procedures adopted by the Secretary concerned.

(3) For a period of 180 days after publication of a list pursuant to paragraph (2), persons asserting that particular parcels omitted from such a list should have been included may request the Secretary concerned to add such parcels to the appropriate list. The Secretary concerned shall add to the list any such parcels which the Secretary determines meet the conditions specified in paragraph (1).

(c) NATIONALLY SIGNIFICANT LANDS.—(1) During preparation or revision of an initial list under subsection (b), the Secretary concerned shall identify those listed lands which are located wholly or partially within any consideration system unit and all other listed lands which Congress has designated for specific management or which the Secretary concerned decides, in the concerned Secretary's discretion, should be retained in order to meet public, resource protection, or administrative needs. For purposes of this paragraph, the term 'conservation system unit' means any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, or National Wilderness Preservation System, a national forest monument, or a national conservation area, a national recreation area, or any lands being studied for possible designation as part of such a system or unit.

(2) The provisions of subsection (a) shall not apply to any land identified by the Secretary concerned pursuant to paragraph (1). The Secretary concerned shall not include any such lands on any list prepared pursuant to subsection (d). Subject to valid existing rights arising from factors other than those described in subsection (b)(1), any right, title, and interest in and to lands identified pursuant to paragraph (1) and not previously vested in the United States is hereby vested and confirmed in the United States.

(3) In the same manner as the initial list was published and distributed pursuant to subsection (b)(2), the Secretary concerned shall publish and distribute an identification of all lands in which right, title, and interest is vested and confirmed in the United States by paragraph (2).

(d) FINAL LISTS.—(1) As soon as possible after considering any requests made pursuant to subsection (b)(3) and the identification of lands pursuant to subsection (c), the Secretary of the Interior and the Secretary of Agriculture shall each publish a final list, consisting of lands included on each Secretary's initial list not identified pursuant to subsection (c)(1). Unless a Secretary has published a final list on or before the date 18 months after the date of publication, pursuant to subsection (b)(2), of such Secretary's initial list, the initial list prepared by such Secretary shall be deemed on such date to be the final list required to be published by such Secretary, and thereafter no lands included on such initial list shall be excluded from operation of subsection (a).

(2) If a court makes a final decision that a parcel of land was arbitrarily and capriciously excluded from operation of subsection (a), such parcel shall be deemed to have been included on a final list published pursuant to paragraph (1), unless such parcel is located wholly or partially inside a conservation system unit or any other area which Congress has designated for specific management, in which case such parcel shall be subject to the provisions of subsection (c)(2).

(e) ISSUANCE OF INSTRUMENTS.—(1) Except as otherwise provided in this title, no later than 6 months after the date on which the Secretary concerned publishes a final list of lands pursuant to subsection (d), the Secretary concerned shall issue deeds confirming the quitclaim made by subsection (a) of this section of all right, title, and interest of the United States in and to the lands included on such final list, subject to valid existing rights arising from factors other than a relinquishment to the United States of the type described in subsection (b). Each such confirmatory deed shall operate to estop the United States from making any claim of right, title, or interest of the United States in and to the base lands described in the deed, shall be made in the name of the listed owner or entryman, his heirs, devisees, successors, and assigns, and shall be in a form suitable for recordation and shall be filed and recorded by the United States with the recorder of deeds or other like official of the county or counties within which the lands covered by such confirmatory deed are located so that the title to such lands may be determined in accordance with applicable State law.

(2) The United States shall not adjudicate and, notwithstanding any provision of law to the contrary, does not consent to be sued in any suit instituted to adjudicate the ownership of, or to quiet title to, any base land included in a final list and described in a confirmatory deed.

(3) Neither the Secretary of the Interior nor the Secretary of Agriculture shall be required to inspect any lands included on a final list nor to inform any member of the public regarding the condition of such lands prior to the issuance of the confirmatory deeds required by this subsection, and nothing in this Act shall be construed as affecting any valid rights with respect to lands covered by a confirmatory deed issued pursuant to this subsection that were in existence on the date of issuance of such confirmatory deed.

(f) Waiver of Certain Claims Against the United States.—Any person or entity accepting the benefits of this title or failing to act to seek such benefits within the time allotted by this title with respect to any base or other lands shall be deemed to

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Section 103(c) of the Wildfire Disaster Recovery Act of 1989 (16 U.S.C. 551 note) is amended in the first sentence by striking out '1991' and inserting in lieu thereof '1992'.

**SEC. . BEAR RIVER EXCHANGE.**

(a) IN GENERAL.—If, within 5 years after the date of enactment of this Act, the State of Utah transfers to the Secretary of the Interior all right, title, and interest of the State of Utah in and to the State lands in exchange for Federal lands, the Secretary of the Interior, within 18 months after such transfer, shall transfer to the State of Utah all right, title, and interest in and to so much of the Federal lands as the Secretary determines to be equal in fair market value to the State lands.

(b) STATE LANDS.—As used in this section, the term "State lands" means approximately 700.70 acres of land located in the State of Utah, as generally depicted as State lands on the map entitled "Bear River Migratory Bird Refuge", map numbered 1, and more particularly described as:

The South half of the Northwest Quarter and Lots 5, 6, 7, and 8, all in Section 4, and also, Lots 7 and 8, Section 5, township 8 North, Range 2 West, Salt Lake Base and Meridian.

All property below the surveyed meander line and North of the Bear River Bird Refuge North Boundary in Sections 4 and 9 and in the East one-half of Sections 5 and 8, Township 8 North, Range 2 West, Salt Lake Base and Meridian.

(c) FEDERAL LANDS.—As used in this section, the term "Federal lands" means approximately 1,365.14 acres of land located in the State of Utah, as generally depicted as Federal lands on the map entitled "Fingerpoint", map numbered 2, and the map entitled "Rozel Point", map numbered 3, and more particularly described as:

Township 7 North, Range 10 West, Salt Lake Base & Meridian

Section 5: Lots 1-6, W½SW¼
Section 6: Lots 1-7, W½SE¼
Section 7: Lots 1-6
Section 8: Lots 1-4, W½
Section 17: Lots 1-5
Section 18: Lots 1-3

Township 8 North, Range 7 West, Salt Lake Base & Meridan

Section 8: Lots 1-12, E½NE¼

(d) ADMINISTRATION.—The lands transferred to the United States under this section shall be added to and administrated as part of the Bear River Migratory Bird Refuge.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

## SNAKE RIVER BIRDS OF PREY NATIONAL CONSERVATION AREA

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 725, H.R. 2141, regarding birds of prey.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2141) to establish the Snake River Birds of Prey National Conservation Area in the State of Idaho, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

***SECTION 1. FINDINGS.***

*The Congress finds the following:*

*(1) The public lands managed by the Bureau of Land Management in the State of Idaho within the Snake River Birds of Prey Area contain one of the densest known nesting populations of eagles, falcons, owls, hawks, and other birds of prey (raptors) in North America.*

*(2) These public lands constitute a valuable national biological and education resource since birds of prey are important components of the ecosystem.*

*(3) These public lands also contain important historic and cultural resources as well as other resources and values, which should be protected and appropriately managed.*

*(4) A military training area within the Snake River Birds of Prey Area, known as the Orchard Training Area, has been used since 1953 by reserve components of the Armed Forces. Military use of this area is currently governed by a Memorandum of Understanding between the Bureau of Land Management and the State of Idaho Military Division, dated May 1985. Operating under this Memorandum of Understanding, the Idaho National Guard has provided valuable assistance to the Bureau of Land Management with respect to fire control and other aspects of management of the Orchard Training Area and the other lands in the Snake River Birds of Prey Area. Military use of the lands within the Orchard Training Area should continue in accordance with such Memorandum of Understanding (or extension of renewal thereof), to the extent consistent with section 4(e) of this Act, because this would be in the best interest of training of the reserve components (an important aspect of national security) and of the local economy.*

*(5) Protection of the conservation area as a home for raptors can best and should be accomplished by the Secretary of the Interior, acting through the Bureau of Land Management, under a management plan that—*

*(A) emphasizes management, protection, and rehabilitation of habitat for these raptors and of other resources and values of the area;*

*(B) provides for continued military use, consistent with the requirements of section 4(e) of this Act, of the Orchard Training Area by reserve components of the Armed Forces;*

*(C) addresses the need for public educational and interpretive opportunities;*

*(D) provides for the conservation, development and use of other resources in the area to the extent compatible with either the maintenance or enhancement of raptor habitat; and*

*(E) demonstrates management practices and techniques that may be useful to other areas of the public lands and elsewhere.*

*(6) There exists near the conservation area, the World Center for Birds of Prey operated by The Peregrine Fund, Inc., where research, public education, recovery, and re-establishment operations exist for endangered raptor species. There also exists at Boise State University, a raptor study program which attracts national and international graduate and undergraduate students.*

*(7) The Bureau of Land Management and Boise State University, together with other State, Federal, and private entities, have formed the Raptor Research and Technical Assistance Center to be housed at Boise State University, which provides a unique adjunct to the conservation area for raptor management, recovery, research, and public visitation, interpretation, and education.*

*(8) Consistent with requirements of section 202 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712 and 1732), the Secretary has developed a comprehensive management plan and, based on such plan, has implemented a management program for the public lands included in the conservation area established by this Act.*

*(9) Additional authority and guidance must be provided to assure that essential raptor habitat remains in public ownership, to facilitate sound and effective planning and management, to provide for effective public interpretation and education, to ensure continued study of the relationship of humans to raptors, to preserve the unique and irreplaceable habitat of the conservation area, and to conserve and properly manage the other natural resources of the area in concert with maintenance of this habitat.*

*(10) An ongoing research program funded by the Bureau of Land Management and the National Guard and conducted by the Raptor Research Technical Assistance Center is providing information to be used in connection with future decision making concerning management of all uses, including continued military use, of public lands within the Snake River Birds of Prey Area.*

*(11) The public lands in the Snake River Birds of Prey Conservation area have been used for domestic livestock grazing for more than a century. Appropriate protection and sound management of raptor habitat and the other resource values of this land would not preclude continuation of this use which has provided major economic contributions and stability to the local and state economies.*

*(12) Hydroelectric facilities for the generation and transmission of electricity exist within the Snake River Birds of Prey Area pursuant to a license(s) issued by the Federal Energy Regulatory Commission, or its predecessor, the Federal Power Commission. Nothing in this Act shall affect the relicensing of hydropower facilities on the Snake River.*

***SEC. 2. DEFINITIONS.***

*As used in this Act:*

*(1) The term "Secretary" means the Secretary of the Interior.*

*(2) The term "conservation area" means the Snake River Birds of Prey National Conservation Area established by section 3.*

*(3) The term "raptor" or "raptors" means individuals or populations of eagles, falcons, owls, hawks, and other birds of prey.*

*(4) The term "raptor habitat" includes the habitat of the raptor prey base as well as the nesting and hunting habitat of raptors within the conservation area.*

*(5) The term "Memorandum of Understanding" means the Memorandum of Understanding No. ID–237, dated May 1985, between the State of Idaho Military Division and the Bureau of Land Management.*

*(6) The term "Orchard Training Area" means that area generally so depicted on the map referred to in section 3(b), and as described in the Memorandum of Understanding as well as the air space over the same.*

*(7) The term "Impact Area" means that area which was used for the firing of live artillery projectiles and is used for live fire ranges of all types and, therefore, poses a danger to public safety and which is generally so depicted on the map referred to in section 3(b).*

*(8) The term "Artillery Impact Area" means that area within the Impact Area into which live projectiles are fired, which is generally described as that area labeled as such on the map referred to in section 3(b).*

*(9) The term "the plan" means the comprehensive management plan developed for the conservation area, dated August 30, 1985, together with such revisions thereto as may be required in order to implement this Act.*

*(10) The term "hydroelectric facilities" means all facilities related to the generation, transmission and distribution of hydroelectric power and which are subject to, and authorized by, a license(s), and any and all amendments thereto, issued by the Federal Energy Regulatory Commission.*

***SEC. 3. ESTABLISHMENT OF NATIONAL CONSERVATION AREA.***

*(a) PURPOSES AND ESTABLISHMENT.—In order to provide for the conservation and protection of raptor populations and habitats and, to the extent it is consistent with these purposes, to provide for the continued multiple-use resource management of the conservation area (including but not limited to such uses as grazing), and in recognition of the scientific, cultural and educational resources of these public lands, there is hereby established the Snake River Birds of Prey National Conservation Area ("conservation area").*

*(b) AREA INCLUDED.—The conservation area shall consist of approximately 482,457 acres of federally owned lands and interests therein managed by the Bureau of Land Management as generally depicted on the map entitled "Snake River Birds of Prey National Conservation Area", dated November 1991.*

*"(c) MAP AND LEGAL DESCRIPTION.—As soon as is practicable after enactment of this Act, the map referred to in subsection (b) and a legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Each such map shall have the same force and effect as if included in this Act; except that the Secretary may correct clerical and typographical errors in such map and legal description. Each such map shall be on file and available for public inspection in the office of the Director and the Idaho State Director of the Bureau of Land Management of the Department of the Interior.*

*(d) WITHDRAWALS.—Subject to valid existing rights, the Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; and from entry, application, and selection under the Act of March 3, 1877 (Ch. 107, 19 Stat. 377, 43 U.S.C. 321 et seq.; commonly referred to as the "Desert Lands Act"), section 4 of the Act of August 18, 1894 (Ch. 301, 28 Stat. 422; 43 U.S.C. 641; commonly referred to as the "Carey Act"), the Act of July 3, 1890 (Ch. 656, 26 Stat. 215; commonly referred to as the "State of Idaho Admissions Act"), section 2275 of the Revised Statutes, as amended (43 U.S.C. 851), and section 2276 of the Revised Statutes, as amended (43 U.S.C. 852). The Secretary shall return to the applicants any such applications pending on the date of enactment of this Act, without further action.*

*Subject to valid existing rights, upon the date of enactment of this Act, lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the general mining laws, and from disposition under all laws pertaining to mineral and geothermal leasing laws, and any amendments thereto, and the mineral material disposal laws.*

**SEC. 4. MANAGEMENT AND USE.**

(a) IN GENERAL.—(1)(A) Within one year after the date of enactment of this Act, the Secretary shall finalize a management plan that is in conformance with the requirements of this Act.

(B) Thereafter, the Secretary shall review the plan at least once every four years and shall make such revisions as may be necessary or appropriate.

(C) In reviewing and revising the plan, the Secretary shall provide for appropriate public participation.

(2) Except as otherwise specifically provided in subsections (d), (e), and (f) of this section, the Secretary shall allow only such use of lands in the conservation area as the Secretary determines are consistent with the purposes for which the conservation area is established.

(b) MANAGEMENT GUIDANCE.—After each review pursuant to subsection (a), the Secretary shall make such revisions as may be needed so that the plan and management program to implement the plan include, in addition to any other necessary or appropriate provisions, provide for—

(1) protection for the raptor populations and habitats and the scientific, cultural and educational resources and values on the public lands in the conservation area;

(2) identification of levels of continued military use of the Orchard Training Area compatible with paragraph (1) of this subsection;

(3) public use of the conservation area consistent with the purposes of this Act.

(4) interpretive and education opportunities for the public;

(5) a program for continued scientific investigation and study to provide information to support sound management in accordance with this Act, to advance knowledge of raptor species and the resources and values of the conservation area, and to provide a process for transferring to other areas of the public lands and elsewhere this knowledge and management experience;

(6) such vegetative enhancement and other measures as may be necessary to restore or enhance prey habitat;

(7) the identification of levels, types, timing and terms and conditions for the allowable nonmilitary uses of lands within the conservation area that will be compatible with the protection, maintenance, or enhancement of raptor populations and habitats and the other purposes for which the conservation area is established; and

(8) an assessment of the desirability of imposing appropriate fees for public uses (including, but not limited to, recreational use) of lands in the conservation area, which are not now subject to fees, to be used to further the purposes for which the conservation area is established.

(c) VISITOR CENTER.—The Secretary, acting through the Director of the Bureau of Land Management, is authorized to establish, in cooperation with other public or private entities as the Secretary may deem appropriate, a visitor center designed to interpret the history and the geological, ecological, natural, cultural, and other resources of the conservation area and the biology of the raptors and their relationships to man.

(d) VISITOR USE OF AREA.—The Secretary may provide for visitor use of the public lands in the conservation area to such extent and in such manner as the Secretary considers consistent with the protection of raptors and raptor habitat, public safety, and the purposes for which the conservation area is established. To the extent practicable, the Secretary shall make available to visitors and other members of the public a map of the conservation area and such other educational and interpretive materials as may be appropriate.

(e) NATIONAL GUARD USE OF THE AREA.—(1) Pending completion of the above mentioned ongoing research concerning military use of lands in the conservation area, or until the date five years after the date of enactment of this Act, whichever is sooner, the Secretary shall permit continued military use of those portions of the conservation area known as the Orchard Training Area in accordance with the Memorandum of Understanding, to the extent consistent with the use levels identified pursuant to subsection (b)(2) of this section.

(2) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall review the management plan and make such additional revisions therein as may be required to assure that it meets the requirements of this Act.

(3) The Secretary shall submit to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report of the results of the ongoing research concerning military use of lands in the conservation area.

(4) Nothing in this Act shall preclude minor adjustment of the boundaries of the Orchard Training Area in accordance with provisions of the Memorandum of Understanding.

(5) After completion of the ongoing research concerning military use of lands in the Orchard Training Area or after the date five years after the date of enactment of this Act, whichever first occurs, the Secretary shall continue to permit military use of such lands, but only to the extent the Secretary, on the basis of such research, determines such use is compatible with the purposes set forth in section 3(a). Such use thereafter shall be permitted in accordance with the Memorandum of Understanding, which may be extended or renewed by the Secretary so long as such use continues to meet the requirements of subsection (b)(2) of this section.

(6) In accordance with the Memorandum of Understanding, the Secretary shall require the State of Idaho Military Division to insure that appropriate military units maintain a program of decontamination.

(7) Nothing in this Act shall be construed as precluding the extension or renewal of the Memorandum of Understanding, or the construction of any improvements or buildings in the Orchard Training Area so long as the requirements of this subsection are met.

(f) LIVESTOCK GRAZING.—The Secretary shall, consistent with the purposes for which the conservation area is established, permit continued use of lands in the conservation area for domestic livestock, including activities the Secretary determines necessary to carry out proper and practical grazing management programs such as Animal Damage Control activities, in accordance with the Act of June 28, 1934 (43 U.S.C. 315 et seq.; commonly referred to as the "Taylor Grazing Act"), section 402 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752), and other laws applicable to such use of the public lands, and the plan requirements of subsection (a) of this section.

(g) COOPERATIVE AGREEMENTS.—The Secretary is authorized to provide technical assistance to, and to enter into such cooperative agreements and contracts with, the State of Idaho and with local governments and private entities as the Secretary deems necessary or desirable to carry out the purposes of this Act.

(h) AGRICULTURAL PRACTICES.—Nothing in this Act shall be construed as affecting recognized agricultural practices or other activities on private land adjacent to or within the conservation area boundary.

(i) HYDROELECTRIC FACILITIES.—Nothing in this Act shall affect the jurisdiction of the Federal Energy Regulatory Commission concerning the continued and future operation of hydroelectric facilities, licensed or relicensed under the Federal Power Act (16 U.S.C. §§ 791a et seq.), located within the boundaries of the conservation area.

**SEC. 5. LAND ACQUISITIONS.**

(a) ACQUISITIONS.—(1) The Secretary is authorized to acquire lands and interests therein within the boundaries of the conservation area by donation, purchase with donated or appropriated funds, exchange, or transfer from another Federal agency, except that such lands or interests owned by the State of Idaho or a political subdivision thereof may be acquired only by donation or exchange provided that, no lands or interests therein shall be acquired without the consent of the owner.

(2) Any lands located within the boundaries of the conservation area that are acquired by the United States on or after the date of enactment of this Act shall become a part of the conservation area and shall be subject to this Act.

(b) PURCHASE OF LANDS.—In addition to the authority in section 318(d) of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1748) and notwithstanding section 7(a) of the Land and Water Conservation Fund Act of 1964 (16 U.S.C. 4601-9(a)), monies appropriated from the Land and Water Conservation Fund may be used as authorized in section 5(b) of the Endangered Species Act of 1973 (16 U.S.C. 1534(b)), for the purposes of acquiring lands or interests therein within the conservation area for administration as public lands as a part of the conservation area.

(c) LAND EXCHANGES.—The Secretary shall, no later than 4 years after the date of enactment of this Act, study, identify and, where appropriate, initiate land exchanges to resolve ownership conflicts within the conservation area.

**SEC. 6. OTHER LAWS AND ADMINISTRATIVE PROVISIONS.**

(a) OTHER LAWS.—(1) Nothing in this Act shall be construed to supersede, limit or otherwise affect administration and enforcement of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or to limit the applicability of the National Trails System Act to any lands within the conservation area.

(2) Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as limiting the applicability to lands in the conservation area of laws applicable to public lands generally, including but not limited to the National Historic Preservation Act, the Archaeological Resources Protection Act of 1979, or the Native American Graves Protection and Repatriation Act.

(3) Nothing in his Act shall be construed as altering the status of any lands that on the date of enactment of this Act were not managed by the Bureau of Land Management.

(4) Nothing in this Act shall be construed as prohibiting the Secretary from engaging qualified persons to use public lands within the conservation area for the propagation of plants (including seeds) to be used for vegetative enhancement of the conservation area in accordance with the plan and in furtherance of the purposes for which the conservation area is established.

(b) RELEASE.—The Congress finds and directs that the public lands within the conservation area established as a natural area in October 1971 by Public Land Order 5133 have been adequately studied for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act of 1976 and are no longer subject to section 603(c) of such Act pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such area for preservation as wilderness.

(c) EXISTING ADMINISTRATIVE WITHDRAWAL REVOKED.—Public Land Orders 5133 dated October 12, 1971, and 5777 dated November 21, 1980, issued by the Secretary are hereby revoked.

*(d) WATER RIGHTS.—Nothing in this act, nor any action taken pursuant thereto, shall constitute either an expressed or implied federal reservation of water or water right for any purpose.*

*(e) ENFORCEMENT.—Any person who violates any regulation promulgated by the Secretary to implement the provisions of this Act shall be subject to a fine in accordance with applicable provisions of title 18, United States Code, imprisonment of not more than 1 year or both.*

***SEC. 7. AUTHORIZATION OF APPROPRIATIONS.***

*There are authorized to be appropriated such sums as may be necessary to carry out this Act.*

AMENDMENT NO. 3433

Mr. CRAIG. Mr. President, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG] proposes an amendment numbered 3433.

Strike all after the enacting clause and insert in lieu thereof the following:

**SEC. 1. FINDINGS.**

The Congress finds the following:

(1) The public lands managed by the Bureau of Land Management in the State of Idaho within the Snake River Birds of Prey Area contain one of the densest known nesting populations of eagles, falcons, owls, hawks, and other birds of prey (raptors) in North America.

(2) These public lands constitute a valuable national biological and educational resource since birds of prey are important components of the ecosystem.

(3) These public lands also contain important historic and cultural resources as well as other resources and values, all of which should be protected and appropriately managed.

(4) A military training area within the Snake River Birds of Prey Area, known as the Orchard Training Area, has been used since 1953 by reserve components of the Armed Forces. Military use of this area is currently governed by a Memorandum of Understanding between the Bureau of Land Management and the State of Idaho Military Division, dated May 1985. Operating under this Memorandum of Understanding, the Idaho National Guard has provided valuable assistance to the Bureau of Land Management with respect to fire control and other aspects of management of the Orchard Training Area and the other lands in the Snake River Birds of Prey Area. Military use of the lands within the Orchard Training Area should continue in accordance with such Memorandum of Understanding (or extension or renewal thereof), to the extent consistent with section 4(e) of this Act, because this would be in the best interest of training of the reserve components (an important aspect of national security) and of the local economy.

(5) Protection of the conservation area as a home for raptors can best and should be accomplished by the Secretary of the Interior, acting through the Bureau of Land Management, under a management plan that—

(A) emphasizes management, protection, and rehabilitation of habitat for these raptors and of other resources and values of the area;

(B) provides for continued military use, consistent with the requirements of section 4(e) of this Act, of the Orchard Training Area by reserve components of the Armed Forces;

(C) addresses the need for public educational and interpretive opportunities;

(D) allows for diverse appropriate uses of lands in the area to the extent consistent with the maintenance and enhancement of raptor populations and habitats and protection and sound management of other resources and values of the area; and

(E) demonstrates management practices and techniques that may be useful to other areas of the public lands and elsewhere.

(6) There exists near the conservation area a facility, the World Center for Birds of Prey operated by The Peregrine Fund, Inc., where research, public education, recovery, and reestablishment operations exist for endangered raptor species. There also exists at Boise State University a raptor study program which attracts national and international graduate and undergraduate students.

(7) The Bureau of Land Management and Boise State University, together with other State, Federal, and private entities, have formed the Raptor Research and Technical Assistance Center to be housed at Boise State University, which provides a unique adjunct to the conservation area for raptor management, recovery, research, and public visitation, interpretation, and education.

(8) Consistent with requirements of sections 202 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712 and 1732), the Secretary has developed a comprehensive management plan and, based on such plan, has implemented a management program for the public lands included in the conservation area established by this Act.

(9) Additional authority and guidance must be provided to assure that essential raptor habitat remains in public ownership, to facilitate sound and effective planning and management, to provide for effective public interpretation and education, to ensure continued study of the relationship of humans and these raptors, to preserve the unique and irreplaceable habitat of the conservation area, and to conserve and properly manage the other natural resources of the area in concert with maintenance of this habitat.

(10) An ongoing research program funded by the Bureau of Land Management and the National Guard is intended to provide information to be used in connection with future descisionmaking concerning management of all uses, including continued military use, of public lands within the Snake River Birds of Prey Area.

(11) The public lands in the Snake River Birds of Prey Conservation area have been used for domestic livestock grazing for more than a century. Appropriate protection and sound management of raptor habitat and the other resource values of this land would not preclude continuation of this use which has provided major economic contributions and stability to the local and State economies.

(12) Hydroelectric facilities for the generation and transmission of electricity exist within the Snake River Birds of Prey Area pursuant to a license(s) issued by the Federal Energy Regulatory Commission, or its predecessor, the Federal Power Commission.

**SEC. 2. DEFINITIONS.**

As used in this Act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "conservation area" means the Snake River Birds of Prey National Conservation Area established by section 3.

(3) The term "raptors" or "raptor" means individuals or populations of eagles, falcons, owls, hawks, and other birds of prey.

(4) The term "raptor habitat" includes the habitat of the raptor prey base as well as the nesting and hunting habitat of raptors within the conservation area.

(5) The term "Memorandum of Understanding" means the Memorandum of Understanding #ID-237, dated May 1985, between the State of Idaho Military Division and the Bureau of Land Management.

(6) The term "Orchard Training Area" means that area generally so depicted on the map referred to in section 3(b), and as described in the Memorandum of Understanding as well as the air space over the same.

(7) The term "Impact Area" means that area which was used for the firing of live artillery projectiles and is used for live fire ranges of all types and, therefore, poses a danger to public safety and which is generally so depicted on the map referred to in section 3(b).

(8) The term "Artillery Impact Area" means that area within the Impact Area into which live projectiles are fired, which is generally described as that area labeled as such on the map referred to in section 3(b).

(9) The term "the plan" means the comprehensive management plan developed for the conservation area, dated August 30, 1985, together with such revisions thereto as may be required in order to implement this Act.

(10) The term "hydroelectric facilities" means all facilities related to the generation, transmission, and distribution of hydroelectric power and which are subject to, and authorized by, a license(s), and any and all amendments thereto, issued by the Federal Energy Regulatory Commission.

**SEC. 3. ESTABLISHMENT OF NATIONAL CONSERVATION AREA.**

(a) ESTABLISHMENT AND PURPOSES.—(1) There is hereby established the Snake River Birds of Prey National Conservation Area, hereafter referred to as the "conservation area".

(2) The purposes for which the conservation area is established are: to provide for the conservation, protection, and enhancement of raptor populations and habitats, and the natural and environmental resources and values associated therewith, and of the scientific, cultural, and educational resources and values of the public lands in the conservation area; and, to the extent compatible with the foregoing purposes, to allow continuation of existing uses of the public lands in the conservation area, subject to the provisions of this Act.

(b) AREA INCLUDED.—The conservation area shall consist of approximately 482,457 acres of federally owned lands and interests therein managed by the Bureau of Land Management as generally depicted on the map entitled "Snake River Birds of Prey National Conservation Area", dated November 1991.

(c) MAP AND LEGAL DESCRIPTION.—As soon as is practicable after enactment of this Act, the map referred to in subsection (b) and a legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Each such map shall have the same force and effect as if included in this title; except that the Secretary may correct clerical and typographical errors in such map and legal description. Each such map shall be on file and available for public inspection in the office of the Director and the Idaho State Director of the Bureau of Land Management of the Department of the Interior.

(d) WITHDRAWALS.—Subject to valid existing rights, the Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal

(except as provided in paragraph (3)) under the public land laws; and from entry, application, and selection under the Act of March 3, 1877 (Ch. 107, 19 Stat. 377, 43 U.S.C. 321 et seq.; commonly referred to as the "Desert Lands Act"), section 4 of the Act of August 18, 1894 (Ch. 301, 28 Stat. 422; 43 U.S.C. 641; commonly referred to as the "Carey Act"), the Act of July 3, 1890 (Ch. 656, 26 Stat. 215; commonly referred to as the "State of Idaho Admissions Act"), section 2275 of the Revised Statutes, as amended (43 U.S.C. 851), and section 2276 of the Revised Statutes, as amended (43 U.S.C. 852). The Secretary shall return to the applicants any such applications pending on the date of enactment of this Act, without further action. Subject to valid existing rights, as of the date of enactment of this Act, lands within the conservation area are withdrawn from location under the general mining laws, the operation of the mineral and geothermal leasing laws, and the mineral material disposal laws.

**SEC. 4. MANAGEMENT AND USE.**

(a) IN GENERAL.—(1)(A) Within 1 year after the date of enactment of this Act, the Secretary shall finalize a management plan that is in conformance with the requirements of this Act.

(B) Thereafter, the Secretary shall review the plan at least once every 4 years and shall make such revisions as may be necessary or appropriate.

(C) In reviewing and revising the plan, the Secretary shall provide for appropriate public participation.

(2) Except as otherwise specifically provided in subsections (d), (e), and (f) of this section, the Secretary shall allow only such uses of lands in the conservation area as the Secretary determines will further the purposes for which the conservation area is established.

(b) MANAGEMENT GUIDANCE.—After each review pursuant to subsection (a), the Secretary shall make such revisions as may be needed so that the plan and management program to implement the plan include, in addition to any other necessary or appropriate provisions, provisions for—

(1) protection for the raptor populations and habitats and the scientific, cultural, and educational resources and values of the public lands in the conservation area;

(2) identifying levels of continued military use of the Orchard Training Area compatible with paragraph (1) of this subsection;

(3) public use of the conservation area consistent with the purposes of this Act;

(4) interpretive and educational opportunities for the public;

(5) a program for continued scientific investigation and study to provide information to support sound management in accordance with this Act, to advance knowledge of raptor species and the resources and values of the conservation area, and to provide a process for transferring to other areas of the public lands and elsewhere this knowledge and management experience;

(6) such vegetative enhancement and other measures as may be necessary to restore or enhance prey habitat;

(7) the identification of levels, types, timing, and terms and conditions for the allowable non-military uses of lands within the conservation area that will be compatible with the protection, maintenance, and enhancement of raptor populations and habitats and the other purposes for which the conservation area is established; and

(8) assessing the desirability of imposing appropriates fees for public uses (including, but not limited to, recreational use) of lands in the conservation area, which are not now subject to fees, to be used to further the purposes for which the conservation area is established.

(c) VISITORS CENTER.—The Secretary, acting through the Director of the Bureau of Land Management, is authorized to establish, in cooperation with other public or private entities as the Secretary may deem appropriate, a visitors center designed to interpret the history and the geological, ecological, natural, cultural, and other resources of the conservation area and the biology of the raptors and their relationships to man.

(d) VISITORS USE OF AREA.—In addition to the Visitors Center, the Secretary may provide for visitor use of the public lands in the conservation area to such extent and in such manner as the Secretary considers consistent with the protection of raptors and raptor habitat, public safety, and the purposes for which the conservation area is established. To the extent practicable, the Secretary shall make available to visitors and other members of the public a map of the conservation area and such other educational and interpretive materials as may be appropriate.

(e) NATIONAL GUARD USE OF THE AREA.—(1) Pending completion of the ongoing research concerning military use of lands in the conservation area, or until the date 5 years after the date of enactment of this Act, whichever is the shorter period, the Secretary shall permit continued military use of those portions of the conservation area known as the Orchard Training Area in accordance with the Memorandum of Understanding, to the extent consistent with the use levels identified pursuant to subsection (b)(2) of this section.

(2) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall review the management plan and make such additional revisions therein as may be required to assure that it meets the requirements of this Act.

(3) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall submit to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report of the results of such research.

(4) Nothing in this Act shall preclude minor adjustment of the boundaries of the Orchard Training Area in accordance with provisions of the Memorandum of Understanding.

(5) After completion of the ongoing research concerning military use of lands in the Orchard Training Area or after the date 5 years after the date of enactment of this Act, whichever first occurs, the Secretary shall continue to permit military use of such lands, unless the Secretary, on the basis of such research, determines such use is not compatible with the purposes set forth in section 3(a)(2). Any such use thereafter shall be permitted in accordance with the Memorandum of Understanding, which may be extended or renewed by the Secretary so long as such use continues to meet the requirements of subsection (b)(2) of this section.

(6) In accordance with the Memorandum of Understanding, the Secretary shall require the State of Idaho Military Division to insure that military units involved maintain a program of decontamination.

(7) Nothing in this Act shall be construed as by itself precluding the extension or renewal of the Memorandum of Understanding, or the construction of any improvements or buildings in the Orchard Training Area so long as the requirements of this subsection are met.

(f) LIVESTOCK GRAZING.—Notwithstanding section 4(a)(2) of this Act, if the Secretary determines domestic livestock grazing is compatible with the purposes for which the conservation area is established, such grazing will occur on public lands within the conservation area to the extent the Secretary determines such use of such lands is compatible with the purposes for which the conservation area is established. Any such grazing, and activities the Secretary determines necessary to carry out proper and practical grazing management programs (such as animal damage control activities) shall be managed in accordance with the Act of June 28, 1934 (43 U.S.C. 315 et seq.; commonly referred to as the "Taylor Grazing Act"), section 402 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752), other laws applicable to such use and programs on the public lands, and the management plan for the conservation area.

(g) COOPERATIVE AGREEMENTS.—The Secretary is authorized to provide technical assistance to, and to enter into such cooperative agreements and contracts with, the State of Idaho and with local governments and private entities as the Secretary deems necessary or desirable to carry out the purposes and policies of this Act.

(h) AGRICULTURAL PRACTICES.—Nothing in this Act shall be construed as constituting a grant of authority to the Secretary to restrict recognized agricultural practices or other activities on private land adjacent to or within the conservation area boundary.

(i) HYDROELECTRIC FACILITIES.—Notwithstanding any provision of this Act, or regulations and management plans undertaken pursuant to its provisions, the Federal Energy Regulatory Commission shall retain its current jurisdiction concerning all aspects of the continued and future operation of hydroelectric facilities, licensed or relicensed under the Federal Power Act (16 U.S.C. 791a et seq.), located within the boundaries of the conservation area.

**SEC. 5. ADDITIONS.**

(a) ACQUISITIONS.—(1) The Secretary is authorized to acquire lands and interests therein within the boundaries of the conservation area by donation, purchase with donated or appropriated funds, exchange, or transfer from another Federal agency, except that such lands or interests owned by the State of Idaho or a political subdivision thereof may be acquired only by donation or exchange.

(2) Any lands located within the boundaries of the conservation area that are acquired by the United States on or after the date of enactment of this Act shall become a part of the conservation area and shall be subject to this Act.

(b) PURCHASE OF LANDS.—In addition to the authority in section 318(d) of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1748) and notwithstanding section 7(a) of the Land and Water Conservation Fund Act of 1964 (16 U.S.C. 4601-9(a)) monies appropriated from the Land and Water Conservation Fund may be used as authorized in section 5(b) of the Endangered Species Act of 1973 (16 U.S.C. 1534(b)), for the purposes of acquiring lands or interests therein within the conservation area for administration as public lands as a part of the conservation area.

(c) LAND EXCHANGES.—The Secretary shall within 4 years of enactment, study, identify, and initiate voluntary land exchanges which would resolve ownership related land use conflicts within the conservation area.

**SEC. 6. OTHER LAWS AND ADMINISTRATIVE PROVISIONS.**

(a) OTHER LAWS.—(1) Nothing in the Act shall be construed to supersede, limit, or otherwise affect administration and enforcement of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or to limit the applicability of the National Trails System Act to any lands within the conservation area.

(2) Except as otherwise specifically provided in this title, nothing in this title shall be construed as limiting the applicability to lands in the conservation area of laws applicable to public lands generally, including but not limited to the National Historic Preservation Act, the Archaeological Resources Protection Act of 1979, or the Native American Graves Protection and Repatriation Act.

(3) Nothing in this Act shall be construed as by itself altering the status of any lands that on the date of enactment of this Act were not managed by the Bureau of Land Management.

(4) Nothing in this Act shall be construed as prohibiting the Secretary from engaging qualified persons to use public lands within the conservation area for the propagation of plants (including seeds) to be used for vegetative enhancement of the conservation area in accordance with the plan and in furtherance of the purposes for which the conservation area is established.

(b) RELEASE.—The Congress finds and directs that the public lands within the Snake River Birds of Prey Natural Area established as a natural area in October 1971 by Public Land Order 5133 have been adequately studied and found unsuitable for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act of 1976. Such lands are hereby released from further management pursuant to section 603(c) of such an Act and shall be managed in accordance with other applicable provisions of law, including this Act.

(c) EXISTING ADMINISTRATIVE WITHDRAWAL TERMINATED.—Public Land Orders 5133 dated October 12, 1971, and 5777 dated November 21, 1980, issued by the Secretary are hereby terminated.

(d) WATER.—(1) The Congress finds that the United States is currently a party in an adjudication of rights to waters of the Snake River, including water rights claimed by the United States on the basis of the reservation of lands for purposes of conservation of fish and wildlife and that consequently there is no need for this Act to effect a reservation by the United States of rights with respect to such waters in order to fulfill the purposes for which the conservation area is established.

(2) Nothing in this Act or any action taken pursuant thereto shall constitute either an expressed or implied reservation of water or water rights for any purpose.

(3) Nothing in this Act shall be construed as effecting a relinquishment or reduction of any of the water rights held or claimed by the United States within the State of Idaho or elsewhere on or before the date of enactment of this Act.

(4) The Secretary and all other officers of the United States shall take steps necessary to protect all water rights claimed by the United States in the Snake River adjudication now pending in the district court of the State of Idaho in which the United States is joined under the McCarran Amendment (section 208 of the Act of July 10, 1952; 66 Stat. 560; 43 U.S.C. 666).

(e) ENFORCEMENT.—Any person who violates any regulation promulgated by the Secretary to implement the provisions of this Act shall be subject to a fine in accordance with applicable provisions of title 18, United States Code, imprisonment of not more than 1 year, or both.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

The PRESIDING OFFICER. Without objection, the Senator's amendment is agreed to.

The amendment (No. 3433) was agreed to.

If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The amendment1, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 2141), as amended, was passed.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

## APPOINTMENTS BY THE REPUBLICAN LEADER

The PRESIDING OFFICER. The Chair announces, on behalf of the Republican leader, pursuant to Public Law 96-114, as amended, the appointment of the following individuals to the Congressional Award Board: The Senator from Missouri [Mr. DANFORTH], Mr. Charles Smithers, Jr., of Connecticut, Mr. Rod DeArment, of Virginia, and Ms. Mary McAuliffe, of Virginia.

## NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AUTHORIZATION ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2130.

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

*Resolved*, That the House agree to the amendment of the Senate to the text of the bill (H.R. 2130) entitled "An Act to authorize appropriations for the National Oceanic and Atmospheric Administration for fiscal year 1992," with the following amendment:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "National Oceanic and Atmospheric Administration Authorization Act of 1992".

**SEC. 2. DEFINITIONS.**

For the purposes of this Act, the term—

(1) "Act of 1890" means the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Bureau to the Department of Agriculture", approved October 1, 1890 (26 Stat. 653); and

(2) "Act of 1947" means the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.).

### TITLE I—NOAA ATMOSPHERIC AND SATELLITE PROGRAMS

**SEC. 101. NATIONAL WEATHER SERVICE OPERATIONS AND RESEARCH.**

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out the operations and research activities of the National Weather Service under law, $311,532,000 for fiscal year 1992 and $395,822,000 for fiscal year 1993. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to National Weather Service operations and research specified by the Act of 1890, the Act of 1947, and any other law involving such activities. Such activities include meteorological, hydrological, aviation, and oceanographic public warnings and forecasts, as well as applied research in support of such warnings and forecasts.

(b) PACIFIC WEATHER BUOYS.—Of the sums authorized under subsection (a), $840,000 for fiscal year 1992 and $1,135,000 for fiscal year 1993 are authorized to be appropriated for the purpose of operating and maintaining weather buoys off the coast of California, Oregon, Washington, and Hawaii.

(c) COOPERATIVE WEATHER OBSERVER PROGRAM.—The Secretary of Commerce may use funds otherwise available for conducting weather observations to strengthen the Cooperative Weather Observer Program and encourage public participation in the program. The Secretary may—

(1) provide distinctive insignia or paraphernalia to Cooperative Weather Observers; and

(2) make awards of nominal value to recognize continued participation in the program by observers or to recognize outstanding achievements by such observers or groups of observers without regard to any law restricting expenditures for such purposes to Federal employees.

**SEC. 102. PUBLIC WARNING AND FORECAST SYSTEMS.**

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to improve its public warning and forecast systems under law, $132,034,000 for each of the fiscal years 1992 and 1993. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to public warning and forecast systems specified by the Act of 1890, the Act of 1947, and any other law involving such activities. Such activities include the development, acquisition, and implementation of major public warning and forecast systems.

(b) WEATHER RADAR COMPLETE PROGRAM AUTHORIZATION.—(1) Except as provided in paragraph (2), there are authorized to be appropriated to the Secretary of Commerce for all fiscal years beginning with fiscal year 1993, not to exceed $26,971,000, to remain available until expended, to complete the acquisition and deployment of the Next Generation Weather Radar system, and to cover all associated activities (including program

management and operations and maintenance through September 30, 1996).

(2) None of the funds are authorized to be appropriated for any fiscal year under paragraph (1), unless, within 60 days after the submission of the President's budget request for such fiscal year, the Secretary of Commerce—

(A) certifies to the Congress that—

(i) the radars, including system software, meet the technical performance specifications included in the radar procurement contract as in effect on October 1, 1992;

(ii) the system contract is viable, and the Secretary does not foresee circumstances which would prevent fulfillment of the contract;

(iii) the system can be fully sited, commissioned, and operational without requiring further authorization of appropriations beyond amounts authorized under paragraph (1); and

(iv) the Secretary does not foresee further delays in the system deployment and operation schedule; or

(B) submits to the Congress a report which describes—

(i) the circumstances which prevent a certification under subparagraph (A);

(ii) remedial actions undertaken or to be undertaken with respect to such circumstances;

(iii) the effects of such circumstances on the deployment and operation schedule and radar coverage; and

(iv) a justification for proceeding with the program, if appropriate.

**SEC. 103. CLIMATE AND AIR QUALITY RESEARCH.**

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out its climate and air quality research activities under law, $100,718,000 for fiscal year 1992 and $103,877,000 for fiscal year 1993. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to climate and air quality research specified by the Act of 1890, the Act of 1947, and any other law involving such activities. Such activities include interannual and seasonal climate research, long-term climate and air quality research, and the National Climate Program.

(b) CLIMATE AND GLOBAL CHANGE.—Of the sums authorized under subsection (a), $67,000,000 for each of the fiscal years 1992 and 1993 are authorized to be appropriated for the purposes of studying climate and global change. Such program shall augment and integrate existing programs of the National Oceanic and Atmospheric Administration and shall include global observations, monitoring, and data and information management relating to the study of changes in the Earth's climatic system, fundamental research on critical oceanic and atmospheric processes, and climate prediction and diagnostics.

**SEC. 104. ATMOSPHERIC RESEARCH.**

There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out its atmospheric research activities under law, $43,935,000 for fiscal year 1992 and $44,781,000 for fiscal year 1993. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to atmospheric research specified by the Act of 1890 and by any other law involving such activities. Such activities include research for developing improved observation and prediction capabilities for atmospheric processes, as well as solar-terrestrial services and research.

**SEC. 105. SATELLITE OBSERVING SYSTEMS.**

(a) IN GENERAL.—(1) There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out its satellite observing systems activities under law, $305,744,000 for fiscal year 1992 and $336,000,000 for fiscal year 1993. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to data and information services specified by the Act of 1890 and by any other law involving such activities. Such activities include spacecraft procurement, launch, and associated ground station modifications for polar orbiting and geostationary environmental satellite systems, as well as the operation of such satellites and land remote-sensing satellites.

(2) Of the sums authorized under paragraph (1), $2,300,000 in fiscal year 1993 are authorized for the administration by the National Oceanic and Atmospheric Administration of the ground stations for the Search and Rescue Satellite Aided Tracking System. Such administration shall be carried out in consultation with the Department of Transportation and the Department of Defense.

(b) EMERGENCY CONTINGENCY FUND.—There are authorized to be appropriated to the Secretary of Commerce, $110,000,000 for fiscal year 1992, to be deposited in an Emergency Weather Satellite Contingency Fund. Such Fund shall be available subject to the restrictions of appropriations Acts, without fiscal year limitation, to the Secretary only for the purpose of enabling the National Oceanic and Atmospheric Administration to maintain geostationary environmental satellite coverage for monitoring and prediction of hurricanes and severe storms, including but not limited to the procurement of gap filler satellites, launch vehicles, and payments to foreign governments.

(c) STRATEGIC PLAN—(1) The Secretary of Commerce and the Administrator of the National Aeronautics and Space Administration shall jointly develop and, not more than 120 days after the date enactment of this Act, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a strategic plan for development procurement, and operation of the environmental satellite program of the Department of Commerce.

(2) The objectives of the strategic plan shall be—

(A) to ensure continuous and adequate operational environmental satellite coverage; and

(B) to require direct Federal fiscal and administrative accountability in all aspects of such environmental satellite program.

(3) The strategic plan shall—

(A) delineate the management duties and functions of each Federal department or agency involved in such satellite program;

(B) establish funding responsibilities for each Federal department or agency in a manner which reflects their respective management duties and functions;

(C) set forth procedures to be followed in the development, procurement, and operations of environmental satellites in such program;

(D) minimize the potential for developmental and procurement problems, and for cost overruns;

(E) provide for effective interagency and international coordination;

(F) provide for research and development activities to ensure that the procurement of operational environmental satellites relies on proven technologies, and to investigate potential improvements in data applications and operations for such satellites in order to improve the national weather warning and forecast system; and

(G) specify legislative and administrative actions necessary to implement the plan and to accomplish the objectives described in paragraph (2).

(d) GEOSTATIONARY SATELLITE COMPLETE PROGRAM AUTHORIZATION.—(1) Except as provided in paragraph (2), there are authorized to be appropriated to the Secretary of Commerce for all fiscal years beginning with fiscal year 1993, not to exceed $1,005,255,000, to remain available until expended, to complete the procurement of Geostationary Operational Environmental Satellites I, J, K, L, and M, and the procurement of the launching and supporting ground systems of such satellites.

(2) None of the funds are authorized to be appropriated for any fiscal year under paragraph (1), unless, within 60 days after the submission of the President's budget request for such fiscal year, the Secretary of Commerce—

(A) certifies to the Congress that—

(i) the results of testing indicate that the satellite instruments are likely to meet the technical performance specifications included in the satellite contract as in effect on October 1, 1992;

(ii) the procurements can be completed without requiring further authorization of appropriations beyond amounts authorized under paragraph (1); and

(iii) the Secretary foresees no gap in two-satellite service operations resulting from non-performance of the satellite contract; or

(B) submits to the Congress a report which describes—

(i) the circumstances which prevent a certification under subparagraph (A);

(ii) remedial actions undertaken or to be undertaken with respect to such circumstances;

(iii) the effects of such circumstances on the launch schedule and satellite coverage; and

(iv) a justification for proceeding with the program, if appropriate.

**SEC. 106. DATA AND INFORMATION SYSTEMS.**

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out its data and information services activities under law, $32,628,000 for fiscal year 1992 and $39,596,000 for fiscal year 1993. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to data and information services specified by the Act of 1890 and by any other law involving such activities. Such activities include climate data services, ocean data services, geophysical data services, and environmental assessment and information services.

(b) MODERNIZATION INITIATIVE.—Of the sums authorized under subsection (a), $10,000,000 in fiscal year 1992 and $15,000,000 in fiscal year 1993 are authorized to be appropriated for the purpose of modernizing the data and information systems of the National Oceanic and Atmospheric Administration to meet increasing requirements for managing, archiving, and distributing environmental data and information.

(c) NEEDS ASSESSMENT FOR DATA MANAGEMENT, ARCHIVAL, AND DISTRIBUTION.—(1) Not later than 12 months after the date of enactment of this Act and at least biennially thereafter, the Secretary of Commerce shall

complete an assessment of the adequacy of the environmental data and information systems of the National Oceanic and Atmospheric Administration. In conducting such an assessment, the Secretary shall take into consideration the need to—

(A) provide adequate capacity to manage, archive, and disseminate environmental data and information collected and processed, or expected to be collected and processed, by the National Oceanic and Atmospheric Administration and other appropriate departments and agencies;

(B) establish, develop and maintain information bases, including necessary management systems, which will promote consistent, efficient, and compatible transfer and use of data;

(C) develop effective interfaces among the environmental data and information systems of the National Oceanic and Atmospheric Administration and other appropriate departments and agencies;

(D) develop and use nationally accepted formats and standards for data collected by various national and international sources; and

(E) integrate and interpret data from different sources to produce information that can be used by decisionmakers in developing policies that effectively respond to national and global environmental concerns.

(2) Not later than 12 months after the date of enactment of this Act and biennially thereafter, the Secretary of Commerce shall develop and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a comprehensive plan, based on the assessment under paragraph (1), to modernize and improve the environmental data and information systems of the National Oceanic and Atmospheric Administration. The report shall—

(A) set forth modernization and improvement objectives for the 10-year period beginning with the year in which the plan is submitted, including facility requirements and critical new technological components that would be necessary to meet the objectives set forth;

(B) propose specific agency programs and activities for implementing the plan;

(C) identify the data and information management, archival, and distribution responsibilities of the National Oceanic and Atmospheric Administration with respect to other Federal departments and agencies and international organizations, including the role of the National Oceanic and Atmospheric Administration with respect to large data systems like the Earth Observing System Data and Information System; and

(D) provide an implementation schedule and estimate funding levels necessary to achieve modernization and improvement objectives.

**SEC. 107. HURRICANE RECONNAISSANCE PROGRAM.**

(a) ESTABLISHMENT OF PROGRAM.—(1) The Secretary of Defense and the Secretary of Commerce shall establish a 5-year joint program for collecting operational and reconnaissance data, conducting research, and analyzing data on tropical cyclones to assist the forecast and warning program and increase the understanding of the causes and behavior of tropical cyclones.

(2) The Secretary of Commerce shall establish the Tropical Cyclone Research Advisory Committee, an advisory committee of tropical cyclone research scientists, to make recommendations for tropical cyclone research activities and reconnaissance procedures.

(b) RESPONSIBILITIES.—(1) The Secretary of Defense shall have the responsibility for maintaining, flying, and funding tropical cyclone reconnaissance aircraft to accomplish the program established under this section and to transfer the data to the Secretary of Commerce. Program responsibility may not be transferred to any other Federal department or agency, including the Coast Guard, without the agreement and approval of the Secretary of Defense, the Secretary of Commerce, and the head of any other Federal agency or department to which the responsibility is transferred.

(2) The Secretary of Commerce shall have the responsibility to provide funding for data gathering and research by remote sensing, ground sensing, research aircraft, and other technologies necessary to accomplish the program established under this section.

(c) MANAGEMENT PLANS.—(1) The Secretary of Defense and the Secretary of Commerce shall jointly develop and, within 120 days after the date of enactment of this Act, submit to the Congress a management plan for the program established under this section, which shall include organizational structure, goals, major tasks, and funding profiles for the 5-year duration of the program.

(2) The Secretary of Defense and the Secretary of Commerce, in consultation with the Tropical Cyclone Research Advisory Committee established by section 107(a)(2), shall jointly develop and, within 4 years after the date of enactment of this Act, submit to the Congress a management plan providing for continued tropical cyclone surveillance and reconnaissance which will adequately protect the citizens of the coastal areas of the United States.

(3) The management plans and programs required by this section shall in every sense provide for at least the same degree and quality of protection (such as early warning capability and accuracy of fixing a storm's location) as currently exists with a combination of satellite technology and manned reconnaissance flights. Additionally, such plans and programs shall in no way allow any reduction in the level, quality, timeliness, sustainability, or area served (including the State of Hawaii) of both the existing principal and back-up tropical cyclone reconnaissance and tracking systems.

**SEC. 108. UNITED STATES WEATHER RESEARCH PROGRAM.**

(a) ESTABLISHMENT.—The Secretary of Commerce, in cooperation with the Federal Coordinating Council for Science, Engineering, and Technology through the Committee on Earth and Environmental Sciences, shall establish a United States Weather Research Program to—

(1) increase benefits to the Nation from the substantial investment in modernizing the public weather warning and forecast system in the United States;

(2) improve local and regional weather forecasts and warnings;

(3) address critical weather-related scientific issues; and

(4) coordinate governmental, university, and private-sector efforts.

(b) IMPLEMENTATION PLAN.—Not later than 90 days after the date of enactment of this Act, the Secretary of Commerce, in cooperation with the Committee on Earth and Environmental Sciences, shall prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a plan for implementation of the United States Weather Research Program which shall—

(1) establish, the 10-year period beginning in the year the plan is submitted, the goals and priorities for Federal weather research which most effectively advance the scientific understanding of weather processes and provide information to improve weather warning and forecast systems in the United States;

(2) describe specific activities, including research activities, data collection and data analysis requirements, predictive modeling, participation in international research efforts, demonstration of potential operational forecast applications, and education and training required to achieve and goals and priorities; and

(3) set forth the role of each Federal agency and department to be involved in the United States Weather Research Program, identifying and addressing, as appropriate, relevant programs and activities of the Federal agencies and departments that would contribute to such Program.

**SEC. 109. WEATHER SERVICE OFFICE IN RENO, NEVADA.**

(a) FACILITY ACQUISITION.—The Administrator of the National Oceanic and Atmospheric Administration is authorized—

(1) to construct, on approximately 10 acres of land to be leased from the University of Nevada System, Desert Research Institute, or

(2) in the alternative, to acquire by lease construction on such land, with a lease term of up to 30 years.

a Weather Forecast Office, upper air facility, regional climate center, and associated instruments and site improvements as part of the implementation of the Next Generation Weather Radar and National Weather Service Modernization Program for the Reno, Nevada area. This authorization is subject to the availability of appropriations provided in advance for the purpose stated in paragraph (1) or (2).

(b) REIMBURSEMENT AUTHORITY.—The Administrator is authorized to reimburse the Desert Research Institute for the cost of providing utilities and access to the site.

(c) OPERATIONS.—The Administrator is authorized to carry out the operations of the National Oceanic and Atmospheric Administration in such facility.

**SEC. 110. WEATHER SERVICE FACILITIES IN SOUTH FLORIDA.**

(A) CONSTRUCTION OF FACILITY.—The Administrator of the National Oceanic and Atmospheric Administration is authorized to construct, on land to be leased from Florida International University at the University's Tamiami campus, a facility for the National Hurricane Center, a Weather Forecast Office, an upper air facility, and associated site improvements as part of the implementation of the Next Generation Weather Radar and National Weather Service Modernization Program for the South Florida area. This authorization is subject to the availability of appropriations provided in advance for the purpose stated in this subsection.

(b) OPERATIONS.—The Administrator is authorized to carry out the operations of the National Oceanic and Atmospheric Adminstration in such facility.

**SEC. 111. WEATHER FORECAST OFFICE, HONOLULU.**

(a) FACILITY ACQUISITION.—(1) The Administrator of the National Oceanic and Atmospheric Administration is authorized to lease building and associated space from the University of Hawaii, Honolulu, for the operation of a Weather Forecast Office, as part of the implementation of the Next Generation Weather Radar and National Weather Serv-

ice Modernization Program for the State of Hawaii, for a term of up to 20 years. This authorization is subject to the availability of appropriations provided in advance for the purpose stated in this paragraph.

(2) Rental costs for the space leased under paragraph (1) shall not exceed fair annual rental value as established by governmental appraisal.

(b) ALTERATIONS.—The Administrator is authorized to expend funds to make all necessary alterations to the space to allow for operation of a Weather Forecast Office.

(c) OPERATIONS.—The Administrator is authorized to carry out the operations of the National Oceanic and Atmospheric Administration in such facility.

**SEC. 112. INSTITUTE FOR AVIATION WEATHER PREDICTION.**

The Administrator of the National Oceanic and Atmospheric Administration shall establish an Institute for Aviation Weather Prediction. The Institute shall provide forecasts, weather warnings, and other weather services to the United States aviation community. The Institute shall expand upon the activities of the aviation unit currently at the National Severe Storms Forecast Center in Kansas City, Missouri, and shall be established in the Kansas City, Missouri area. The Administrator shall provide a full and fair opportunity for employees at the National Severe Storms Forecast Center to assume comparable duties and responsibilities within the Institute.

**SEC. 113. WEATHER SERVICE OFFICE IN OKLAHOMA.**

(a) FACILITY ACQUISITION.—(1) The Administrator of the National Oceanic and Atmospheric Administration is authorized to lease building and associated space to be constructed by the University of Oklahoma, Norman, for the operation of the National Severe Storms Laboratory, Weather Forecast Office, NEXRAD Operational Support Facility, and National Institute for Storm Prediction as part of the implementation of the Next Generation Weather radar and National Weather Service Modernization Program, for a term of up to 20 years. This authorization is subject to the availability of appropriations provided in advance for the purposes stated in this paragraph.

(2) Rental costs for the space leased under paragraph (1) shall not exceed fair annual rental value as established by governmental appraisal.

(b) ALTERATIONS.—The Administrator is authorized to expend funds to make all necessary alterations to the space to allow for operations listed in subsection (a)(1).

(c) OPERATIONS.—The Administrator is authorized to carry out the operations of the National Oceanic and Atmospheric Administration in such facility.

**SEC. 114. TRANSFER OF DATA ARCHIVING RESPONSIBILITY.**

(A) FINDINGS.—The Congress finds that—

(1) section 602 of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4272) directs the Secretary of Commerce to provide for the archiving of land remote-sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) the Secretary of Commerce, currently provides for the archiving of Landsat data at the Department of the Interior's EROS Data Center, which is consistent with the requirement of section 602(g) of such Act (15 U.S.C. 4272(g)) to use existing Federal Government facilities to the extent practicable in carrying out this archiving responsibility;

(3) the Landsat data collected since 1972 are an important global data set for monitoring and assessing land resources and global change;

(4) the Secretary of the Interior maintains archives of aerial photography, digital cartographic data, and other Earth science data at the EROS Data Center that also are important data sets for monitoring and assessing land resources and global change;

(5) it is appropriate to transfer authority to the Secretary of the Interior for the archiving of land remote-sensing data; and

(6) the Secretary of the Interior should explore ways to facilitate the use of archived data for research purposes consistent with other provisions of the Land Remote-Sensing Commercialization Act of 1984.

(b) PROVISION OF UNENHANCED DATA.—Section 402(b)(4) of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4242(b)(4)) is amended by inserting "of the Interior" immediately after "Secretary".

(c) ARCHIVING OF DATA.—Section 602 of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4272) is amended—

(1) in subsections (b), (c), (d), (f), and (g), by inserting "of the Interior" immediately after "Secretary" each place it appears; and

(2) by adding at the end the following new subsection:

"(h) In carrying out the functions of this section, the Secretary of the Interior shall consult with the Secretary to ensure that archiving activities are consistent with the terms and conditions of any contract or agreement entered into under title II, III, or V of this Act and with any license issued under title IV of this Act.".

**SEC. 115. WEATHER OFFICE IN EUREKA, CALIFORNIA.**

Notwithstanding any other law, any property and improvements to that property located on Woodley Island in the city of Eureka, California, that are—

(1) acquired by the Secretary of Commerce from Humbolt Bay Harbor Recreation and Conservation District, California, for use as a weather forecasting office; and

(2) determined by the Secretary to be excess property,

shall revert to that district.

**SEC. 116. REPORT ON SATELLITE OCEANOGRAPHY.**

SEC. 116.(a) IN GENERAL.—The Federal Coordinating Council for Science, Engineering, and Technology through the Committee on Earth and Environmental Sciences, in consultation with Federal, academic, and commercial users of remotely sensed data, shall consider and develop findings and recommendations regarding—

(1) the most urgent current needs of oceanographic researchers within the Federal Government, the academic community, and the private sector, for remote sensing capabilities and remotely sensed data, including findings regarding the present inadequacies in these capabilities and data; and

(2) the major goals of satellite oceanography for the next 10 years.

(b) REPORT.—Not later than one year after the date of enactment of this Act, the Federal Coordinating Council for Science, Engineering, and Technology shall submit to the Congress a report which describes the findings and recommendations of the Committee on Earth and Environmental Sciences, including recommendations for, or a description of actions to be taken toward—

(1) correcting the inadequacies in remote sensing capabilities;

(2) improving the availability of remotely sensed data; and

(3) achieving the major goals of satellite oceanography developed pursuant to subsection (a)(2).

## TITLE II—NOAA OCEAN AND COASTAL PROGRAMS

**SEC. 201. NATIONAL OCEAN SERVICE.**

(a) MAPPING, CHARTING, AND GEODESY.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out mapping, charting, and geodesy activities (including geodetic data collection and analysis) under the Act of 1947 and any other law involving those activities, $50,917,000 for fiscal year 1992 and $51,087,000 for fiscal year 1993.

(b) OBSERVATION AND ASSESSMENT.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out observation and assessment activities—

(1) under the Act of 1947 and any other law involving those activities, $57,273,000 for fiscal year 1992 and $57,273,0000 for fiscal year 1993; and

(2) under title II of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1441 et seq.), $11,000,000 for fiscal year 1992 and $11,000,000 for fiscal year 1993.

(c) COASTAL OCEAN PROGRAM.—Of the sums authorized under subsection (b)(1), $17,352,0000 for each of the fiscal years 1992 and 1993 are authorized to be appropriated for the purposes of conducting a Coastal Ocean Program. Such program shall augment and integrate existing programs of the National Oceanic and Atmospheric Administration and shall include efforts to improve predictions of fish stocks, to better conserve and manage living marine resources, to improve predictions of coastal ocean pollution to help correct and prevent degradation of the ocean environment, to promote development of ocean technology to support the effort of science to understand and characterize the role oceans play in global climate and environmental analysis, and to improve predictions of coastal hazards to protect human life and personal property.

(d) LONG ISLAND SOUND CIRCULATION MODEL.—No moneys appropriated pursuant to the authorizations in this Act shall be used to conduct analyses of samples collected under the National Status and Trends Program until the Policy Committee of the Long Island Sound Study certifies that the National Oceanic and Atmospheric Administration has completed the water circulation model for Long Island Sound.

(e) CIRCULATION MODEL FUNDING.—Of the sums authorized under subsection (b) for fiscal year 1992, $600,000 is available for completion of the water circulation model for Long Island Sound and $400,000 is available for National Status and Trends Program stations in Long Island Sound.

(f) OCEAN MANAGEMENT.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out ocean management activities, $1,678,000 for fiscal year 1992 and $1,823,000 for fiscal year 1993.

**SEC. 202. OCEAN AND GREAT LAKES RESEARCH.**

(a) OCEAN AND GREAT LAKES RESEARCH AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out ocean and Great Lakes research activities under the Act of 1947, the Act of 1890, and any other law involving those activities, $32,171,000 for fiscal year 1992 and $39,800,000 for fiscal year 1993.

(b) COOPERATIVE INSTITUTE FOR LIMNOLOGY AND ECOSYSTEMS RESEARCH.—In addition to

amounts authorized under subsection (a), there are authorized to be appropriated to the Office of Oceanic and Atmospheric Research of the National Oceanic and Atmospheric Administration $250,000 for fiscal year 1992 and $260,000 for fiscal year 1993, for use by the Cooperative Institute for Limnology and Ecosystems Research (established in partnership with the State of Michigan and the Great Lakes Environmental Research Laboratory) for—

(1) research conducted by the Institute;

(2) development of the Institute; and

(3) for preparation of a five-year plan for research and development.

(c) LARGE LAKES RESEARCH.—(1) In addition to amounts authorized under subsections (a) and (b), there are authorized to be appropriated to the Secretary of Comerce for use by the Office of Oceanic and Atmospheric Research $2,000,000 for fiscal year 1992 and $2,080,000 for fiscal year 1993 for use for preparing a plan for large lakes research.

(2) Amounts appropriated under this subsection may be used for—

(A) preparation of a 5-year plan designating large lake study sites, research activities, and anticipated research products; and

(B) collection of physical, chemical, and biological data required for preparing that plan.

(3) Activities conducted with amounts appropriated under this subsection shall be coordinated through the Great Lakes Environmental Research Laboratory, working in association with the Cooperative Institute for Limnology and Ecosystems Research and the National Undersea Research Program.

**SEC. 203. AQUATIC NUISANCE PREVENTION AND CONTROL PROGRAM.**

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce $11,000,000 for fiscal year 1992 and $11,440,000 for fiscal year 1993 for use in implementing the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Public Law 101-646).

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Commerce shall submit a report to the Congress on progress toward establishing a nonindigenous aquatic nuisance prevention and control program within the National Oceanic and Atmospheric Administration and projected funding for such a program for the following five fiscal years.

**SEC. 204. REPEAL OF NATIONAL OCEAN POLLUTION PLANNING ACT OF 1978.**

The National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701-1709) is repealed.

**SEC. 205. NOAA OIL AND HAZARDOUS SUBSTANCE SPILL COST REIMBURSEMENT.**

(a) TREATMENT OF AMOUNTS RECEIVED AS REIMBURSEMENT OF EXPENSES.—Notwithstanding any other provision of law, amounts received by the United States as reimbursement of expenses related to oil or hazardous substance spill response activities, or natural resource damage assessment, restoration, rehabilitation, replacement, or acquisition activities, conducted (or to be conducted) by the National Oceanic and Atmospheric Administration—

(1) shall be deposited into the Fund;

(2) shall be available, without fiscal year limitation and without apportionment, for use in accordance with the law under which the activities are conducted; and

(3) shall not be considered to be an augmentation of appropriations.

(b) APPLICATION.—Subsection (a) shall apply to amounts described in subsection (a) that are received—

(1) after the date of the enactment of this Act; or

(2) with respect to the oil spill associated with the grounding of the EXXON VALDEZ.

(c) DEFINITIONS.—For purposes of this section—

(1) the term "Fund" means the Damage Assessment and Restoration Revolving Fund of the National Oceanic and Atmospheric Administration referred to in title I of Public Law 101-515 under the heading "National Oceanic and Atmospheric Administration" (104 Stat. 2105); and

(2) the term "expenses" includes incremental and base salaries, ships, aircraft, and associated indirect costs, except the term does not include base salaries and benefits of National Oceanic and Atmospheric Administration Support Coordinators.

## TITLE III—NOAA MARINE FISHERY PROGRAMS

**SEC. 301. AUTHORIZATION OF APPROPRIATIONS.**

The National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409) is amended—

(1) in section 2(a) by striking "$26,500,000" and all that follows through "fiscal year 1989" and inserting in lieu thereof "$47,933,000 for fiscal year 1992 and $59,162,000 for fiscal year 1993";

(2) in section 3(a) by striking "$35,000,000" the first time it appears and all that follows through "fiscal year 1989" and inserting in lieu thereof "$27,290,000 for fiscal year 1992 and $35,594,000 for fiscal year 1993"; and

(3) in section 4(a) by striking "$10,000,000" and all that follows through "fiscal year 1989" and inserting in lieu thereof "$12,182,000 for fiscal year 1992 and $18,838,000 for fiscal year 1993".

**SEC. 302. DEVELOPMENT OF DOLPHIN-SAFE METHODS OF TUNA FISHING.**

Section 2 of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409) is amended by adding at the end the following new subsection:

"(d) Of the sums authorized under subsection (a) of this section, $1,000,000 for each of the fiscal years 1992 and 1993 are authorized to be appropriated for the purpose of developing dolphin-safe method of locating and catching yellowfin tuna. Such authorization shall be in addition to moneys authorized under section 7 of the Act entitled 'An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes, approved October 9, 1981 (16 U.S.C. 1384). Within six months after the date of enactment of this subsection, the Secretary, in cooperation with the Inter-American Tropical Tuna Commission and after consultation with interested persons, shall publish a program plan for public comment that shall provide for—

"(1) cooperative research to improve understanding of the behavioral association of dolphins and yellowfin tuna in the eastern tropical Pacific Ocean;

"(2) development, testing, and implementation of new methods of locating and catching yellowfin tuna without the incidental taking of dolphins; and

"(3) appropriate measures to ensure program participation and sharing of associated costs by each foreign government that conducts, or authorizes its nationals to conduct, yellowfin tuna fishing in the eastern tropical Pacific Ocean.".

**SEC. 303. FISHERIES RESEARCH.**

Section 304(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(e)) is amended by redesignating paragraphs (1), (2), and (3), and any reference thereto, as paragraphs (2), (3), and (4), respectively, and by inserting immediately after "FISHERIES RESEARCH.—" the following: "(1) The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics of the fisheries.".

**SEC. 304. FISHERY FACILITIES.**

Section 1101(k) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271(k)), is amended—

(1) by striking "or" at the end of paragraph (1);

(2) by adding "or" at the end of paragraph (2); and

(3) by inserting immediately after paragraph (2) the following new paragraph:

"(3) for aquaculture, including operations on land or elsewhere—

"(A) any structure or appurtenance thereto designed for aquaculture;

"(B) the land necessary for any such structure or appurtenance described in subparagraph (A);

"(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A); and

"(D) any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for aquaculture;".

**SEC. 305. STUDY OF JOINT ENFORCEMENT OF FISHERIES REGULATIONS.**

Not later than 4 months after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a joint report describing methods by which Coast Guard enforcement efforts in the western Pacific Ocean under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) may be enhanced and coordinated with those of the National Oceanic and Atmospheric and Atmospheric Administration. The report shall—

(1) evaluate the ability of the Coast Guard to address key enforcement problems, which the Secretary of Commerce shall identify, for the western Pacific Ocean, particularly in the exclusive economic zone adjacent to the Hawaiian Islands, the Northern Mariana Islands, and the territories and possessions of the United States;

(2) propose procedures by which the Coast Guard and the National Oceanic and Atmospheric Administration may coordinate their efforts to improve and maximize effective enforcement of fisheries regulations, including but not limited to the chartering of light aircraft for fisheries surveillance and enforcement; and

"(3) recommend appropriate levels of Coast Guard participation in such efforts.

**SEC. 306. STUDY ON EFFECTS OF DOLPHIN FEEDING.**

(a) STUDY.—The Secretary of Commerce shall conduct a study in the eastern Gulf of Mexico on the effects of feeding of noncaptive dophins by human beings. The study conducted pursuant to this section shall be designed to detect any behavior or diet modification resulting from this feeding and to identify the effects, if any, of these modifications on the health and well-being of the dolphins.

(b) EXTERNAL REVIEW.—In design and conduct of the study required under subsection (a), the Secretary shall consult with the National Academy of Sciences and the Marine Mammal Commission.

(c) REPORT.—Within 18 months after the date of the enactment of this Act, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study conducted pursuant to subsection (a).

**SEC. 307. CHESAPEAKE BAY ESTUARINE RESOURCES OFFICE.**

"(a) ESTABLISHMENT.—(1) The Secretary of Commerce shall establish, within the National Oceanic and Atmospheric Administration, an office to be known as the Chesapeake Bay Estuarine Resources Office (hereinafter referred to as the "Office").

(2) The Office shall be headed by a Director who shall be appointed by the Secretary of Commerce, in consultation with the Chesapeake Bay Executive Council. Any individual appointed as Director shall have knowledge and experience in research or resource management efforts in the Chesapeake Bay.

(3) The Director may appoint such additional personnel for the Office as the Director determines necessary to carry out this section.

(b) FUNCTIONS.—The Office, in consultation with the Chesapeake Bay Executive Council, shall—

(1) provide technical assistance to the Administrator, to other Federal departments and agencies, and to State and local governments agencies in—

(A) assessing the processes that shape the Chesapeake Bay system and affect its living resources;

(B) identifying technical and management alternatives for the restoration and protection of living resources and the habitats they depend upon; and

(C) monitoring the implementation and effectiveness of management plans;

(2) develop and implement a strategy for the National Oceanic and Atmospheric Administration that integrates the science, research, monitoring, data collection, regulatory, and management responsibilities of the Secretary of Commerce in such a manner as to assist the cooperative, intergovernmental Chesapeake Bay Program to meet the commitments of the Chesapeake Bay Agreement;

(3) coordinate the programs and activities of the various organizations within the National Oceanic and Atmospheric Administration and the Chesapeake Bay Regional Sea Grant Programs (including programs and activities in coastal and estuarine research, monitoring, and assessment; fisheries research and stock assessments; data management; remote sensing; coastal management; and habitat conservation);

(4) coordinate the activities of the National Oceanic and Atmospheric Administration with the activities of the Environmental Protection Agency and other Federal, State, and local agencies;

(5) establish an effective mechanism which shall ensure that projects have undergone appropriate peer review and provide other appropriate means to determine that projects have acceptable scientific and technical merit for the purpose of achieving maximum utilization of available funds and resources to benefit the Chesapeake Bay area;

(6) remain cognizant of ongoing research, monitoring, and management projects and assist in the dissemination of the result and findings of those projects; and

(7) submit a biennial report to the Congress and the Secretary of Commerce with respect to the activities of the Office and on the progress made in protecting and restoring the living resources and habitat of the Chesapeake Bay.

(c) BUDGET LINE ITEM.—The Secretary of Commerce shall identify, in the President's annual budget to the Congress, the funding request for the Office.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 2 of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409), as amended by section 302 of this Act, is further amended by adding at the end the following new subsection:

"(e) Of the sums authorized under subsection (a) of this section, no more than $2,500,000 is authorized to be appropriated for each of the fiscal years 1992 and 1993 to enable the National Oceanic and Atmospheric Administration to establish the Chesapeake Bay Estuarine Resources Office under section 306 of the National Oceanic and Atmospheric Administration Authorization Act of 1991. No more than 20 percent of the amount appropriated under the authorization in this subsection shall be used for administrative purposes.".

(e) CHESAPEAKE EXECUTIVE COUNCIL.—For purposes of this section, "Chesapeake Executive Council" means the representatives from the Commonwealth of Virginia, the State of Maryland, the Commonwealth of Pennsylvania, the Environmental Protection Agency, the District of Columbia, and the Chesapeake Bay Commission, who are signatories to the Chesapeake Bay Agreement, and any future signatories to that Agreement.

**SEC. 308. NATIONAL SHELLFISH INDICATOR PROGRAM.**

(a) ESTABLISHMENT OF A RESEARCH PROGRAM.—The Secretary of Commerce, in cooperation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, shall establish and administer a 5-year national shellfish research program (hereafter in this section referred to as the "Program") for the purpose of improving existing classification systems for shellfish growing waters using the latest technological advancements in microbiology and epidemiological methods. Within 12 months after the date of enactment of this Act, the Secretary of Commerce, in cooperation with the advisory committee established under subsection (b) and the Consortium, shall develop a comprehensive 5-year plan for the Program which shall at a minimum provide for—

(1) an environmental assessment of commercial shellfish growing areas in the United States, including an evaluation of the relationships between indicators of fecal contamination and human enteric pathogens;

(2) the evaluation of such relationships with respect to potential health hazards associated with human consumption of shellfish;

(3) a comparison of the current microbiological methods used for evaluating indicator bacteria and human enteric pathogens in shellfish and shellfish growing waters with new technological methods designed for this purpose;

(4) the evaluation of current and projected systems for human sewage treatment in eliminating viruses and other human enteric pathogens which accumulate in shellfish;

(5) the design of epidemiological studies to relate microbiological data, sanitary survey data, and human shellfish consumption data to actual hazards to health associated with such consumption; and

(6) recommendations for revising Federal shellfish standards and improving the capabilities of Federal and State agencies to effectively manage shellfish and ensure the safety of shellfish intended for human consumption.

(b) ADVISORY COMMITTEE.—(1) For the purpose of providing oversight of the Program on a continuing basis, an advisory committee (hereafter in this section referred to as the "Committee") shall be established under a memorandum of understanding between the Interstate Shellfish Sanitation Conference and the National Marine Fisheries Service.

(2) The Committee shall—

(A) identify priorities for achieving the purpose of the Program;

(B) review and recommend approval or disapproval of Program work plans and plans of operation;

(C) review and comment on all subcontracts and grants to be awarded under the Program;

(D) receive and review progress reports from the Consortium and Program subcontractors and grantees; and

(E) provide such other advice on the Program as is appropriate.

(3) The Committee shall consist of at least 10 members and shall include—

(A) three members representing agencies having authority under State law to regulate the shellfish industry, of whom one shall represent each of the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions;

(B) three members representing persons engaged in the shellfish industry in the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions (who shall be appointed from among at least six recommendations by the industry members of the Interstate Shellfish Sanitation Conference Executive Board), of whom one shall represent the shellfish industry in each region;

(C) three members, of whom one shall represent each of the following Federal agencies: the National Oceanic and Atmospheric Administration, the Environmental Protection Agency, and the Food and Drug Administration; and

(D) one member representing the Shellfish Institute of North America.

(4) The Chairman of the Committee shall be selected from among the Committee members described in paragraph (3)(A).

(5) The Committee shall establish and maintain a subcommittee of scientific experts to provide advice, assistance, and information relevant to research funded under the Program, except that no individual who is awarded, or whose application is being considered for, a grant or subcontract under the Program may serve on such subcommittee. The membership of the subcommittee shall, to the extent practicable, be regionally balanced with experts who have scientific knowledge concerning each of the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions. Scientists from the National Academy of Sciences and appropriate Federal agencies (including the National Oceanic and Atmospheric Administration, Food and Drug Administration, Centers for Disease Control, National Institutes of Health, Environmental Protection Agency, and National Science Foundation) shall be considered for membership on the subcommittee.

(6) Members of the Committee and its scientific subcommittee establish under this subsection shall not be paid for serving on

the Committee or subcommittee, but shall receive travel expenses as authorized by section 5703 of title 5, United States Code.

(c) CONTRACT WITH CONSORTIUM.—Within 30 days after the date of enactment of this Act, the Secretary of Commerce shall seek to enter into a cooperative agreement or contract with the Consortium under which the Consortium will—

(1) be the academic administrative organization and fiscal agent for the Program;

(2) award and administer such grants and subcontracts as are approved by the Committee under subsection(b);

(3) develop and implement a scientific peer review process for evaluating grant and subcontractor applications prior to review by the Committee;

(4) in cooperation with the Secretary of Commerce and the Committee, procure the services of a scientific project director;

(5) develop and submit budgets, progress reports, work plans, and plans of operation for the Program to the Secretary of Commerce and the Committee; and

(6) make available to the Committee such staff, information, and assistance as the Committee may reasonably require to carry out its activities.

(d) REPORTING REQUIREMENTS.—Within 3 months after the date of enactment of this Act and within each of the next three consecutive 3-month intervals, the Secretary of Commerce shall provide Congress with written assessments of Federal efforts to implement this section. In addition, the Secretary of Commerce shall submit an annual report to Congress on the Program, including a description of the research funded under the Program and the results of such research.

(e) AUTHORIZATION OF APPROPRIATIONS.—(1) Of the sums authorized under section 4(a) of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409), there are authorized to be appropriated to the Secretary of Commerce $5,200,000 for each of the fiscal years 1993 through 1997 for carrying out the Program. Of the amounts appropriated pursuant to this authorization, not more than 5 percent of such appropriation may be used for administrative purposes by the National Oceanic and Atmospheric Administration. The remaining 95 percent of such appropriation shall be used to meet the administrative and scientific objectives of the Program.

(2) The Interstate Shellfish Sanitation Conference shall not administer appropriations authorized under this section, but may be reimbursed from such appropriations for its expenses in arranging for travel, meetings, workshops, or conferences necessary to carry out the Program.

(f) DEFINITIONS.—As used in this section, the term—

(1) "Consortium" means the Louisiana Universities Marine Consortium; and

(2) "shellfish" means any species of oyster, clam, or mussel that is harvested for human consumption.

**SEC. 309. COOPERATIVE INSTITUTE OF FISHERIES OCEANOGRAPHY.**

The Secretary of Commerce shall acquire on a long-term basis from the Administrator of General Services space on Pivers Island in Beaufort, North Carolina, that is needed to implement the memorandum of understanding of March 2, 1989, between the National Oceanic and Atmospheric Administration, Duke University, and the University of North Carolina establishing the Cooperative Institute of Fisheries Oceanography. This section shall not apply if the annual cost of leasing the required space exceeds $2,000,000.

**SEC. 310. UNITED STATES GULF OF MEXICO AND SOUTH ATLANTIC SHRIMP FISHERY STUDY.**

(a) STUDY.—(1) The Secretary of Commerce shall conduct a comprehensive economic study to provide baseline information to guide policy decisions on the future of the United States Gulf of Mexico and South Atlantic shrimp fishery. Funds shall only be expended under the terms of paragraph (2) of this section.

(2) The study shall—

(A) gather information as to the extent to which governmental and economic factors have affected or may affect the United States Gulf of Mexico and South Atlantic shrimp fishery;

(B) attempt to expand available historical data through survey contacts and cooperation with the industry; and

(C) incorporate the results of the studies on the United States Gulf of Mexico and South Atlantic shrimp fishery that are underway or completed on the date this section is effective.

(b) REPORT.—The Secretary of Commerce shall submit a report to Congress detailing the results of this study no later than October 1, 1993.

(c) AUTHORIZATION.—There is authorized to be appropriated to carry out the provisions of this section $1,000,000 for fiscal year 1993. None of the funds authorized under section 304(g) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(g)) may be used to carry out the provisions of this section.

**SEC. 311. REPORT ON SATELLITE CAPABILITIES FOR FISHERIES ENFORCEMENT.**

(a) IN GENERAL.—Not later than six months after the date of the enactment of this Act, the Secretary of Commerce, in consultation with the heads of other Federal agencies, shall prepare and submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report describing how current and planned satellite capabilities of the Federal Government can aid in the enforcement of Federal fisheries laws and international fisheries conservation programs.

(b) REPORT CONTENTS.—The report under subsection (a) shall include consideration of—

(1) active, transponder-based systems and passive, vessel signature-based technologies capable of localizing or identifying individual vessels without the use of vessel-carried transmitters;

(2) the resolution, coverage periods, and all-weather effectiveness of each technology and the real-time data delivery capacity of the various systems;

(3) a description of the technological requirements (including data processing and transfer procedures) and institutional requirements necessary to transfer satellite data to end users for management and enforcement purposes; and

(4) the status of foreign civil satellites and the feasibility of their application to international vessel location and monitoring.

**SEC. 312. DEMONSTRATION PROJECT FOR SEAFOOD HANDLING TRAINING AND EDUCATION.**

(a) GRANTS.—The Secretary of Commerce may make annual grants to the City of San Francisco and the Port of San Francisco for each of the fiscal years 1992 and 1993 for a joint project at the San Francisco Wharf to demonstrate safe seafood handling and to conduct seafood education programs.

(b) AUTHORIZATION OF APPROPRIATIONS.—For grants under this section, there are authorized to be appropriated to the Secretary of Commerce—

(1) $250,000 for fiscal year 1992; and

(2) $350,000 for fiscal year 1993.

Such funds shall remain available until expended.

**SEC. 313. BOWHEAD WHALE STUDY.**

Notwithstanding any other provision of law, the Department of Commerce and the Department of the Interior are authorized to pay as appropriate, $48,464, plus interest since June 6, 1988, to reimburse any unpaid costs incurred in the research and preparation of a paper entitled "Quantification of Subsistence and Cultural Need for Bowhead Whales by Alaska Eskimos", which was presented by the United States to the 40th Annual Meeting of the International Whaling Commission.

**SEC. 314. FISHERIES RESEARCH CENTER.**

The Secretary of Commerce, through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized to construct a building, on approximately 15 acres of land to be leased from the University of Southwest Louisiana for a 99-year term. This section shall not apply if the annual cost of leasing the required land exceeds one dollar. This authorization is subject to the availability of appropriations provided in advance for the purpose stated in this section.

**SEC. 315. PASCAGOULA LABORATORY WAREHOUSE FACILITIES.**

Due to the logistical crisis at the National Marine Fisheries Service Laboratory at Pascagoula, Mississippi, the Administrator of the National Oceanic and Atmospheric Administration should give immediate consideration to upgrading dock and warehouse support facilities at such Laboratory in fiscal year 1993.

## TITLE IV—ADMINISTRATION AND OTHER ACCOUNTS

**SEC. 401. PROGRAM SUPPORT.**

(a) EXECUTIVE DIRECTION AND ADMINISTRATIVE ACTIVITIES.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out executive direction and administrative activities (including management, administrative support, provision of retired pay of National Oceanic and Atmospheric Administration commissioned officers, and policy development) under the Act entitled "An Act to clarify the status and benefits of commissioned officers of the National Oceanic and Atmospheric Administration, and for other purposes", approved December 31, 1970 (33 U.S.C. 857-1 et seq.), and any other law involving those activities, $68,460,000 for fiscal year 1992 and $75,750,000 for fiscal year 1993.

(b) MARINE SERVICES.—(1) There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out marine services activities (including ship operations, maintenance, and support) under the Act of 1947 and any other law involving those activities, $63,407,000 for fiscal year 1992 and $68,518,000 for fiscal year 1993.

(2) There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to acquire a multibeam sonar mapper, $1,500,000 for fiscal year 1993.

(3) In addition to sums authorized in paragraphs (1) and (2), there are authorized to be appropriated to the Secretary of Commerce $1,040,000 for fiscal year 1993 for the reactivation and operation of the research vessel ALBATROSS IV.

(4)(A) Unless necessary for safety reasons, the Secretary of Commerce shall not deacti-

vate the ALBATROSS IV (if active), until an equivalent replacement vessel is operational.

(B) The Secretary of Commerce shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives 60 days prior to the proposed deactivation of any other research vessel of that National Oceanic and Atmospheric Administration, if an equivalent replacement vessel will not become operational at the time of deactivation.

(5) The Secretary of Commerce shall consult with the Oceanographer of the Navy regarding appropriate cost effective and practical measures to allow vessels of the National Oceanic and Atmospheric Administration to be interoperable with vessels of the Department of the Navy, including with respect to operation, maintenance, and repair of those vessels.

(c) AIRCRAFT SERVICES.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out aircraft services activities (including aircraft operations, maintenance, and support) under the Act of 1890 and any other law involving those activities, $8,865,000 for fiscal year 1992 and $10,336,000 for fiscal year 1993.

**SEC. 402. CONSTRUCTION.**

There are authorized to be appropriated to the Secretary of Commerce, for acquisition, construction, maintenance, and operation of facilities of the National Oceanic and Atmospheric Administration under any law involving those activities, $34,917,000 for fiscal year 1992 and $94,500,000 for fiscal year 1993.

**SEC. 403. NOTICE OF REPROGRAMMING.**

(a) IN GENERAL.—The Secretary of Commerce shall provide notice to the Committee on Commerce, Science, and Transportation and Committee on Appropriations of the Senate and to the Committee on Merchant Marine and Fisheries, Committee on Science, Space, and Technology, and Committee on Appropriations of the House of Representatives, not less than 15 days before reprogramming funds available for a program, project, or activity of the National Oceanic and Atmospheric Administration in an amount greater than the lesser of $250,000 or 5 percent of the total funding of such program, project, or activity if the reprogramming—

(1) augments an existing program, project, or activity;

(2) reduces by 5 percent or more (A) the funding for an existing program, project, or activity or (B) the numbers of personnel therefor as approved by Congress; or

(3) results from any general savings from a reduction in personnel which would result in a change in an existing program, project, or activity.

(b) NOTICE OF REORGANIZATION.—The Secretary of Commerce shall provide notice to the Committees on Merchant Marine and Fisheries, Science, Space, and Technology, and Appropriations of the House of Representatives, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate not later than 15 days before any major reorganization of any program, project, or activity of the National Oceanic and Atmospheric Administration.

**SEC. 404. FINANCIAL ASSISTANCE.**

(a) PROCESSING OF APPLICATIONS.—Within 12 months after the date of enactment of this Act, the Secretary of Commerce shall develop and, after notice and opportunity for public comment, promulgate regulations or guidelines to ensure that a complete application for a grant, contract, or other financial assistance under a nondiscretionary assistance program shall be processed and approved or disapproved within 75 days after submission of the application to the responsible program office of the National Oceanic and Atmospheric Administration.

(b) NOTIFICATION OF APPLICANT.—Not later than 14 days after the date on which the Secretary of Commerce receives an application for a contract, grant, or other financial assistance provided under a nondiscretionary assistance program administered by the National Oceanic and Atmospheric Administration, the Secretary shall indicate in writing to the applicant whether or not the application is complete and, if not complete, shall specify the additional material that the applicant must provide to complete the application.

(c) EXEMPTION.—In the case of a program for which the recipient of a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, a State or an interstate fishery commission, such financial assistance may be provided by the Secretary to that recipient on a sole-source basis, notwithstanding any other provision of law.

(d) DEFINITION.—In this section, the term "nondiscretionary assistance program" means any program for providing financial assistance—

(1) under which the amount of funding for, and the intended recipient of, the financial assistance is specified by Congress; or

(2) the recipients of which have customarily been a State or an interstate fishery commission.

**SEC. 405. PRICE FREEZE ON CHARTS AND OTHER PRODUCTS OF NOAA.**

Notwithstanding section 1307 of title 44, United States Code, the price of nautical charts or other nautical products produced or published by the National Oceanic and Atmospheric Administration and sold after the date of the enactment of this Act shall not exceed the price of that type of chart or product on the date of enactment of this Act adjusted for inflation. This section shall not apply after September 30, 1994.

**SEC. 406. COOPERATIVE AGREEMENTS.**

The Secretary of Commerce, acting through the Under Secretary of Commerce for Oceans and Atmosphere, may enter into cooperative agreements and other financial agreements with any nonprofit organizations to—

(1) aid and promote scientific and educational activities to foster public understanding of the National Oceanic and Atmospheric Administration or its programs; and

(2) solicit private donations for the support of such activities.

**SEC. 407. RECRUITMENT OF MINORITIES AND WOMEN FOR NOAA SCIENCE EDUCATION ACTIVITIES.**

(a) FINDINGS.—The Congress finds the following:

(1) In this decade, more than two-thirds of the new entrants to the United States labor force will be minorities and women—groups which for the most part have been historically underrepresented in the sciences.

(2) The National Science Foundation estimates that by the year 2000, the United States will face a shortfall of more than 400,000 science and engineering personnel.

(3) Given the demographics of the United States workforce, the problem of underrepresented minorities and women in the sciences and engineering could seriously compromise the industrial and technological capability of the United States, as well as its ability to compete in international marketplaces.

(4) The National Oceanic and Atmospheric Administration has made important efforts to promote education programs in the sciences for students, teachers, and other citizens.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the National Oceanic and Atmospheric Administration should continue to expand its educational programs in the sciences, and in this effort, that the National Oceanic and Atmospheric Administration should develop and promote programs that reach out to and recruit minorities and women for education in the sciences.

TITLE V—NATIONAL MARINE MONITORING PROGRAM

**SEC. 501. AMENDMENT.**

The Marine Protection, Research, and Sanctuaries Act of 1972 is amended by adding at the end the following new title:

"TITLE V—NATIONAL COASTAL MONITORING ACT

**"SEC. 501. PURPOSES.**

"The purposes of this title are to—

"(1) establish a comprehensive national program for consistent monitoring of the Nation's coastal ecosystems;

"(2) establish long-term water quality assessment and monitoring programs for high priority coastal waters that will enhance the ability of Federal, State, and local authorities to develop and implement effective remedial programs for those waters;

"(3) establish a system for reviewing and evaluating the scientific, analytical, and technological means that are available for monitoring the environmental quality of coastal ecosystems;

"(4) establish methods for identifying uniform indicators of coastal ecosystem quality;

"(5) provide for periodic, comprehensive reports to Congress concerning the quality of the Nation's coastal ecosystems;

"(6) establish a coastal environment information program to distribute coastal monitoring information;

"(7) provide state programs authorized under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) with information necessary to design land use plans and coastal zone regulations that will contribute to the protection of coastal ecosystems; and

"(8) provide certain water pollution control programs authorized under the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) with information necessary to design and implement effective coastal water pollution controls.

**"SEC. 502. DEFINITIONS.**

"For the purposes of this title, the term—

"(1) 'Administrator' means the Administrator of the Environmental Protection Agency;

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"(2) 'coastal ecosystem' means a system of interacting biological, chemical, and physical components throughout the water column, water surface, and benthic environment of coastal waters;

"(3) 'coastal water quality' means the physical, chemical and biological parameters that relate to the health and integrity of coastal ecosystems;

"(4) 'coastal water quality monitoring' means a continuing program of measurement, analysis, and synthesis to identify and quantify coastal water quality conditions and trends to provide a technical basis for decision making;

"(5) 'coastal waters' mean waters of the Great Lakes, including their connecting wa-

ters and those portions of rivers, streams, and other bodies of water having unimpaired connection with the open sea up to the head of tidal influence, including wetlands, intertidal areas, bays, harbors, and lagoons, including waters of the territorial sea of the United States and the contiguous zone"; and

"(6) 'Under Secretary' means Under Secretary of Commerce for Oceans and Atmosphere.

**"SEC. 503. COMPREHENSIVE COASTAL WATER QUALITY MONITORING PROGRAM.**

"(a) AUTHORITY; JOINT IMPLEMENTATION.—(1) The Administrator and the Under Secretary, in conjunction with other Federal, State, and local authorities, shall jointly develop and implement a program for the long-term collection, assimilation, and analysis of scientific data designed to measure the environmental quality of the Nation's coastal ecosystems pursuant to this section. Monitoring conducted pursuant to this section shall be coordinated with relevant monitoring programs conducted by the Administrator, Undersecretary, and other Federal, State, and local authorities.

"(2) Primary leadership for the monitoring program activities conducted by the Environmental Protection Agency pursuant to this section shall be located at the Environmental Research Laboratory in Narragansett, Rhodes Island.

"(b) PROGRAM ELEMENTS.—The Comprehensive Coastal Water Quality Monitoring Program shall include, but not be limited to—

"(1) identification and analysis of the status of environmental quality in the Nation's coastal ecosystems, including but not limited to, assessment of—

"(A) ambient water quality, including contaminant levels in relation to criteria and standards issued pursuant to title III or the Federal Water Pollution Control Act (33 U.S.C. 1311 *et seq.*);

"(B) benthic environmental quality, including analysis or contaminant levels in sediments in relation to criteria and standards issued pursuant to title III of the Federal Water Pollution Control Act (33 U.S.C. 1311 *et seq.*); and

"(C) health and quality of living resources.

"(2) identification of sources of environmental degradation affecting the Nation's coastal ecosystems;

"(3) assessment of the impact of governmental programs and management strategies and measures designed to abate or prevent the environmental degradation of the Nation's coastal ecosystems;

"(4) assessment of the accumulation of floatables along coastal shorelines;

"(5) analysis of expected short-term and long-term trends in the environmental quality of the Nation's coastal ecosystems; and

"(6) the development and implementation of intensive coastal water quality monitoring programs in accordance with subsection (d).

"(c) MONITORING GUIDELINES AND PROTOCOLS.

"(1) GUIDELINES.—Not later than 18 months after the date of the enactment of this title, the Administrator and the Under Secretary shall jointly issue coastal water quality monitoring guidelines to assist in the development and implementation of coastal water quality monitoring programs. The guidelines shall—

"(A) provide an appropriate degree of uniformity among the coastal water quality monitoring methods and data while preserving the flexibility of monitoring programs to address specific needs;

"(B) establish scientifically valid monitoring methods that will—

"(i) provide simplified methods to survey and assess the water quality and ecological health of coastal waters;

"(ii) identify and quantify through more intensive efforts the severity of existing or anticipated problems in selected coastal waters;

"(iii) identify and quantify sources of pollution that cause or contribute to those problems, including point and nonpoint sources;

"(iv) evaluate over time the effectiveness of efforts to reduce or eliminate pollution from those sources;

"(C) provide for data compatibility to enable data to be efficiently stored and shared by various users; and

"(D) identify appropriate physical, chemical, and biological indicators of the health and quality of coastal ecosystems.

"(2) TECHNICAL PROTOCOLS.—Guidelines issued under paragraph (1) shall include protocols for—

"(A) designing statistically valid coastal water quality monitoring networks and monitoring surveys, including assessment of the accumulation of floatables.

"(B) sampling and analysis, including appropriate physical and chemical parameters, living resource parameters, and sediment analysis techniques; and

"(C) quality control, quality assessment, and data consistency and management.

"(3) PERIODIC REVIEW.—The Administrator and the Under Secretary shall periodically review the guidelines and protocols issued under this subsection to evaluate their effectiveness, the degree to which they continue to answer program objectives and provide an appropriate degree of uniformity while taking local conditions into account, and any need to modify or supplement them with new guidelines and protocols, as needed.

"(4) DISCHARGE PERMIT DATA.—The Administrator or a State permitting authority shall ensure that compliance monitoring conducted pursuant to section 402(a)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1342(a)(2)) for permits for discharges to coastal waters is consistent with the guidelines issued under this subsection. Any modifications of discharge permits necessary to implement this subsection shall be deemed to be minor modifications of such permit. Nothing in this subsection requires dischargers to conduct monitoring other than compliance monitoring pursuant to permits under section 402(a)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1342(a)(2)).

"(d) INTENSE COASTAL WATER QUALITY MONITORING PROGRAMS.—

"(1) IN GENERAL.—The Comprehensive Coastal Water Quality Monitoring Program established pursuant to this section shall include intensive coastal water quality monitoring programs developed under this subsection.

"(2) DESIGNATION OF INTENSIVE MONITORING AREAS.—Not later than 24 months after the date of enactment of this title and periodically thereafter, the Administrator and the Under Secretary shall, based on recommendations by the National Research Council, jointly designate coastal areas to be intensively monitored.

"(3) IDENTIFICATION OF SUITABLE COASTAL AREAS.—(A) The Administrator and the Under Secretary shall contract with the National Research Council to conduct a study to identify coastal areas suitable for the establishment of intensive coastal monitoring programs. In identifying these coastal areas, the National Research Council shall consider areas that—

"(i) are representative of coastal ecosystems throughout the United States;

"(ii) will provide information to assess the status and trends of coastal water quality nation-wide; and

"(iii) would benefit from intensive water quality monitoring because of local management needs.

"(B) In making recommendations under this paragraph, the National Research Council shall consult with Regional Research Boards established pursuant to title IV of this Act.

"(C) The National Research Council shall, within 18 months of the date of enactment of this title, submit a report to the Administrator and the Under Secretary listing areas suitable for intensive monitoring.

"(D) The Administrator and the Under Secretary, in conjunction with other Federal, State, and local authorities, shall develop and implement multi-year programs of intensive monitoring for Massachusetts and Cape Cod Bays, the Gulf of Maine, the Chesapeake Bay, the Hudson-Raritan Estuary, and each area jointly designated by the Administrator and the Under Secretary pursuant to paragraph (2).

"(4) INTENSIVE COASTAL WATER QUALITY MONITORING PROGRAMS.—Each intensive coastal water quality monitoring program developed pursuant to this subsection shall—

"(A) identify water quality conditions and problems and provide information to assist in improving coastal water quality;

"(B) clearly state the goals and objectives of the monitoring program and their relationship to the water quality objectives for coastal waters covered by the program;

"(C) identify the water quality and biological parameters of the monitoring program and their relationship to these goals and objectives;

"(D) describe the types of monitoring networks, surveys and other activities to be used to achieve these goals and objectives, using where appropriate the guidelines issued under subsection (c);

"(E) survey existing Federal, State, and local coastal monitoring activities and private compliance monitoring activities in or on the coastal waters covered by the program, describe the relationship of the program to those other monitoring activities, and integrate them, as appropriate, into the intensive monitoring program;

"(F) describe the data management and quality control components of the program;

"(G) specify the implementation requirements for the program, including—

"(i) the lead Federal, State, or regional authority that will administer the program;

"(ii) the public and private parties that will implement the program;

"(iii) a detailed schedule for program implementation;

"(iv) all Federal and State responsibilities for implementing the program; and

"(v) the changes in Federal, State, and local monitoring program necessary to implement the program;

"(H) estimate the costs to Federal and State governments, and other participants, of implementing the monitoring program; and

"(I) describe the methods to assess periodically the success of the monitoring program in meeting its goals and objectives, and the manner in which the program may be modified from time-to-time.

"(5) CRITERIA FOR MONITORING MASSACHUSETTS AND CAPE COD BAYS.—In addition to the criteria listed in paragraph (4), the intensive

monitoring program for Massachusetts and Cape Cod Bays shall establish baseline data on environmental phenomena (such as quantity of bacteria and quality of indigenous species, and swimmability) and determine the ecological impacts resulting from major point source discharges.

"(6) MEMORANDUM OF UNDERSTANDING.—Prior to implementing any intensive coastal water quality monitoring program under this subsection, the Administrator and the Under Secretary shall enter into a Memorandum of Understanding to implement the intensive coastal water quality monitoring programs and may extend the Memorandum of Understanding to include other appropriate Federal agencies. The Memorandum of Understanding shall identify the monitoring and reporting responsibilities of each agency and shall encourage the coordination of monitoring activities.

"(7) IMPLEMENTATION.—(A) The Administrator, the Under Secretary, the Governor of each State having waters subject to an intensive coastal water quality monitoring program developed pursuant to this subsection shall ensure compliance with that program.

"(B) The Administrator and the Under Secretary are authorized to enter into cooperative agreements to provide financial assistance to non-Federal agencies and institutions to support implementation of intensive monitoring programs under this subsection. Federal financial assistance may only be provided on the condition that not less than fifty percent of the costs of the monitoring to be conducted by a non-Federal agency or institution is provided from non-Federal funds.

"(e) COMPREHENSIVE IMPLEMENTATION STRATEGY.—

"(1) IN GENERAL.—Within 1 year after the date of enactment of this title, the Administrator and the Under Secretary shall jointly submit to Congress a Comprehensive Implementation Strategy identifying the current and planned activities to implement the Comprehensive Coastal Monitoring Program pursuant to this section.

"(2) CONSULTATION.—The Administrator and the Under Secretary shall consult with the National Academy of Sciences, the Director of the U.S. Fish and Wildlife Service, the Director of the Minerals Management Service, the Commandant of the Coast Guard, the Secretary of the Navy, the Secretary of Agriculture, the heads of any other relevant Federal or regional agencies, and the Governors of coastal States in developing the Strategy.

"(3) PUBLIC COMMENT.—Not less than 3 months before submitting the Strategy to Congress, the Administrator and the Under Secretary shall jointly publish a draft version of the Strategy in the Federal Register and shall solicit public comments regarding the Strategy.

"(4) MEMORANDUM OF UNDERSTANDING.—Within 1 year after submission of the Strategy under paragraph (1), the Administrator and the Under Secretary shall enter into a Memorandum of Understanding with appropriate Federal agencies necessary to effect the coordination of Federal coastal monitoring programs. The Memorandum of Understanding shall identify the monitoring and reporting responsibilities of each agency and shall encourage the coordination of monitoring activities where possible.

**"SEC. 504. REPORT TO CONGRESS.**

"On September 20 of every other year beginning in 1993, the Administrator and the Under Secretary shall jointly submit to the Committee on Commerce, Science, and Transportation and the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation of the House of Representatives a report describing the condition of the nation's coastal ecosystems, including the following:

"(1) an assessment of the status and health of the Nation's coastal ecosystems;

"(2) an evaluation of environmental trends in coastal ecosystems;

"(3) identification of sources of environmental degradation affecting coastal ecosystems;

"(4) an assessment of the extent to which floatables degrade coastal ecosystems, including trends in the accumulation of floatables and the threat posed by floatables to aquatic life;

"(5) an assessment of the impact of government programs designed to abate the degradation of coastal ecosystems;

"(6) an evaluation of the adequacy of monitoring programs and identification of any additional program elements which may be needed; and

"(7) a summary of monitoring results in areas monitored under subsection 503(d).

**"Sec. 505. AUTHORIZATION OF APPROPRIATIONS.**

"(a) NOAA AUTHORIZATION.—For development and implementation of programs under this title, including financial assistance to non-Federal agencies and institutions to support implementation of intensive monitoring programs under section 503(d), there is authorized to be appropriated to the Under Secretary amounts not to exceed $5,000,000 for fiscal year 1993, $8,000,000 for fiscal year 1994, $10,000,000 for fiscal year 1995, and $12,000,000 for fiscal year 1996.

"(b) EPA AUTHORIZATION.—For development and implementation of programs under this title, including financial assistance to non-Federal agencies and institutions to support implementation of intensive monitoring programs under section 503(d), there is authorized to be appropriated to the Administrator amounts not to exceed $5,000,000 for fiscal year 1993, $8,000,000 for fiscal year 1994, and $10,000,000 for fiscal year 1995, and $12,000,000 for fiscal year 1996.".

TITLE VI—FLEET MODERNIZATION

**SEC. 601. SHORT TITLE.**

This title may be cited as the "NOAA Fleet Modernization Act".

**SEC. 602. DEFINTIONS.**

In this title, the term—

(1) "NOAA" means the National Oceanic and Atmospheric Administration within the Department of Commerce.

(2) "NOAA fleet" means the fleet of research vessels owned or operated by NOAA.

(3) "Plan" means the NOAA Fleet Replacement and Modernization Plan described in section 604.

(4) "Secretary" means the Secretary of Commerce.

(5) "UNOLS" means University-National Oceanographic Laboratory System.

**SEC. 603. FLEET REPLACEMENT AND MODERNIZATION PROGRAM.**

The Secretary is authorized to implement, subject to the requirements of this Act, a 15-year program to replace and modernize the NOAA fleet.

**SEC. 604. FLEET REPLACEMENT AND MODERNIZATION PLAN.**

(a) IN GENERAL.—To carry out the program authorized in section 603, the Secretary shall develop and submit to Congress a replacement and modernization Plan for the NOAA fleet covering the years authorized under section 610.

(b) TIMING.—The Plan required in subsection (a) shall be submitted to Congress within 30 days of the date of enactment of this Act, and updated on an annual basis.

(c) PLAN ELEMENTS.—The Plan required in subsection (a) shall include the following—

(1) the number of vessels proposed to be modernized or replaced, the schedule for their modernization or replacement, and anticipated funding requirements;

(2) the number of vessels proposed to be constructed, leased, or chartered;

(3) the number of vessels, or days at sea, that can be obtained by using the vessels of the UNOLS;

(4) the number of vessels that will be made available to NOAA by the Secretary of the Navy, or any other federal official, and the terms and conditions for their availability;

(5) the proposed acquisition of modern scientific instrumentation for the NOAA fleet, including acoustic systems data transmission positioning and communication systems, physical, chemical, and meteorological oceanographic systems, and data acquisition and processing systems: and

(6) the appropriate role of the NOAA Corps in operating and maintaining the NOAA fleet.

(d) CONTRACTING LIMITATION.—The Secretary may not enter into any contract for the construction, lease, or service life extension of a vessel of the NOAA fleet before the date of the submission to Congress of the Plan required in subsection (a).

**SEC. 605. DESIGN OF NOAA VESSELS.**

(a) DESIGN REQUIREMENT.—Except for the vessel designs identified under subsection (b), the Secretary, working through the Office of the NOAA Corps Operations and the Systems Procurement Office, shall—

(1) prepare requirements for each class of vessel to be constructed or converted under the Plan; and

(2) contract competitively from non-governmental entities with expertise in shipbuilding for vessel design and construction based on the requirements for each class of vessel to be acquired.

(b) EXCEPTION.—The Secretary shall—

(1) report to Congress identifying any existing vessel design or design proposal that meets the requirements of the Plan within 30 days after the date of enactment of this Act and shall promptly advise the Congress of any modification of these designs; and

(2) submit to Congress as part of the annual update of the Plan required in section 604 any subsequent existing vessel design or design proposals that meet the requirements of the Plan.

**SEC. 606. CONTRACT AUTHORITY.**

(a) MULTIYEAR CONTRACTS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), and notwithstanding section 1341 of title 31, United States Code and section 3732 of the Revised Statutes of the United States (41 U.S.C. 11), the Secretary may acquire vessels for the NOAA fleet by purchase, lease, lease-purchase, or otherwise, under one or more multiyear contracts.

(2) REQUIRED FINDINGS.—The Secretary may not enter into a contract pursuant to this subsection unless the Secretary finds with respect to that contract that—

(A) there is a reasonable expectation that throughout the contemplated contract period the Secretary will request from Congress funding for the contract at the level required to avoid contract termination; and

(B) the use of the contract will promote the best interests of the United States by en-

couraging competition and promoting economic efficiency in the operation of the NOAA fleet.

(3) REQUIRED CONTRACT PROVISIONS.—Secretary may not enter into a contract pursuant to this subsection unless the contract includes—

(A) a provision under which the obligation of the United States to make payments under the contract for any fiscal year is subject to the availability of appropriations provided in advance for those payments;

(B) a provision that specifies the term of effectiveness of the contract; and

(C) appropriate provisions under which, in case of any termination of the contract before the end of the term specified pursuant to subparagraph (B), the United States shall only be liable for the lesser of—

(i) an amount specified in the contract for such a termination; or

(ii) amounts that—

(I) were appropriated before the date of the termination for the performance of the contract or for procurement of the type of acquisition covered by the contract; and

(II) are unobligated on the date of the termination.

(b) SERVICE CONTRACTS.—Notwithstanding any other provision of law, the Secretary may enter into multiyear contracts for oceanographic research, fisheries research, and mapping and charting services to assist the Secretary in fulfilling NOAA missions. The Secretary may only enter into these contracts if—

(1) the Secretary finds that it is in the public interest to do so;

(2) the contract is for not more than 7 years; and

(3)(A) the cost of the contract is less than the cost (including the cost of operation, maintenance, and personnel) to the NOAA of obtaining those services on NOAA vessels; or

(B) NOAA vessels are not available or cannot provide those services.

(c) BONDING AUTHORITY.—Notwithstanding any other law, the Secretary may not require a contractor for the construction, alteration, repair, or maintenance of a NOAA vessel to provide a bid bond, payment bond, performance bond, completion bond, or other surety instrument in an amount greater than 20 percent of the value of the base contract quantity (excluding options) unless the Secretary determines that requiring an instrument in that amount will not prevent a responsible bidder or offeror from competing for the award of the contract.

**SEC. 607. RESTRICTION WITH RESPECT TO CERTAIN SHIPYARD SUBSIDIES.**

(a) IN GENERAL.—The Secretary of Commerce may not award a contract for the construction, repair (except emergency repairs), or alteration of any vessel of the National Oceanic and Atmospheric Administration in a shipyard, if that vessel benefits or would benefit from significant subsidies for the construction, repair, or alteration of vessels in that shipyard.

(b) DEFINITION.—In this section, the term "significant subsidy" includes, but is not limited to, any of the following:

(1) Officially supported export credits.

(2) Direct official operating support to the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including but not limited to—

(A) grants;

(B) loans and loan guarantees other than those available on the commercial market;

(C) forgiveness of debt;

(D) equity infusions on terms inconsistent with commercially reasonable investment practices; and

(E) preferential provision of goods and services.

(3) Direct official support for investment in the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including but not limited to the kinds of support listed in paragraph (2)(A) through (E), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.

(4) Assistance in the form of grants, preferential loans, preferential tax treatment, or otherwise, that benefits or is directly related to shipbuilding and repair for purposes of research and development that is not equally open to domestic and foreign enterprises.

(5) Tax policies and practices that favor the shipbuilding and repair industry, directly or indirectly, such as tax credits deductions, exemptions, and preferences, including accelerated depreciation, if such benefits are not generally available to persons or firms not engaged in shipbuilding or repair.

(6) Any official regulation or practice that authorizes or encourages persons or firms engaged in shipbuilding or repair to enter into anticompetitive arrangements.

(7) Any indirect support directly related, in law or in fact, to shipbuilding and repair at national yards, including any public assistance favoring shipowners with an indirect effect on shipbuilding or repair activities, and any assistance provided to suppliers or significant inputs to shipbuilding, which results in benefits to domestic shipbuilders.

(8) Any export subsidy identified in the Illustrative List of Export Subsidies in the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade or any other export subsidy that may be prohibited as a result of the Urguary Round of trade negotiations.

**SEC. 608. USE OF VESSELS.**

(a) VESSEL AGREEMENTS.—In implementing the NOAA fleet replacement and modernization program, the Secretary shall use excess capacity of UNOLS vessels where appropriate and may enter into memoranda of agreement with the operators of these vessels to carry out this requirement.

(b) REPORT TO CONGRESS.—Within one year after the date of enactment of this Act, the Comptroller General of the United States shall provide a report to Congress, in consultation with the Secretary, comparing the cost-efficiency, accounting, and operating practices of the vessels of NOAA, UNOLS, other Federal agencies, and the United States private sector in meeting the missions of NOAA.

**SEC. 609. INTEROPERABILITY.**

The Secretary shall consult with the Oceanographer of the Navy regarding appropriate measures that should be taken, on a reimbursable basis, to ensure that NOAA vessels are interoperable with vessels of the Department of the Navy, including with respect to operation, maintenance, and repair of those vessels.

**SEC. 610. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary for carrying out this title—

(1) $50,000,000 for fiscal year 1993;

(2) $100,000,000 for fiscal year 1994; and

(3) such sums as are necessary for each of the fiscal years 1995, 1996, and 1997.

(b) LIMITATION ON FLEET MODERNIZATION ACTIVITIES.—All National Oceanic and Atmospheric Administration fleet modernization, shipbuilding, and conversion shall be conducted in accordance with this title.

## TITLE VII—WEATHER SERVICE MODERNIZATION

**SEC. 701. SHORT TITLE.**

This title may be cited as the "Weather Service Modernization Act".

**SEC. 702. DEFINITIONS.**

For the purposes of this title, the term—

(1) "automate" means to replace employees with automated weather service equipment;

(2) "change operations at a field office" means transfer service responsibility, commission weather observation systems, decommission a National Weather Service radar, change staffing levels significantly, or move a field office to a new location inside the local commuting and service area;

(3) "Committee" means the Modernization Transition Committee established by section 707;

(4) "degradation of service" means any decrease in or failure to maintain the quality and type of weather services provided by the National Weather Service to the public in a service area, including but not limited to a reduction in existing weather radar coverage at an elevation of 10,000 feet;

(5) "field office" means any National Weather Service Office or National Weather Service Forecast Office;

(6) "Plan" means the National Implementation Plan required under section 703;

(7) "relocate" means to transfer from one location to another location that is outside the local commuting or service area;

(8) "Secretary" means the Secretary of Commerce;

(9) "service area" means the geographical area for which a field office provides services or conducts observations, including but not limited to local forecasts, severe weather warnings, aviation support, radar coverage, and ground weather observations; and

(10) "Strategic Plan" means the 10-year strategic plan for the comprehensive modernization of the National Weather Service, required under section 407 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (15 U.S.C. 313 note).

**SEC. 703. NATIONAL IMPLEMENTATION PLAN.**

(a) NATIONAL IMPLEMENTATION PLAN.—As part of the budget justification documents submitted to Congress in support of the annual budget request for the Department of Commerce, the Secretary shall include a National Implementation Plan for modernization of the National Weather Service for each fiscal year following fiscal year 1993 until such modernization is complete. The Plan shall set forth the actions, during the 2-year period beginning with the fiscal year for which the budget request is made, that will be necessary to accomplish the objectives described in the Strategic Plan, and shall include—

(1) detailed requirements for new technologies, facilities, staffing levels and positions, and funding, in accordance with the overall schedule for modernization;

(2) notification of any proposed action to change operations at a field office and the intended date of such operational change;

(3) identification of any field office that the Secretary intends to certify under section 706, including the intended date of such certification;

(4) special measures to test, evaluate, and demonstrate key elements of the modernized National Weather Service operations prior to national implementation, including a multistation operational demonstration which tests the performance of the modernization in an integrated manner for a sustained period;

(5) detailed plans and funding requirements for meteorological research to be accomplished under this title to assure that new techniques in forecasting will be developed to utilize the new technologies being implemented in the modernization; and

(6) training and education programs to ensure that employees gain the necessary expertise to utilize the new technologies and to minimize employee displacement as a consequence of modernization.

(b) TRANSMITTAL TO COMMITTEE.—The Secretary shall transmit a copy of each annual Plan to the Committee.

(c) CONSULTATION.—In developing the Plan, the Secretary shall consult, as appropriate, with the Committee and public entities responsible for providing or utilizing weather services.

**SEC. 704. MODERNIZATION CRITERIA.**

(a) NATIONAL RESEARCH COUNCIL REVIEW.—The Secretary shall contract with the National Research Council for a review of the scientific and technical modernization criteria by which the Secretary proposes to certify action to close, consolidate, automate, or relocate a field office under section 706. In conducting such review, the National Research Council shall prepare and submit to the Secretary, no later than 9 months after the date of enactment of this Act, a report which—

(1) assess requirements and procedures for commissioning new weather observation systems, decommissioning an outdated National Weather Service radar, and evaluating staffing needs for field offices in an affected service area;

(2) assesses the statistical and analytical measures that should be made for a service area to form an adequate basis for determining that there will be no degradation of service; and

(3) includes such other recommendations as the National Research Council determines are appropriate to ensure public safety.

(b) CRITERIA.—No later than 12 months after the date of enactment of this Act, the Secretary, in consultation with the National Research Council and the Committee and after notice and opportunity for public comment, shall publish in the Federal Register modernization criteria (including all requirements and procedures), based on the report required under this section, for—

(1) commissioning new weather observation systems, decommissioning an outdated National Weather Service radar, and evaluating staffing needs for field offices in an affected service area; and

(2) certifying action to close, consolidate, automate, or relocate a field office under section 706.

**SEC. 705. CHANGES IN FIELD OFFICE OPERATIONS.**

(a) NOTIFICATION.—The Secretary shall not change operations at a field office pursuant to implementation of the Strategic Plan unless the Secretary has provided the notification required by section 703.

(b) WEATHER RADAR DECOMMISSIONING.—The Secretary shall not remove or permanently decommission any National Weather Service radar until the Secretary has prepared radar commissioning and decommissioning reports documenting that such action would be consistent with the modernization criteria established under section 704(b)(1). The commissioning report shall document that the radar system performs reliably, satisfactory maintenance support is in place, sufficient staff with adequate training are present to operate the system, technical coordination with weather service users has been completed, and the radar being commissioned satisfactorily supports field office operations. The decommissioning report shall document that the replacement radar has been commissioned, technical coordination with service users has been completed, and the radar being decommissioned is no longer needed to support field office operations.

(c) SURFACE OBSERVING SYSTEM COMMISSIONING.—The Secretary may not commission an automated surface observing system located at an airport unless it is determined, in consultation with the Secretary of Transportation, that the weather service provided after commissioning will continue to be in full compliance with applicable flight aviation rules promulgated by the Federal Aviation Administration.

**SEC. 706. RESTRUCTURING FIELD OFFICES.**

SEC. 706. (a) PROHIBITION.—The Secretary shall not close, before January 1, 1996, any field office pursuant to implementation of the Strategic Plan.

(b) CERTIFICATION.—The Secretary shall not close, consolidate, automate, or relocate any field office, unless the Secretary has certified that such action will not result in any degradation of service. Such certification shall include—

(1) a description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(2) a detailed comparison of the services provided within the service area and the services to be provided after such action;

(3) a description of any recent or expected modernization of National Weather Service operations which will enhance services in the service area;

(4) an identification of any area within any State which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(5) evidence, based upon operational demonstration of modernized National Weather Service operations, which was considered in reaching the conclusion that no degradation in service will result from such action; and

(6) any report of the Committee submitted under section 707(c) that evaluates the proposed certification.

(c) PUBLIC REVIEW.—Each certification decision shall be preceded by—

(1) publication in the Federal Register of a proposed certification; and

(2) a 60-day period after such publication during which the public may provide comments to the Secretary on the proposed certification.

(d) FINAL DECISION.—If after consideration of the public comment received under subsection (c) the Secretary, in consultation with the Committee, decides to close, consolidate, automate, or relocate any such field office, the Secretary shall publish a final certification in the Federal Register and submit the certification to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

(e) SPECIAL CIRCUMSTANCES.—The Secretary may not close or relocate any field office—

(1) which is located at an airport, unless the Secretary, in consultation with the Secretary of Transportation and the Committee, first conducts an air safety appraisal, determines that such action will not result in degradation of service that affects aircraft safety, and includes such determination in the certification required under subsection (b); or

(2) which is the only office in a State, unless the Secretary first evaluates the effect on weather services provided to in-State users, such as State agencies, civil defense officials, and local public safety offices, and includes in the certification required under subsection (b) the Secretary's determination that a comparable level of weather services provided to such in-State users will remain.

(f) LIAISON OFFICER.—The Secretary may not close, consolidate, automate, or relocate a field office until arrangements have been made to maintain for a period of at least 2 years at least one person in the service area to act as a liaison officer who—

(1) provides timely information regarding the activities of the National Weather Service which may affect service to the community, including modernization and restructuring; and

(2) works with area weather service users, including persons associated with general aviation, civil defense, emergency preparedness, and the news media, with respect to the provision of timely weather warnings and forecasts.

**SEC. 707. MODERNIZATION TRANSITION COMMITTEE.**

(a) ESTABLISHMENT.—There is established a committee of 12 members to be known as the Modernization Transition Committee.

(b) MEMBERSHIP AND TERMS.—(1) The Committee shall consist of—

(A) five members representing agencies and departments of the United States which are responsible for providing or using weather services, including but not limited to the National Weather Service, the Department of Defense, the Federal Aviation Administration, and the Federal Emergency Management Agency; and

(B) seven members to be appointed by the Secretary from civil defense and public safety organizations, news media, any labor organization certified by the Federal Labor Relations Authority as an exclusive representative of weather service employees, meteorological experts, and private sector users of weather information such as pilots and farmers.

(2) The term of office of a member of the Committee shall be 3 years; except that, of the original membership, four shall serve a 5-year term, four shall serve a 4-year term, and four shall serve a 3-year term. No individual may serve for more than one additional 3-year term.

(3) The Secretary shall designate a chairman of the Committee from among its members.

(c) DUTIES.—(1) The Committee may review any proposed certification under section 706 for which the Secretary has provided a notice of intent to certify in the Plan, and should review such a proposed certification if there is a significant possibility of degradation of service within the affected service area. Upon the request of the Committee, the Secretary shall make available to the Committee the supporting documents developed by the Secretary in connection with the proposed certification. The Committee may prepare and submit to the Secretary, prior to publication of the proposed certification, a report which evaluates the proposed certification on the basis of the modernization criteria and with respect to the requirement that there be no degradation of service.

(2) The Committee shall advise the Congress and the Secretary on—

(A) the implementation of the Strategic Plan, annual development of the Plan, and establishment and implementation of modernization criteria; and

(B) matters of public safety and the provision of weather services which relate to the comprehensive modernization of the National Weather Service.

(d) PAY AND TRAVEL EXPENSES.—Members of the Committee who are not employees of the United States shall each be paid at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of title 5, United ± States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Committee. Members shall receive travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

(e) STAFF.—The Secretary shall make available to the Committee such staff, information, and assistance as it may reasonably require to carry out its activities.

(f) TERMINATION.—The Committee shall terminate on December 31, 1999.

**SEC. 708. WEATHER SERVICE REPORT.**

(a) REPORT.—The Secretary shall prepare a report on the proposed modernization of the National Weather Service and transmit the report, not later than 6 months after the date of enactment of this Act, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

(b) CONTENTS.—(1) The report required by subsection (a) shall identify the size of the geographic area of responsibility of each proposed Weather Forecast Office and shall include an explanation of the number and type of personnel required at each Weather Forecast Office. For each proposed Weather Forecast Office covering a geographic area greater than two times the average geographic area of responsibility of Weather Forecast Offices nationwide, the report shall detail the reasons for assigning those Weather Forecast Offices a geographic area which differs significantly from the national average.

(2) The report shall list the number of next generation weather radars that will be associated with each Weather Forecast Office nationwide under the proposed modernization plan. If some Weather Forecast Offices will be associated with more than one such radar, the report shall explain the deviation from the National Weather Service's stated policy of associating one such radar with one Weather Forecast Office, and shall analyze and compare any differences in the expected efficiency of those Weather Forecast Offices with Weather Forecast Offices that will be associated with only one such radar.

(c) CONSULTATION.—In preparing portions of the report that address Weather Forecast Offices located in areas of the Nation that are uniquely dependent on general aviation as a means of transportation, the Secretary shall consult with local aviation groups. In the case of Alaska, such local groups shall include the Alaska Aviation Safety Foundation, the Alaska Airmen's Association, and the regional representatives of the Aircraft Owners and Pilots Association.

**SEC. 709. REPEALS.**

The National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (15 U.S.C. 313 note), is amended by repealing—

(1) subsections (b), (c), and (d) of section 407; and

(2) section 408.

## TITLE VIII—NORTH PACIFIC ANADROMOUS STOCKS CONVENTION

**SEC. 801. SHORT TITLE.**

This title may be cited as the "North Pacific Anadromous Stocks Act of 1992".

**SEC. 802. PURPOSE.**

It is the purpose of this title to implement the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, signed in Moscow, February 11, 1992.

**SEC. 803. DEFINITIONS.**

As used in this title, the term—

(1) "Anadromous stocks" means stocks of species listed in the Annex to the Convention that migrate into the Convention area.

(2) "Anadromous fish" means fish of the species listed in the Annex to the Convention that migrate into the Convention area.

(3) "Authorized officer" means a law enforcement official authorized to enforce this title under section 809(a).

(4) "Commission" means the North Pacific Anadromous Fish Commission provided for by article VIII of the Convention.

(5) "Convention" means the Convention for the Conservation of Anadromous Stocks of the North Pacific Ocean, signed in Moscow, February 11, 1992.

(6) "Convention area" means the waters of the North Pacific Ocean and its adjacent seas, north of 33 degrees North Latitude, beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

(7) "Directed fishing" means fishing targeted at a particular species or stock of fish.

(8) "Ecologically related species" means living marine species which are associated with anadromous stocks found in the Convention area, including, but not restricted to, both predators and prey of anadromous fish.

(9) "Enforcement officer" means a law enforcement official authorized by any Party to enforce this title.

(10) "Exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this title, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

(11) "Fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

(12) "Fishing" means—

(A) the catching, taking, or harvesting of fish, or any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(B) any operation at sea in preparation for or in direct support of any activity described in subparagraph (A).

(13) "Fishing vessel" means—

(A) any vessel engaged in catching fish within the Convention area or in processing or transporting fish loaded in the Convention area;

(B) any vessel outfitted to engage in any activity described in subparagraph (A);

(C) any vessel described in subparagraph (A) or (B).

(14) "Incidental taking" means catching, taking, or harvesting a species or stock of fish while conducting directed fishing for another species or stock of fish.

(15) "Party" means Canada, Japan, the Russian Federation, the United States, and any other nation that may accede to the Convention.

(16) "Secretary" means the Secretary of State.

(17) "United States Section" means the United States Commissioners of the Commission.

**SEC. 804. UNITED STATES COMMISSIONERS.**

(a) COMMISSIONERS.—The United States shall be represented on the Commission by not more than three United States Commissioners and be appointed by and serve at the pleasure of the President. Each United States Commissioner shall be appointed for a term of office not to exceed 4 years, but is eligible to reappointment. Of the Commissioners—

(1) one shall be an official of the United States Government;

(2) one shall be a resident of the State of Alaska; and

(3) one shall be a resident of the State of Washington.

An individual is not eligible for appointment under paragraph (2) or (3) as a Commissioner unless the individual is knowledgeable or experienced concerning the anadromous stocks and ecologically related species of the North Pacific Ocean.

(b) ALTERNATE COMMISSIONERS.—The Secretary, in consultation with the Secretary of Commerce, may designate from time to time Alternative United States Commissioners to the Commission. An Alternate United States Commissioner may exercise all designated powers and duties of a United States Commissioner in the absence of a duly designated Commissioner for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of authorized United States Commissioners that will not be present.

(c) UNITED STATES SECTION.—The United States Section, in consultation with the Advisory Panel established in section 805, shall identify and recommend to the Commission research needs and priorities for anadromous stocks, and ecologically related species subject to the Convention, and oversee the United States research programs involving such fisheries, stocks, and species.

(d) COMPENSATION.—United States Commissioners and Alternate United States Commissioners shall receive no compensation for their services as Commissioners and Alternate Commissioners.

**SEC. 805. ADVISORY PANEL.**

(a) ESTABLISHMENT OF PANEL.—An Advisory Panel to the United States Section is established. The Advisory Panel shall be composed of the following:

(1) The Commissioner of the Alaska Department of Fish and Game.

(2) The Director of the Washington Department of Fisheries.

(3) One representative of the Pacific States Marine Fisheries Commission, designated by the Executive Director of that commission.

(4) Eleven members (six of whom shall be residents of the State of Alaska and five of whom shall be residents of the State of Washington), appointed by the Secretary, in consultation with the Secretary of Commerce, from among a slate of 12 persons nominated by the Governor of Alaska and a slate of 10 persons nominated by the Governor of Washington.

(b) QUALIFICATIONS.—Persons appointed to the Advisory Panel shall be individuals who are knowledgeable or experienced concerning anadromous stocks and ecologically related species. In submitting a slate of nominees pursuant to subsection (a)(4), the Governors of Alaska and Washington shall seek to represent the broad range of parties interested in anadromous stocks and ecologically related species, and at a minimum shall include on each slate at least one representative of commercial salmon fishing interests and of environmental interests concerned with protection of living marine resources.

(c) LIMITATION ON SERVICE.—Any person appointed to the Advisory Panel pursuant to subsection (a)(4) shall serve for a term not to

exceed 4 years, and may not serve more than two consecutive terms.

(d) FUNCTIONS.—The Advisory Panel shall be invited to all nonexecutive meetings of the United States Section and at such meetings shall be granted the opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section.

(e) COMPENSATION AND EXPENSES.—The members of the Advisory Panel shall receive no compensation or travel expenses for their services as such members.

**SEC. 806. COMMISSION RECOMMENDATIONS.**

The Secretary, with the concurrence of the Secretary of Commerce, may accept or reject, on behalf of the United States, recommendations made by the Commission in accordance with article IX of the Convention.

**SEC. 807. ADMINISTRATION AND ENFORCEMENT OF CONVENTION.**

(a) RESPONSIBILITIES.—The Secretary of Commerce shall be responsible for administering provisions of the Convention, this title, and regulations issued under this title. The Secretary, in consultation with the Secretary of Commerce and the Secretary of Transportation, shall be responsible for coordinating the participation of the United States in the Commission.

(b) CONSULTATION AND COOPERATION.—In carrying out such functions, the Secretary of Commerce—

(1) shall, in consultation with the Secretary of Transportation and the United States Section, issue such regulations as may be necessary to carry out the purposes and objectives of the Convention and this title; and

(2) may, with the concurrence of the Secretary, cooperate with the authorized officials of the government of any Party.

**SEC. 808. COOPERATION WITH OTHER AGENCIES.**

(a) IN GENERAL.—Any agency of the Federal Government is authorized, upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish, on a reimbursable basis, facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention. Such agency may accept reimbursement from the Commission.

(b) FUNCTIONS OF SECRETARY OF COMMERCE.—In carrying out the provisions of the Convention and this title, the Secretary of Commerce may arrange for cooperation with agencies of the United States, the States, private institutions and organizations, and agencies of the government of any Party, to conduct scientific and other programs, and may execute such memoranda as may be necessary to reflect such agreements.

**SEC. 809. ENFORCEMENT PROVISIONS.**

(a) DUTIES OF SECRETARIES OF COMMERCE AND TRANSPORTATION.—This title shall be enforced by the Secretary of Commerce and the Secretary of Transportation. Such Secretaries may by agreement utilize, on a reimbursable basis or otherwise, the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall, and the head of any Federal or State agency that has entered into an agreement with either such Secretary under the preceding sentence may (if the agreement so provides), authorize officers to enforce the provisions of the Convention, this title, and regulations issued under this title. Any such agreement or contract entered into pursuant to this section shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) DISTRICT COURT JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this title.

(c) POWERS OF ENFORCEMENT OFFICERS.—Authorized officers may, shoreward of the outer boundary of the exclusive economic zone, or during hot pursuit from the zone—

(1) with or without a warrant or other process—

(A) arrest any person, if the officer has reasonable cause to believe that such person has committed an act prohibited by section 810;

(B) board, and search or inspect, any fishing vessel subject to the provisions of the Convention and this title;

(C) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of the Convention, this title, or regulations issued under this title;

(D) seize any fish (wherever found) taken or retained in violation of any provision referred to in subparagraph (C);

(E) seize any other evidence related to any violation of any provision referred to in subparagraph (C);

(2) execute any warrant or other process issued by any court of competent jurisdiction; and

(3) Exercise any other lawful authority.

(d) ADDITIONAL POWERS.—(1) An authorized officer may in the Convention area—

(A) board a vessel of any Party that reasonably can be believed to be engaged in directed fishing for, incidental taking of, or processing of anadromous fish, and, without warrant or process, inspect equipment, logs, documents, catch, and other articles, and question persons, on board the vessel, for the purpose of carrying out the provisions of the Convention, this title, or any regulation issued under this title; and

(B) if any such vessel or person on board is actually engaged in operations in violation of any such provision, or there is reasonable ground to believe any person or vessel was obviously so engaged before the boarding of such vessel by the authorized officer, arrest or seize such person or vessel and further investigate the circumstance if necessary.

If an authorized officer, after boarding and investigation, has reasonable cause to believe that any such fishing vessel or person engaged in operations in violation of any provision referred to in subparagraph (A), the officer shall deliver the vessel or person as promptly as practicable to the enforcement officers of the appropriate Party, in accordance with the provisions of the Convention.

(2) When requested by the appropriate authorities of a Party, an authorized officer may be directed to attend as a witness, and to produce such available records and files or duly certified copies thereof as may be necessary, for the prosecution by that Party of any violation of the provisions of the Convention or any law of that Party relating to the enforcement thereof.

**SEC. 810. UNLAWFUL ACTIVITIES.**

It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States—

(1) to fish for any anadromous fish in the Convention area;

(2) to retain on board any anadromous fish taken incidentally in a fishery directed at nonanadromous fish in the Convention area;

(3) to fail to return immediately to the sea any anadromous fish taken incidentally in a fishery directed at nonanadromous fish in the Convention area;

(4) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any anadromous fish taken or retained in violation of the Convention, this title, or any regulation issued under this title;

(5) to refuse to permit any enforcement officer to board a fishing vessel subject to such person's control for purposes of conducting any research or inspection in connection with the enforcement of the Convention, this title, or any regulation issued under this title;

(6) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any enforcement officer in the conduct of any search or inspection described in paragraph (5);

(7) to resist a lawful arrest or detection for any act prohibited by this section;

(8) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this section; or

(9) to violate any provision of the Convention, this title, or any regulation issued under this title.

**SEC. 811. PENALTIES.**

(a) CIVIL PENALTIES.—(1) Any person who is found by the Secretary of Commerce, after notice and opportunity for the hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 810 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary of Commerce, or the Secretary's designee, by written notice. In determining the amount of such penalty, the Secretary of Commerce shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(2) Any person against whom a civil penalty is assessed under paragraph (1) may obtain review thereof in the appropriate court of the United States by filing a complaint in such court within 30 days from the date of such order and by simultaneously serving a copy of such complaint by certified mail on the Secretary of Commerce, the Attorney General, and the appropriate United States Attorney. The Secretary of Commerce shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary of Commerce shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary of Commerce, the matter shall be referred to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order im-

posing the civil penalty shall not be subject to review.

(4) A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission mission of an act prohibited by section 810 shall be liable in rem for any civil penalty assessed for such violation under paragraph (1) and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel that may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(5) The Secretary of Commerce may compromise, modify, or remit, with or without conditions, any civil penalty that is subject to imposition or that has been imposed under this section.

(6) For the purposes of conducting any hearing under this section, the Secretary of Commerce may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary of Commerce or to appear and produce documents before the Secretary of Commerce, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) OFFENSES.—(1) A person is guilty of an offense if the person commits any act prohibited by section 810 (5), (6), (7), or (8).

(2) Any offense described in paragraph (1) is a class A misdemeanor punishable by a fine under title 18, United States Code, or imprisonment for not more than 6 months, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any enforcement officer, or places any such officer in fear of imminent bodily injury, the offense is a felony punishable by a fine under title 18, United States Code, or imprisonment for not more than 10 years, or both.

(c) FORFEITURE.—(1) Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or a fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 810 shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(2) Any district court of the United States shall have jurisdiction, upon application of the Attorney General on behalf of the United States, to order any forfeiture authorized under paragraph (1) and any action provided for under paragraph (4).

(3) If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this title or for which security has not previously been obtained. The provisions of the customs laws relating to—

(A) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(B) the disposition of such property or the proceeds from the sale thereof; and

(C) the remission or mitigation of any such forfeiture;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title, unless such provisions are inconsistent with the purposes, policy, and provisions of this title.

(4)(A) Any officer authorized to serve any process in rem that is issued by a court having jurisdiction under section 809(b) shall—

(i) stay the execution of such process; or

(ii) discharge any fish seized pursuant to such process;

upon receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(B) Any fish seized pursuant to this title may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(5) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel and which is seized in connection with an act prohibited by section 810 were taken or retained in violation of the Convention and this title.

**SEC. 812. FUNDING REQUIREMENTS.**

(a) AUTHORIZATION.—There are authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Convention and this title, including—

(1) necessary travel expenses of the United States Commissioners or Alternate Commissioners; and

(2) the United States' share of the joint expenses of the Commission.

(b) RESEARCH.—Such funds as shall be made available to the Secretary of Commerce for research and related activities shall be expended to carry out the program of the Commission in accordance with the recommendations of the United States Section and to carry out other research and observer programs pursuant to the Convention.

**SEC. 813. DISPOSITION OF PROPERTY.**

The Secretary shall dispose of any United States property held by the International North Pacific Fisheries Commission on the date of its termination in a manner that would further the purposes of this title.

**SEC. 814. REPEAL OF THE NORTH PACIFIC FISHERIES ACT OF 1954.**

The Act of August 12, 1954 (16 U.S.C. 1021–1035) is repealed.

TITLE IX—NEW ENGLAND GROUNDFISH

**SEC. 901. FISHERY ENFORCEMENT.**

Section 311 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting immediately after subsection (e) the following new subsection:

"(f) ENFORCEMENT OF NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN.—

"(1) ENFORCEMENT AGREEMENTS.—Beginning not later than October 1, 1993, the Secretary shall, if requested by the Governor of a State represented on the New England Fishery Management Council, enter into an agreement under subsection (a), with each of the States represented on such Council, that authorizes the marine law enforcement agency of such State to perform duties of the Secretary relating to enforcement of the Northeast Multispecies Fishery Management Plan.

"(2) REIMBURSEMENT.—An agreement with a State under this subsection shall provide, subject to the availability of appropriations, for reimbursement of the State for expenses incurred in detection and prosecution of violations of any fishery management plan approved by the Secretary.

"(3) COAST GUARD ENFORCEMENT WORKING GROUP.—

"(A) ESTABLISHMENT.—The Commander of the First Coast Guard District shall establish an informal fisheries enforcement working group to improve the overall compliance with and effectiveness of the regulations issued under the Northeast Multispecies Fishery Management Plan.

"(B) MEMBERSHIP.—The working group shall consist of members selected by the Commander, and shall include—

"(i) individuals who are representatives of various fishing ports located in the States represented on the New England Fishery Management Council;

"(ii) captains of fishing vessels that operate in waters under the jurisdiction of that Council; and

"(iii) other individuals the Commander considers appropriate.

"(C) NON-FEDERAL STATUS OF WORKING GROUP MEMBERS.—An individual shall not receive any compensation for, and shall not be considered to be a Federal employee based on, membership in the working group.

"(D) MEETINGS.—The working group shall meet, at the call of the Commander, at least 4 times each year. The meetings shall be held at various major fishing ports in States represented on the New England Fishery Management Council, as specified by the Commander.

"(4) USE OF FINES AND PENALTIES.—Amounts available to the Secretary under this Act which are attributable to fines and penalties imposed for violations of the Northeast Multispecies Fishery Management Plan shall be used by the Secretary pursuant to this section to enforce that Plan.".

**SEC. 902. FISHERIES REINVESTMENT PROGRAM.**

(a) PROGRAM.—Title III of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) is amended by adding at the end the following:

**"SEC. 314. NORTHWEST ATLANTIC OCEAN FISHERIES REINVESTMENT PROGRAM.**

"(a) PROGRAM.—(1) Not later than October 1, 1993, the Secretary shall establish a Northwest Atlantic Ocean Fisheries Reinvestment Program for the purposes of—

"(A) promoting development of commercial fisheries and markets for underutilized species of the northwest Atlantic Ocean;

"(B) developing alternative fishing opportunities for participants in the New England groundfish fishery;

"(C) providing technical support and assistance to United States fishermen and fish processors to improve the value-added processing of underutilized species and to make participation in fisheries for underutilized species of the northwest Atlantic Ocean economically viable;

"(D) creating new economic opportunities through the improved processing and expanded use of fish waste; and

"(E) helping to restore overfished New England groundfish stocks through aquaculture or hatchery programs.

"(2) CONSULTATION.—In establishing and implementing the Northwest Fisheries Reinvestment Program, the Secretary shall consult with representatives of the commercial fishing industry, the seafood processing industry, and the academic community (including the National Sea Grant program).

"(3) ACTIVITIES UNDER PROGRAM.—Subject to the availability of appropriations, the Secretary shall award contracts, grants and other financial assistance to United States citizens to carry out the purposes of subsection (1), under the terms and conditions provided in section 2(c) of the Act of August 11, 1939 (15 U.S.C. 713-3(c); commonly referred to as the "Saltonstall-Kennedy Act"), except that, in making awards under this section for projects involving participation in fisheries for underutilized species, the Secretary shall give the highest priority to a person who owns or operates a fishing vessel permitted under this Act to participate in the New England groundfish who agrees to surrender that permit to the Secretary during the duration of the contract, grant or other assistance.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 1993 through 1997 to carry out the purposes of this section. For fiscal year 1993 no more than $1,000,000, and for fiscal year 1994 no more than $2,000,000, of such funds may be provided from monies made available under section 2(b) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)).

"(b) ASSISTANCE OF OTHER AGENCIES.—The Secretary shall actively seek the assistance of other Federal agencies in the development of fisheries for underutilized species of the northwest Atlantic Ocean, including, to the extent permitted by other applicable laws, assistance from the Secretary of Agriculture in including such underutilized species as agricultural commodities in the programs of the Foreign Agricultural Service for which amounts are authorized under the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3359).

"(c) MANAGEMENT PLANS FOR UNDERUTILIZED SPECIES.—The New England Fishery Management Council, in consultation with other appropriate Councils, shall develop fishery management plans as soon as possible for any underutilized species of the northwest Atlantic Ocean is not covered under such a plan, in order to prevent overfishing of that species.

"(d) UNDERUTILIZED SPECIES DEFINED.—For purposes of this section, the term 'underutilized species of the northwest Atlantic Ocean' means any fish species of the northwest Atlantic Ocean that is identified, by the Director of the Northeast Fisheries Center of the National Marine Fisheries Service, as an underutilized species.".

(b) CONFORMING AMENDMENT.—The table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended by inserting immediately after the item relating to section 313 the following new item:

"Sec. 314. Northwest Atlantic Oceans Fisheries Reinvestment Program.".

(c) AMENDMENTS TO THE SALTONSTALL-KENNEDY ACT.—Section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)(A)); commonly referred to as the "Saltonstall-Kennedy Act"), is amended—

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

(2) by adding at the end the following new clause:

"(iii) to implement the Northwest Atlantic Ocean First Reinvestment Program established under section 314 of the Magnuson Fishery Conservation and Management Act.".

*Resolved*, That the House agree to the amendment of the Senate to the title of the bill.

OCTOBER 8, 1992

Mr. CHAFEE. Mr. President, I want to commend the authors of H.R. 2130, a bill authorizing appropriations for the National Oceanic and Atmospheric Administration. I am particularly pleased with title V of this bill, which establishes a comprehensive program for consistent monitoring of the Nation's marine ecosystems.

This title was jointly developed by the Committee on Commerce, Science, and Transportation, and the Committee on Environment and Public Works. It will be jointly administered by the Environmental Protection Agency and the National Oceanic and Atmospheric Administration. Title V amends the Marine Protection, Research and Sanctuaries Act, and will be the joint jurisdiction of both committees.

The need for a National Marine Monitoring Program, as provided for in this act, is becoming increasingly more apparent. In hearings before the Environment and Public Works Committee, I and other Senators have been frustrated by the lack of definitive answers to seemingly basic questions. Is the shell disease seen in many New England lobsters caused by the ocean disposal of sludge? No one seems to know for sure. Why have oyster harvests in Chesapeake Bay declined by almost two-thirds? What is causing the disorder that results in the beaching of hundreds of dolphins? What is the relationship between the introduction of pollutants to the marine environment and the contamination of marine organisms? What is the impact of extensive new sewage treatment plant capacity on the water quality of Narragansett Bay?

In 1988, Robert Duce, then dean of the University of Rhode Island's Graduate School of Oceanography, lamented in congressional testimony that in many coastal areas we simply do not know with any scientific accuracy whether there has been improvement or degradation. He also noted that the necessary measurements and long-term monitoring programs that can give us a standard against which we can gauge water quality, and by which we can measure water quality changes, simply have not been available for most coastal regions.

Before government can act intelligently, it is essential that we develop a thorough scientific understanding of our marine resource and identify threats to its quality. This knowledge is vital if we are to protect the marine environment and act to prevent problems before they become unmanageable. A report by the congressional Office of Technology Assessment concluded that—monitoring, research, and enforcement are currently inadequate. Information gaps still constrain analyses of marine waste disposal, partly because of lack of information gathering in some areas of the country, lack of systematic analyses of gathered data, and ineffective dissemination of results.

Title V of the bill we are approving today is in direct response to this critical lack of information. It is a major step toward collecting the information we need to accurately determine the health of our Nation's marine ecosystems.

I would like to note that the language in subsection (c)(4) of section 503 could allow NPDES permits to be modified, but only to assure that technical data compiled in connection with compliance monitoring are compatible with the way in which monitoring data are collected. Nothing in the bill would require dischargers to carry out ambient water quality monitoring or sediment quality monitoring requirements.

I am also pleased, Mr. President, that primary leadership for the monitoring program activities conducted by the Environmental Protection Agency will be at the EPA Environmental Research Laboratory in Narragansett, RI. A letter written by the Administrator of the Environmental Protection Agency, together with a colloquy among Senators HOLLINGS, MOYNIHAN, and myself, make it clear that such primary leadership will include locating the headquarters for the EPA monitoring program activities at the EPA Narragansett laboratory. This laboratory is already conducting the near-coastal activities under EPA's Environmental Monitoring and Assessment Program, and is working closely with NOAA in implementing its Status and Trends Program. Also the Narragansett lab is directly involved with the Marine Ecosystem Research Laboratory at the University of Rhode Island, a facility that is uniquely capable of simulating pollution impacts on the marine environment.

The EPA Environmental Research Laboratory at Narragansett is ideally suited to conducting the monitoring activities authorized in this legislation.

I would urge all my colleagues to support this legislation.

Mr. President, I would like to enter into a short colloquy with Senators MOYNIHAN and HOLLINGS regarding H.R. 2130, a bill authorizing appropriations for the National Oceanic and Atmospheric Administration. In particular I would like to focus on title V of this bill, which establishes a comprehensive program for consistent monitoring of the Nation's marine ecosystems.

This title was jointly developed by the Committee on Commerce, Science,

and Transportation, and the Committee on Environment and Public Works. It will be jointly administered by the Environmental Protection Agency and the National Oceanic and Atmospheric Administration.

Section 503 of the bill specifies that "primary leadership for the monitoring program activities conducted by the Environmental Protection Agency pursuant to this section shall be located at the Environmental Research Laboratory in Narragansett, RI."

It is my understanding that this language will ensure that headquarters for the monitoring program which will be established pursuant to this legislation will be located at the EPA laboratory currently located in Narragansett. The personnel primarily responsible for implementing the program will be located at the laboratory.

Such implementation will include:

Developing and implementing intensive coastal water quality monitoring programs in accordance with the legislation.

Identifying and analyzing the status of environmental quality in the Nation's coastal ecosystems.

Assessing ambient water quality, benthic environmental quality, and the health and quality of living organisms.

Identifying sources of environmental degradation affecting the Nation's coastal ecosystems.

In addition, personnel located at the program headquarters in Narragansett will be responsible for providing the scientific basis for the development of coastal water quality monitoring guidelines. Such guidelines will provide for uniformity, establish scientifically valid monitoring methods, and identify appropriate indicators of the health and quality of coastal ecosystems.

Is this consistent with the understanding of the chairmen of the Committee on Commerce, Science, and Transportation, and the Committee on Environment and Public Works?

Mr. HOLLINGS. I would say to the distinguished Senator from Rhode Island that his interpretation of section 503 of H.R. 2130 is entirely consistent with my own. I thank the Senator for his interest, and his assistance in forging this legislation.

Mr. MOYNIHAN. I would also agree that the language in section 503 of H.R. 2130 should be interpreted to mean that headquarters for the monitoring program activities conducted by EPA pursuant to title V of H.R. 2130 will be located at the Environmental Research Laboratory in Narragansett, RI. I commend Senators CHAFEE, HOLLINGS, and DANFORTH for their work on this legislation.

Mr. CHAFEE. I thank my colleagues for their assistance, and commend them for developing legislation which will significantly improve our understanding of the health of the coastal marine environment. I would also like to add that the EPA Environmental Research Laboratory in Narragansett, RI is already conducting the near-coastal activities under EPA's Environmental Monitoring and Assessment Program, and is working closely with NOAA in implementing its Status and Trends Program. This facility is ideally suited to serving as a headquarters for the monitoring activities authorized in this legislation. Again, I thank my colleagues.

Mr. KERRY. Mr. President, it is with great pleasure that I am able to report to my colleagues that an accord has been reached which will allow the Senate to pass H.R. 2130, the National Oceanic and Atmospheric Administration Authorization Act of 1991. This bill contains important provisions that will advance vital national efforts in the areas of weather forecasting, storm warning, protection of marine resources, and our ability to conduct meteorologic and climatologic research into global change and ozone depletion. Never have the needs of the National Oceanic and Atmospheric Administration [NOAA] addressed in this bill been more evident or deserving of action, and I commend my distinguished colleagues for recognizing these needs and responding accordingly.

The bill before us is the product of many months of effort on the parts of many Members and staffs in both the House of Representatives and the Senate. I particularly want to thank Representative DENNIS HERTEL for introducing the original House companion, H.R. 2130, and Representatives STUDDS, GEORGE BROWN, DAVIS, YOUNG, WALKER and their staffs for their diligent efforts in forging this compromise. My Senate colleagues, full Commerce Committee and National Ocean Policy Study [NOPS] chairman Senator HOLLINGS, and NOPS ranking minority member, Senator STEVENS, and their fine staffs, also contributed greatly to this bipartisan agreement.

I am particularly pleased that this bill finally will initiate the long-overdue effort to modernize the NOAA fleet. The 23 vessels of the NOAA fleet comprise approximately one-third of the total Federal oceanographic research capability. The fleet is indispensable; it is used to collect scientific data for studying ocean circulation and global climate change, for charting the Nation's exclusive economic zone [EEZ], for monitoring water quality, and for assessing the status of the Nation's fishery resources.

Yet these vessels have been allowed to slip into a serious state of disrepair, with most nearing the end of their 25-year service life. In addition, these ships require upgraded scientific equipment to address today's complex missions such as bathymetric mapping of the ocean floor. Money authorized in this legislation will begin the process of refurbishing the fleet and revitalizing our Nation's global leadership in basic and applied oceanographic research.

Weather forecasting and storm warning are among NOAA's most important functions. The crucial role of the National Weather Service [NWS] was clearly illustrated this past August and September when Hurricanes Andrew and Iniki and Typhoon Omar came ashore in Florida, Louisiana, Hawaii and Guam. We have all witnessed the tragic images of destruction, of whole communities reduced to rubble, and of families and lives torn apart. While the devastation wrought by these storms is almost too staggering to comprehend, undoubtedly, had it not been for the forecasting and storm warning capabilities of the weather service—especially the National Hurricane Center—loss of human life and property damage would have increased significantly.

An effort is currently underway to modernize the National Weather Service by upgrading equipment and consolidating facilities. Such upgrading will improve climate and air quality research, public warning and forecast systems, climate and global change research, satellite observing systems, atmospheric research, and data and information systems. I have worked with my distinguished colleagues in the House and Senate to develop a bipartisan compromise that ensures there will be no reduction of coverage during the modernization process.

Under this compromise, a yearly national implementation plan that lays out the modernization activities for 2 years will be submitted to Congress. The National Research Council of the National Academy of Sciences will be called upon to define the criteria for certification, and a modernization transition committee will be designated to review proposed certifications. When commissioning new radar systems, thorough documentation must show that the new system is performing to standards before the old system can be decommissioned. At least one liaison officer will remain in an area for at least 2 years after the weather service office in that area is closed. In this way, community preparedness and public access to weather services—services vital to agriculture, emergency evacuation, and air travel—will not be disrupted during the modernization process. Let me thank my esteemed colleagues, committee Chairman FRITZ HOLLINGS, and the distinguished Senator from South Dakota, TOM DASCHLE, who were particularly helpful in resolving this issue.

In 1990, the National Academy of Sciences issued a report on the marine monitoring needs of the Nation, including recommendations for establishing a comprehensive monitoring program. The academy's recommendations were incorporated into a NOAA-EPA monitoring program for ocean and coastal

waters that is authorized in this bill. Under this bill, a comprehensive national program for consistent monitoring of the Nation's marine ecosystems will be established. Included within this program will be a system for reviewing and evaluating scientific, analytical, and technical methods appropriate for monitoring the environmental quality of marine ecosystems, and methods established for identifying uniform indicators of marine ecosystem quality. Importantly, an information program also will be created to distribute information pertaining to marine degradation analyses, assessments, and techniques and practices to State, regional, and local agencies and the public.

In recognition that some areas require special attention, there is within the context of this comprehensive monitoring program a proposed monitoring effort in my own region of the country. In Massachusetts, a $6 billion effort is underway to improve water quality in Boston Harbor through improved wastewater treatment. This is one of the largest cleanups undertaken in the Nation and provides a unique opportunity for scientists and managers to evaluate resulting change in the coastal and marine environments.

Montioring will be needed to show the ratepayers of Massachusetts that the large cost of the cleanup will indeed bring Boston Harbor into compliance with the Clean Water Act and provide fishable and swimmable waters. Careful monitoring also will be needed to assure that the harbor cleanup does not degrade adjacent waters. In particular, the new offshore outfall must not pollute Cape Cod Bay or waters of Massachusetts Bay, especially the future marine sanctuary soon to be designated at Stellwagen Bank. NOAA's monitoring program in this region should not duplicate the work of the Massachusetts Water Resources Authority and the U.S. Geological Survey. Close coordination with these agencies, as well as with the Massachusetts Coastal Zone Management office, is essential to determine the most effective and complementary use of NOAA resources.

NOAA's National Ocean Service [NOS] and National Marine Fisheries Service [NMFS] provide invaluable services such as the assessment and management of the Nation's fisheries resources and mapping and charting of the oceans for marine transportation. Other important programs provided by these services include responding to, and forecasting and monitoring of, the effects of accidental marine oilspills, monitoring of water quality in highly productive coastal areas, and protection of fisheries habitats. These activities are of vital importance to my State, where many coastal communities depend on the ocean for tourism, fishing, marine transportation, and recreation to support their local economies.

Importantly, this legislation encourages NOAA to move forward and conduct research about alternative fishery technologies that are economically viable and environmentally benign. For example, as a result of this legislation, NOAA will undertake the research that is needed to develop alternative techniques for fishing for tuna that do not involve entanglement of dolphins in fishing gear. The American public has made it clear that it will no longer tolerate the senseless killing of dolphins by the world's tuna fleets. Strong efforts by the United States in the international fishing community have reduced dolphin mortality but have not eliminated it. As a matter of course, these efforts to obtain international cooperation must continue. But it is also time to develop alternatives that will allow valuable tuna resources to be harvested without harming dolphins. Other nations, as well as the tuna industry, are willing to contribute funds to this effort. This bill provides for the U.S. contribution.

There are other provisions in this bill that are of particular importance to my State. I would like to discuss briefly three of the more important ones. This year NOAA will reactivate the *Albatross*, the NOAA, vessel moored in Woods Hole. This research vessel conducts stock assessments for fisheries throughout New England. At a time when many of the North Atlantic stocks—species including cod, haddock and yellow tail flounder which are the foundation of the Northeast commercial fisheries—are in decline, it is absolutely essential that we have accurate, up-to-date information on the state of the stocks so that informed management decisions can be made. This bill specifically authorizes the funds that are needed to keep the *Albatross* in operation.

This bill also will help the aquaculture industry by making guaranteed loans from the Fisheries Vessels Obligation Guarantee Program [FVOG] available to this growing activity. This program initially provided money for fishing vessels and later was expanded to include fishery facilities. This will provide needed capital for the fishing industry. But when a Massachusetts aquaculture company applied for a loan under the program, it was told that its operation was not considered a fishery facility. With many of our fisheries now overcapitalized, with the aquaculture industry in an expansion stage, and with the growing realization that the fishing industry must diversify in order to grow and prosper, it only make sense to allow these funds to be used for aquaculture as well as other fishing operations.

Title IX of the bill consists of two modest initiatives aimed at helping the hard-pressed New England fishing industry in its effort to rebuild depleted groundifsh stocks.

Section 901 amends section 311 of the Magnuson Fishery Conservation and Management Act to require the Secretary of Commerce, if requested by a New England Governor, to enter into a cooperative Federal-State agreement to enforce the northeast multispecies fishery management plan, the groundfish plan. A State participating in such an agreement would be eligible for reimbursement of costs incurred in the detection and prosecution of violations. The section also requires the First U.S. Coast Guard District to establish an informal fisheries enforcement working group, consisting of commercial fishing industry representatives from various ports within the region, in order to improve overall compliance with fisheries regulations. The section would require that fines collected for violations of the groundfish plan are to be used by the Secretary of the department which acted to enforce it.

Section 902(a) adds a new section 314 to the Magnuson Act requiring the Secretary to establish a Northwest Atlantic ocean fisheries reinvestment program to assist in the development of economically viable fisheries for underutilized species, to explore new opportunities for the processing and use of fish waste, and to help restore depleted New England groundfish stocks through aquaculture or hatchery programs.

Under the program, the Secretary would be authorized to provide financial assistance to U.S. citizens to carry out the purpose of the section, while giving the highest priority to the owner or operator of a fishing vessel who agrees, in return for the assistance, to surrender temporarily the right to fish for New England groundfish. The purpose of giving preference to such an owner or operator is to use the availability of assistance as a means of reducing, albeit marginally, the fishing effort now concentrated on depleted groundfish stocks.

In establishing and implementing the program, the Secretary shall consult with representatives of the commercial fishing and seafood processing industries and with qualified members of the academic community.

Funding for the fisheries reinvestment program could be made available under the Saltonstall-Kennedy fund, under the separate authority granted by this Act or under a combination thereof. Up to $5 million is authorized annually for fiscal years 1993 through 1997.

Section 902(b) requires the Secretary to work with other Federal agencies to make underutilized species eligible for programs such as the Department of Agriculture's Food for Peace and Section 902(c) directs the New England Regional Fisheries Management Council

to develop a management plan for any significant underutilized species that is not already covered by such a plan.

I note that these two fisheries-related provisions are derived from S. 2849, the proposed New England Groundfish Restoration Act which was approved by the Senate Committee on Commerce, Science and Transportation on June 16. A similar bill, H.R. 5557, was introduced by Representatives GERRY STUDDS and approved by the House of Representatives on September 22.

My own preference would have been to approve S. 2849 in its entirety, or something very close to it. Unfortunately, opposition from within the New England Senate delegation to some aspects of the bill has made that impossible. I am pleased, nevertheless, that we were able to get agreement to move these two provisions, which I believe will take us two significant steps forward in responding to the very serious problems faced by the New England groundfish fishery.

I believe it is important that all Senators, and especially, those from New England, agree that a comprehensive, long-term strategy to restore depleted northwest Atlantic fisheries stocks is essential. The problems are well-documented, severe, urgent and unavoidable. Obviously, we all hope that the New England Council, working with the industry, will be able to develop and implement an effective plan. We note that the industry has made great progress in working with the council, Federal authorities and the Conservation Law Foundation to resolve issues raised by the consent decree under which the council is now forced to operate. If further progress is to be made, it is essential that differences of approach and interest among the various States and gear-types be minimized and the common interest in rebuilding the stocks prevail.

For my part, I intend to begin work as soon as the 103d Congress convenes next year to try to develop a set of regionally accepted proposals for assisting the council and the industry in reducing fishing effort and providing time for the rebuilding of groundfish stocks. The enactment of Title IX of this Act will give us a head start in that direction.

Mr. President, the oceans and atmosphere are critical components of the Earth's ecosystem, and our understanding and management of them is intrinsic to our national well-being. These complex systems moderate global temperatures, protect us from the sun's ultraviolet radiation, and provide us with precious natural resources. The programs of the National Oceanic and Atmospheric Administration are essential for the study, conservation and management of these systems.

I am pleased that we have reached this agreement and are considering this important legislation today, and would like to thank my colleagues and their staffs who have worked with me in a wholly cooperative, diligent, and exemplary bipartisan fashion to achieve this agreement.

Mr. HOLLINGS. Mr. President, I rise today in support of H.R. 2130, the National Oceanic and Atmospheric Administration Authorization [NOAA] Act of 1992, as amended. This legislation reauthorizes many important NOAA atmospheric and satellite, ocean and coastal, and fisheries programs. It also contains provisions to improve coastal monitoring and initiate modernization of the NOAA oceanographic research fleet. As I have done in the past, I remind my colleagues of NOAA's important contributions to our understanding and management of natural systems. The legislation before us today would support and improve NOAA programs which, particularly in these days of growing concern over the global environment, are clearly of importance to us all.

Of particular relevance to those of us from the Southeastern States are the provisions in this legislation dealing with NOAA weather service and satellite operations. As everyone knows, Hurricane Hugo caused a great deal of damage to my home State of South Carolina in 1989. Without the forecasts and monitoring provided by the National Weather Service, however, I can assure you that the damage in South Carolina would have been greater and many more lives would have been lost. Similarly, the National Weather Service's information was crucial in the more recent efforts to respond to Hurricanes Andrew and Iniki. This legislation would authorize necessary funding for satellite and weather service programs, and also would initiate innovative new programs such as a joint program between NOAA and the Department of Defense to research hurricane reconnaissance. Further, the legislation includes a much-needed provision to prohibit the closure of weather service offices, and to ensure that National Weather Service coverage is maintained during the modernization process.

The NOAA authorization bill before us today has been carefully crafted as a joint effort among the committees of jurisdiction in the Senate and the House of Representatives. It is comprehensive legislation addressing many of the major policy issues confronting the agency today. I thank my colleagues in both the Senate and the House who have worked long and hard to put together this important legislation. I urge my colleagues to support H.R. 2130.

COASTAL MONITORING

Mr. MITCHELL. Mr. President, I rise to give my full support to the coastal monitoring provisions in the legislation to authorize the activities of the National Oceanic and Atmospheric Administration.

The monitoring program for coastal waters included in the bill was originally proposed in legislation I introduced to expand the protection of coastal waters. Senators CHAFEE and HOLLINGS worked closely with me in reviewing and revising this proposal and I very much appreciate their constructive efforts to advance this important legislation.

There is growing public awareness and concern about environmental problems in coastal waters. News reports have highlighted beach closings in New Jersey, a dead zone in the Gulf of Mexico, and toxic pollutants in sediments in harbors.

The Congressional Office of Technology Assessment [OTA], in a major report titled "Wastes in the Marine Environment", concluded that the overall health of our estuaries and coastal waters is declining or threatened.

The OTA report provides a summary and assessment of the various laws relating to protection of marine and estuarine waters, including the Clean Water Act and the Marine Protection, Research and Sanctuaries Act. The report states:

> Even if total compliance with today's regulations is achieved, existing programs will not be sufficient to * * * maintain or improve the health of all estuaries and coastal waters. In the absence of additional measures to protect our marine waters, the next few decades will witness new or continued degradation in many estuaries and coastal waters around the country.

The Environment and Public Works Committee has held hearings over the past several years to review the environmental conditions of marine waters and to consider legislation to expand and strengthen marine monitoring and research.

The OTA report, which was presented at the first of those hearings, suggests a range of actions to reverse the decline in coastal and marine water quality, including expanding and strengthening research of the marine environment. The report states:

> Monitoring, research, and enforcement are currently inadequate, and funding levels for those activities are being reduced in some instances.

Dr. Donald Boesch of the Louisiana Marine Consortium, testified:

> Reversing the trend of deteriorating coastal environmental quality well require a much improved understanding of environmental processes and the efforts of changing conditions on ecosystem productivity and integrity.

Mr. Charles Fox, representing the Environmental Policy Institute and a number of environmental groups, stated:

> We believe that the proposed legislation would complement and substantially strengthen existing coastal research and monitoring programs.

An important first step in protecting our coastal waters is to assure that we have useful and reliable data on cur-

rent environmental conditions and trends in these waters. The coastal monitoring program in this legislation now before us will assure that we have this much needed information.

The new coastal monitoring program is to be jointly administered by the Environmental Protection Agency [EPA] and the National Oceanic and Atmospheric Administration [NOAA]. Both agencies have vital roles to play in developing and implementing a coastal monitoring program and the legislation is designed to draw on the strengths of both agencies.

While we want the EPA and NOAA to work together to implement the best possible program for monitoring coastal water and sediment quality, we have not specified specific responsibilities for each agency. Instead, we have asked the agencies to work together to develop a comprehensive monitoring strategy which will define respective roles and responsibilities and indicate where other Federal agencies or governments can contribute this effort.

Another critical provision of the program is the requirement for a joint EPA/NOAA report to Congress on environmental conditions in coastal waters. This report will provide a much needed point of reference for assessing the effectiveness of coastal environmental protection programs.

The coastal monitoring program is to include a comprehensive effort to identify environmental conditions and trends throughout coastal waters. This assessment is to be based on the expansion of existing monitoring networks and programs of EPA and NOAA as well as the integration and consolidation of data generated by other Federal agencies, State and local government and other parties.

A key element of the comprehensive monitoring effort is the development of intensive monitoring programs for specific coastal areas. These intensive monitoring programs will supplement data generated by other monitoring programs and will help answer questions about specific trends or conditions identified as part of the national program. The National Research Council will work with the EPA and NOAA to identify specific areas for intensive monitoring.

I am pleased to note that the Gulf of Maine is one of several areas identified in the bill to be intensively monitored as part of this program. This monitoring effort will provide much needed data on the environmental conditions in the Gulf of Maine. While the Gulf of Maine is still very clean, there is evidence of pollution threats in some areas and this new effort will help assure that we recognize potential problems and take response actions before problems become costly and unmanageable.

The bill also provides for the EPA and NOAA to work with other Federal agencies and other parties to develop technical protocols and guidelines to assure that data collected as a result of coastal monitoring programs is consistent and compatible. This effort is essential if we are to make the best use of limited monitoring resources.

The bill provides that data collected by dischargers under requirements of permits issued under section 402 of the Clean Water Act is to be consistent with the national data guidelines and provides authority to modify permits to accomplish this objective.

Nothing in the bill requires dischargers to conduct monitoring not now required under a 402 permit or to add to a permit a new requirement for ambient monitoring of coastal waters. In addition, the reference in subsection (d)(4)(G)(ii) to private parties refers to those agencies or organizations that will implement the intensive monitoring program and does not require any new requirements, conditions, or modifications to permits issued under section 402 of the Clean Water Act.

The bill provides for authorizations to EPA and NOAA to support the coastal monitoring program. These funds are divided evenly among the two agencies and the specific uses of funds are to be determined as part of the development of the national coastal monitoring strategy. Both agencies are authorized to use a portion of these funds for cooperative or contractual agreements with appropriate non-Federal agencies and institutions to assist in implementing intensive monitoring programs. Any such agreements are to provide that Federal funds be matched on a 50–50 basis.

Mr. President, this legislation will give us much needed insight into the changing conditions of one of our most vital natural resources—our coastal waters. I urge my colleagues to support this legislation.

Mr. LAUTENBERG. Mr. President, I rise in support of title V of H.R. 2130, the NOAA Authorization Act of 1991. Title V establishes a comprehensive monitoring program for our oceans and coastal waters.

Mr. President, we have made a great deal of progress in restoring the health of our marine waters. We no longer discharge raw sewage sludge and industrial waste into our coastal waters and ocean. We have begun to address nonpoint pollution, runoff, which threatens our waters. And fish and returning to our nation's estuaries.

But more remains to be done. According to EPA's latest National Water Quality Inventory, in 1988 30 percent of those estuaries which have been assessed either are failing to achieve water quality standards or threaten to fail to achieve those standards. And 224 beach closures were reported in 18 States. These are remarkable figures nearly two decades after passage of the Clean Water Act.

I have joined Senator MITCHELL in introducing S. 1070, the Coastal Protection Act, to provide the programs we need to address the remaining coastal problems. This act is based on hearings held jointly in 1989 by the Subcommittee on Superfund, Ocean and Water Protection which I chair and the Subcommittee on Environmental Protection. We'll address most of the provisions of the Coastal Protection Act during the Senate's consideration of the Clean Water Act.

One essential element to restoring the health of our waters and one component of the Coastal Protection Act is to establish a comprehensive marine monitoring program. Title V establishes such a program based on the monitoring program included in the Coastal Protection Act. This would include a program to monitor garbage and other floatables along our shorelines and report the results of the monitoring to the public. This floatables monitoring program was first included in the Comprehensive Ocean Assessment and Strategy Act which I introduced in 1989.

Title V also includes a program to intensively monitor certain important coastal areas. I'm pleased that title V includes the Hudson-Raritan estuary as one of the areas to be monitored.

Title V will be an important part of our efforts to protect our coastal waters. I urge my colleagues to support title V.

COASTAL MONITORING

Mr. MOYNIHAN. Mr. President, I am very pleased that the pending legislation includes a new program for monitoring environmental conditions and trends in the Nation's coastal waters, including the Great Lakes. This new authority will provide improved information about coastal waters and provide a sound, scientific basis for future decisions concerning protection of this vital resource.

I also want to note that the program is to be a joint effort of the Environmental Protection Agency and the National Oceanic and Atmospheric Administration. The bill builds on the strengths of each agency and will assure that we have a unified and coordinated understanding of environmental conditions in coastal waters.

This joint monitoring program is the result of a cooperative effort between the Environment and Public Works Committee and the Commerce, Science, and Transportation Committee. It is our intention that this program, which will become a new title of the Marine Protection, Research and Sanctuaries Act, be the joint jurisdiction of our two committees.

Mr. HOLLINGS. I agree with my colleague from New York that the proposed coastal monitoring program before us will substantially improve and increase the information we have about coastal water and the Great Lakes. It

will assist us for years to come in understanding conditions in these waters and responding to possible problems.

The Senator is correct that this program is the product of a joint effort by our two committees and that the new title of the Marine Protection, Research, and Sanctuaries Act is intended to be the joint jurisdiction of our two committees. I look forward to working with the Senator from New York in his new role as chairman of the Environment and Public Works Committee on coastal monitoring and many other issues of mutual interest.

Mr. CHAFEE. I want to thank Senator HOLLINGS for his constructive effort to develop a balanced and workable coastal monitoring program. I agree that the monitoring program is an important step toward assuring the quality of our coastal resources and I agree that the program is most appropriately the joint jurisdiction of the Commerce Committee and the Environment and Public Works Committee, on which I serve as ranking minority member.

Mr. President, I would like to engage the distinguished chairman of the Commerce Committee, Senator HOLLINGS, in a short colloquy regarding H.R. 2130, the National Oceanic and Atmospheric Administration Authorization Act of 1992.

Subsection (c)(4) of section 503 of this bill is intended to assure that compliance monitoring conducted pursuant to section 402(a)(2) of the Clean Water Act is consistent with the guidelines issued under subsection (c). It is my understanding that discharge permits may be modified only to assure that technical data compiled in connection with compliance monitoring is compatible with the way in which monitoring data is collected under the protocols. Furthermore, nothing in the bill would require dischargers to carry out ambient water quality monitoring or other additional monitoring requirements beyond what is currently required under the Clean Water Act.

Subsection (d) of section 503 creates an intensive water quality monitoring program. The provision contained in subsection (d)(4)(G)(ii) of that subsection specifies the implementation requirements for the monitoring program including the public and private parties that will implement the program. It is my understanding that this provision covers only those institutions that will carry out monitoring programs pursuant to subsection (d) and does not require any new requirements, conditions or modifications to NPDES permits issued under section 402 of the Clean Water Act.

Is this consistent with the views of the distinguished Senator from South Carolina?

Mr. HOLLINGS. I would say to the distinguished Senator from Rhode Island that this is entirely consistent with my understanding of subsection (c)(4) of section 503, and subsection (d) of section 503 of S. 1405. I thank the Senator for his interest.

Mr. SARBANES. Mr. President, I rise in strong support of this conference agreement on the National Oceanic and Atmospheric Administration's Authorization Act of 1992. This legislation provides the authority and funding necessary for NOAA to carry out its important missions of marine research, mapping, weather observation, and ocean and coastal management. It also contains two provisions important to meeting the long-term goal of the Chesapeake Bay Program—restoring the Bay's living resources to healthy and balanced levels—a provision which I authored, establishing within NOAA a Chesapeake Bay Estuarine Resources Office, and a program for monitoring the Nation's marine ecosystems, including the Chesapeake Bay.

As the lead Federal agency responsible for marine and estuarine science, NOAA is a vital part in the Chesapeake Bay restoration program. Since 1985, NOAA has conducted studies which include: fisheries stock assessment and statistics improvement, researching processes controlling low dissolve oxygen and toxic contamination, monitoring algal blooms using aircraft remote sensing, and tracking changes in tidal wetlands using Landsat imagery. This research has been essential to improving our understanding of the interrelationships among climate, harvest, and pollution in the decline of anadromous fish and other marine species in the Bay. In addition, NOAA Sea Grant, Coastal Zone Management, Striped Bass and Oyster Disease research programs, among others, have contributed directly to living resource restoration and pollution prevention efforts in the Bay.

With the signing of the Chesapeake Bay Agreement of 1987 and its recent amendments, and a new Memorandum of Understanding with EPA outlining NOAA's responsibilities in the Bay restoration effort, NOAA's role has expanded and become even more important. NOAA and other Bay area organizations have committed to specific measures to reach the goals of restoring and protecting the Bay's living resources, their habitats and ecological relationships. The new goals and objectives underscore the need not only to continue NOAA's present Chesapeake Bay efforts, but also call for greater science, research, monitoring and data collection support activities.

Unfortunately, each year the administration zeroes out funding for NOAA's Chesapeake Bay programs from its budget request on the basis of an erroneous claim that the programs have met their original goals. Each year the Congress restores this funding. In addition, the program office which coordinated the agency's Chesapeake Bay studies was reorganized in 1990 and since then the responsibilities for administering and coordinating the Agency's Chesapeake Bay activities have been diffuse. Absent a specific authorization, as provided for the Great Lakes Program, it was apparent that NOAA's Chesapeake Bay programs would not receive the important priority they deserve.

The Chesapeake Bay Estuarine Resources Office established in this legislation will help ensure that NOAA's commitments to our nation's estuary are met. The legislation codifies the agency's responsibilities to the Bay effort, specifies the functions of the office, and directs the Secretary of Commerce to submit a funding request for this office in the President's annual budget to the Congress.

The new office will provide a focal point for managing and coordinating NOAA's Chesapeake Bay activities, strengthen the agency's interaction with the Bay Program, and ensure NOAA-wide involvement in the Bay area. I am pleased to report that NOAA is currently in the process of leasing space in Annapolis, in the same building as EPA's Chesapeake Bay Program office, and hiring staff for this new office.

In addition, the legislation authorizes a program of biological monitoring in Chesapeake Bay. Biological monitoring is an essential tool for evaluating the success of the Bay's restoration and protection program. Several recent reports on the Chesapeake Bay have identified the need for a Bay-wide monitoring program of the biological resources of the Chesapeake and its tributaries as a top priority to improve our knowledge of Chesapeake Bay species, their natural cycles, their habitat needs and how they respond to human activities. While NOAA has conducted fisheries stock assessments, research on toxics processes and effects, and remote sensing activities as part of its Chesapeake Bay studies program, there is no continuous monitoring effort to track living resource trends and evaluate the responses of the estuary's biota to changes in their environment. Without such a program, plans for improving water quality, habitats and management of resources may be based on inaccurate information and result in costly mistakes. This biological monitoring provision will enhance NOAA's program and assist in establishing clear management goals and progress indicators for productivity, diversity and abundance of species.

I want to commend the chairman of the committee, Senator HOLLINGS, and Senator ROBB who, as a member of the Committee, played a key role in ensuring that these provisions were included in the bill, for their support and assistance. I urge my colleagues to join me in supporting this conference agreement.

Mr. FORD. Mr. President, I move the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

## TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT 900 SERVICES

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6191, the Telephone Disclosure and Dispute Resolution Act 900 Services, just received from the House; that the bill be deemed read the third time, passed, and the motion to reconsider be laid upon the table.

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

So the bill (H.R. 6191) was deemed read the third time, and passed.

## THE OMNIBUS OCEANS ACT OF 1992

Mr. BRADLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5617, the Omnibus Oceans Act of 1992, just received from the House, that the bill be deemed read three times, passed and the motion to reconsider laid upon the table; and that any statements appear in the RECORD at the appropriate place.

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

Mr. KERRY. Mr. President, today I am pleased to report that an agreement has been reached permitting the Senate to pass a bill that includes amendments to title III of the Marine Protection, Research, and Sanctuaries Act [MPRSA] of 1972 and to authorize appropriations for operations and management of the marine sanctuaries program for fiscal years 1993 through 1995. Our national marine sanctuaries protect and preserve marine environments of special ecological, historical, educational, recreational, and aesthetic importance. This marine sanctuary system, like our system of national parks, includes a startling diversity of aquatic habitats and animals such as migrating whales, giant kelp forests, and coral reefs. Importantly, marine sanctuaries provide protected waters and secure habitats for endangered or threatened species of fish, marine mammals, and birds. It is a system in which we can all take pride, and a system that we should continue to support.

Since enactment of the MPRSA in 1972, eight sanctuaries have been designated including sites such as the Channel Islands of California and the Florida Keys. This list is soon to grow, with three more sites to be designated this year.

In the bill now before us, Stellwagen Bank, located in Massachusetts Bay—a site I first nominated for sanctuary designation in 1988—would be designated a National Marine Sanctuary along with the Hawaiian Islands Humpback Whale Sanctuary and Monterey Bay National Marine Sanctuary.

Since it is the sanctuary of which I am most familiar, I would like to focus briefly on the Stellwagen Bank designation. Most of the National Oceanic and Atmospheric Administration's [NOAA] evaluation process intended to culminate in sanctuary designation for Stellwagen Bank has taken place. Public hearings have been held and public comments have been received. However, over the past 5 months NOAA has delayed the final recommendation for designation. On numerous occasions we have been promised that the designation is imminent, and yet the designation has not been made. I now have concluded that it is important to move forward with the designation of Stellwagen Bank in order to proceed with the long-term management and protection of this environmentally sensitive area.

This bill today also would place a ban on mineral and gravel mining at Stellwagen Bank in order to ensure that this valuable area is never subjected to the devastation which would surely accompany those activates. Factors such as pollution in Massachusetts Bay and dumping of dredged materials also threaten this unique marine resource. With the designation of Stellwagen, we would be better able to manage this resource in such a way to minimize the effects of these harmful activities.

As the number of sanctuaries grows larger, we should ensure that adequate resources are provided for management; not only for sites presently operating, but also for newly designated sites. Historically, funding for marine sanctuaries has been insufficient to allow for comprehensive management of marine areas. The bill would authorize additional funding for program management. According to NOAA's Marine Sanctuary Review Team, none of the sanctuaries now in place is adequately staffed or provided with the facilities, equipment, or supplies required to successfully perform the assigned responsibilities. This funding authorization recognizes the complex reality of managing marine sanctuaries, and ensures that new sites like Stellwagen Bank will receive the necessary support they deserve.

However, Federal funding alone will not be enough to protect a sanctuary. This bill would increase the amount of civil penalties imposed for violations of sanctuary regulations. The increased penalties should serve to deter violations, which will benefit the suers of these sanctuaries and reduce enforcement costs. Where the deterrence is ineffective, the proceeds from these penalties would be applied to the costs of sanctuary management and augment Federal spending. In additioin, this bill would authorize the Secretary of Commerce to enter into cooperative agreements and to solicit and receive donations from nonprofit organizations. This authority would provide additional resources for marine sanctuaries and their management.

This bill also addresses specific needs of the marine sanctuary program that either delay sanctuary designations or hinder sanctuary planning and management.

Specifically, the bill addresses interagency cooperation, especially NOAA's authority to review activities—both inside and outside sanctuary boundaries—that affect sanctuary resources. The bill would require all Federal agencies, and all private activities authorized within sanctuaries by licenses, leases, or permits, to submit written statements to the Secretary of Commerce describing activities potentially detrimental to sanctuary resources. It also would allow the Secretary to recommend reasonable and prudent alternatives in order to protect sanctuary resources and quality. Required notifications and responses should promote more timely evaluations of potentially harmful activities and appropriate responses.

Hazardous materials located close to sanctuaries have emerged as a substantive obstacle to sanctuary designation and management. For example, this has been a major obstacle in the Stellwagen Bank designation. Hazardous materials may threaten living marine resources. Knowing the location of hazardous materials and the extent of contamination is essential to comprehensive management and resource protection. The bill would enhance NOAA's ability to obtain from other Federal agencies information regarding the past, present, or proposed future disposal of hazardous materials in or near marine sanctuaries in order to evaluate environmental risks of such waste disposal.

In addition, the bill would direct NOAA to promote and coordinate research, monitoring and education in marine sanctuaries so that the public might better understand the complexities of the marine environment. Greater emphasis on marine research and education should benefit several marine institutions in my own State such as the Woods Hole Oceanographic Institute, the Massachusetts Institute of Technology, and the New England Aquarium. Undoubtedly, sanctuaries in other regions will provide similar benefits.

Finally, there is a need to focus the marine sanctuaries program on the future. This bill would require NOAA to review sanctuary management plans every 5 years in order to evaluate progress in reaching long-term goals. Also, the bill would allow for the establishment of one or more advisory councils for marine sanctuaries. These councils should provide direct assistance, guidance, and vision for sanctuary designations and management.

Before closing, I would also like to express my gratitude and appreciation to the distinguished committee chairman and cosponsor, Senator HOLLINGS, and to the estimable ranking minority member, Senator DANFORTH, as well as to fellow cosponsor, the esteemed Senator from Alaska, Senator STEVENS, for their continued leadership and support for the marine sanctuaries program. I would also like to commend our colleagues in the House, especially Mr. HERTEL, Mr. STUDDS, Mr. PANETTA, and our departed colleague Mr. Jones, for their cooperation and truly superb work in reaching this agreement.

Finally, we cannot ignore, as we are often prone to do, the invaluable assistance of their staffs, assistance that was essential in guiding this bill through the legislative process. I want to extend my sincere appreciation to them for their perseverance and dedication.

The National Marine Sanctuary Program preserves, protects, and manages for future generations invaluable marine environments that are part of our common natural heritage. I am pleased that we are considering this bill to reauthorize this program.

Mr. HOLLINGS. Mr. President, I rise in strong support of H.R. 5617, which includes several important provisions.

First, it authorizes appropriations and manning levels for Coast Guard activities in fiscal year 1993. The bill also includes other important provisions which provide for a sound investment in the future of the Coast Guard.

The bill before us today provides the core authorization for the Coast Guard for fiscal year 1993. The authorization totals $3.817 billion for 1993, which reflects a modest increase of 6 percent from the fiscal year 1992 appropriated level. This small increase clearly is an inaccurate reflection of the expanding duties of this branch of the Nation's armed services. From its 1790 mandate of prevention of smuggling and collection of tax revenues, the duties of the Coast Guard have expanded, in recent years to include search and rescue, fisheries law enforcement, drug interdiction, aids to navigation, marine safety, and marine environmental protection. In addition, during the past few years, the Coast Guard has been on the front line of highly publicized events such as the clean up of the *Exxon Valdez*, the blockade of Iraq, and the Haitian interdiction. The bill provides the bare-bones authorization needed for the Coast Guard to perform these many important functions.

It also provides authorizations for general Coast Guard operations, as well as for some important specific initiatives. Among the general Coast Guard expenses authorized under the bill are funding for Coast Guard operating expenses and capital funding projects. The first of these accounts allows the Coast Guard to pay for operation and maintenance of its vessels and aircraft. The second provides money for acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft. General authorizations are also included to provide affordable housing, medical care, training, family services, and recreational facilities for the men and women of the Coast Guard. Coast Guard retirement pay for fiscal year 1993, which provides money to retired military personnel of the Coast Guard, the Coast Guard Reserve, and the former Lighthouse Service is authorized in this section of the bill. Finally, general authorizations are provided to fund research and development, bridge alteration, and for a 42-percent increase in funding for environmental compliance and restoration activities.

Under the category of specific authorizations, the bill provides an authorization for a number of important Coast Guard projects. To assist the Coast Guard in its efforts to improve oilspill response, specific authorizations are provided for prepositioned oilspill cleanup equipment in Houston, TX, and Portland, OR, and for acquisition of oilspill training simulators for Texas and Massachusetts. The bill also authorizes funding to improve Coast Guard shore facilities at Cape Hatteras in North Carolina.

In addition, it contains provisions which amend existing law applicable to the Coast Guard. These provisions address specific problems related to payment of civil penalties, eligibility for special pay in the Coast Guard, Coast Guard inspection and enforcement authority with respect to foreign passenger vessels, and reimbursement for overseas inspections and examinations of foreign vessels. H.R. 5055 also contains provisions to improve Coast Guard recycling programs, phone access, medical benefits, and inshore vessel traffic regulation.

Furthermore, this legislation authorizes funding for the National Marine Sanctuaries Program for fiscal years 1993 through 1996 and makes certain improvements to the overall program.

This year marks the 20th anniversary of title III of the Marine Protection, Research, and Sanctuaries Act of 1972 [MPRSA]. As we consider the reauthorization legislation before us today, I remind my colleagues of some of the important successes of this program. During recent years, the National Marine Sanctuaries Program has grown in size and stature. Three new sanctuaries have been added to the program in the past 3 years, and at least six additional sites are under consideration for designation. The National Marine Sanctuarites Program is being called upon to meet greater challenges, such as the development of a management plan for the 2,600-square mile Florida Keys National Marine Sanctuary. Clearly, from its relative obscurity in the early 1980's, the National Marine Sanctuaries Program has become a well-recognized and critical key to protecting Marine ecosystems.

This reauthorization package has been tailored to encourage the current momentum of the National Marine Sanctuaries Program, particularly in the designation or study of new sites required by the 1998 amendments to the MPRSA. While providing some fine-tuning, the legislation essentially would provide the Marine Sanctuaries Program with 4 years to take the next important step of developing and implementing management plans in its new and existing sanctuaries. The legislation before us today also provides an increase in authorized funding commensurate with the increased responsibilities of the program.

The legislation also addresses certain needs in existing sanctuaries, and also finalizes designation of several new marine sanctuaries. Under this bill, three new sanctuaries would be added to the National Marine Sanctuaries Program. The Stellwagen Bank National Marine Sanctuary, which is an area of unusual biological productivity and diversity, would be designated off the coast of Massachusetts. The Monterey Bay National Marine Sanctuary, which has been under consideration for some time now, would be designated off the central coast of California. And, finally, the Hawaiian Islands Humpback National Marine Sanctuary, established for the purposes of protecting the Hawaiian stock of the endangered humpback whale, also would be designated.

I am pleased to support inclusion of these important and unique areas in our National Marine Sanctuaries Program. I urge my Senate colleagues to support these new designations, and to approve this overall reauthorization legislation which will help to ensure our Nation's continued efforts to preserve our precious marine environment.

In addition, this bill would amend the Marine Mammal Protection Act of 1972 to improve and provide a statutory basis for the existing marine mammal health and stranding response activities of the National Oceanic and Atmospheric Administration [NOAA].

Each year, NOAA volunteers respond to an average of 2,000 marine mammal strandings along the coast of the United States. Although these volunteer

networks have performed a vital service for some 20 years, recent events, such as the 1987–88 bottlenose dolphin die-off and the 1989 *Exxon Valdez* oil spill, have highlighted inadequacies in the current Federal system for responding to large-scale mortality events. The bill would mandate contingency planning to improve immediate response to large-scale marine mammal stranding events. The legislation would also require standardization of tissue collection and archiving procedures, which would clearly improve our ability to discern the causes of such events. Further, under this legislation, NOAA would be required to set guidelines for the release of rehabilitated marine mammals to the wild.

Mr. President, I urge my colleagues to support this important legislation.

Mr. BREAUX. Mr. President, I rise in support of H.R. 5617, the Oceans Act of 1992. The bill has a provision that is intended to protect the waterways of the United States from serious environmental problems resulting from abandoned barges.

Abandoned barges have been used by so-called midnight dumpers for the disposal of hazardous wastes and waste oils. The General Accounting Office [GAO] has found that there are over 1,300 known abandoned vessels along U.S. waterways. They have been the cause of numerous water pollution incidents, including many incidents in my home State of Louisiana, that have cost the Federal Government millions of dollars in cleanup expenses. This amendment is designed to give the Coast Guard the authority to deal with these potential sources of pollution.

The provision prohibits owners or operators of barges over 100 gross tons from abandoning them on the navigable waters of the United States. In addition, it directs the Secretary of Transportation to fine barge owners or operators up to $1,000 for each day that the vessel is deemed to be abandoned. The Secretary is also directed to require the owner or operator to remove the abandoned barges for which they are responsible. If the owner or operator does not remove the barge as specified, the Secretary is authorized to have it removed by a third party at the expense of the violating party.

This provision regarding abandoned barges is essential to the protection of the waterways of Louisiana. I urge its quick passage.

## THE BREAUX-MOYNIHAN AMENDMENT, THE CLEAN VESSEL ACT OF 1992

Mr. BREAUX. Mr. President, I rise to support the Clean Vessel Act of 1992 amendment, which is subtitle "F" of title V in H.R. 5617, the Oceans Act of 1992.

In 1984, I joined with Senator MALCOLM WALLOP to lead the legislative effort to establish the WALLOP-BREAUX trust fund. We developed a team approach, Mr. President, for protecting and expanding opportunities for recreational boaters to enjoy boating and fishing in America's many waterways.

That program is truly one of America's great success stories. Under the authorizing jurisdiction of the Senate Commerce Committee, the management of the National Oceanic and Atmospheric Administration and the U.S. Coast Guard, Wallop-Breaux's fisheries research and fish habitat improvement, and boating safety and aquatic resource education programs have flourished. The fund collects taxes from boaters and fishermen, more than $240 million a year, to be used at the Federal, State and local level to benefit millions of users of our waterways.

I attribute much of Wallop-Breaux's success to this team approach to enhancing safe and healthy recreational uses of our waterways. The Federal Government, State governments, and the boaters are partners in this effort to protect and develop America's waters.

The time has come, Mr. President, to prepare for realigning the responsibilities of Wallop-Breaux team members. Due to budgetary pressures we see that the Coast Guard is forced into becoming a decreasing presence in State coastal waters. This is occurring at the same time that our recreational boater population is growing.

To deflect this threat to boating safety, the amendment offers an increased share of Wallop-Breaux funding that will flow to the States for boating safety programs. As a result, the States will be in position to upgrade in-State efforts to encourage safe boating.

Today, I am also calling on this successful collaboration to join in solving the increasingly vexatious problem of recreational boaters having to discharge raw sewage in navigable waters of the United States. We know that such practices are in violation of U.S. law.

It is occurring, however, because there are not enough pumpout stations; there are few accessible disposals for dumping such wastes at public and private marinas around the country.

The amendment offers Wallop-Breaux merit grants to States that agree to study the extent of the problem in their jurisdictional waters. States are then encouraged to develop plans for any construction or renovation of pumpout stations and waste reception facilities that are necessary to meet the needs of an increasing boating population.

Mr. President, in accepting this amendment the Senate Commerce Committee is accepting what has proven to be an effective approach to protecting our waterways for safe boating; Once again Chairman HOLLINGS has demonstrated his high level of support for Wallop-Breaux fund programs: in passing this amendment we are eradicating a potentially serious threat to safe boating in the waterways of the United States.

I thank the committee and my colleagues in the Senate for their acceptance of this amendment.

So the bill (H.R. 5617) was deemed read the third time and passed.

## THE JUSTICE IMPROVEMENTS BILL

Mr. BRADLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3349, the justice improvements bill, introduced earlier today by Senators BIDEN and THURMOND; that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table; and that statements with respect to passage of this legislation appear at an appropriate place in the RECORD.

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

The bill (S. 3349) was deemed read the third time and passed, as follows:

S. 3349

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

### TITLE I—CHILD PROTECTION

**SEC. 101. SHORT TITLE.**

This title may be cited as the "National Child Protection Act of 1992".

**SEC. 102. PURPOSES.**

The purposes of this title are—

(1) to establish a national system through which child care organizations may obtain the benefit of a nationwide criminal background check to determine if persons who are current or prospective child care providers have committed child abuse crimes or other serious crimes;

(2) to establish minimum criteria for State laws and procedures that permit child care organizations to obtain the benefit of nationwide criminal background checks to determine if persons who are current or prospective child care providers have committed child abuse crimes or other serious crimes;

(3) to provide procedural rights for persons who are subject to nationwide criminal background checks, including procedures to challenge and correct inaccurate background check information;

(4) to establish a national system for the reporting by the States of child abuse crime information; and

(5) to document and study the problem of child abuse by providing statistical and informational data on child abuse and related crimes to the Department of Justice and other interested parties.

**SEC. 103. DEFINITIONS.**

For the purposes of this title—

(1) the term "authorized agency" means a division or office of a State designated by a State to report, receive, or disseminate information under this title;

(2) the term "background check crime" means a child abuse crime, murder, manslaughter, aggravated assault, kidnapping, arson, sexual assault, domestic violence, incest, indecent exposure, prostitution, promotion of prostitution, and a felony offense

involving the use or distribution of a controlled substance;

(3) the term "child" means a person who is a child for purposes of the criminal child abuse law of a State;

(4) the term "child abuse" means the physical or mental injury, sexual abuse or exploitation, neglectful treatment, negligent treatment, or maltreatment of a child by any person in violation of the criminal child abuse laws of a State, but does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty;

(5) the term "child abuse crime" means a crime committed under any law of a State that establishes criminal penalties for the commission of child abuse by a parent or other family member of a child or by any other person;

(6) the term "child abuse crime information" means the following facts concerning a person who is under indictment for, or has been convicted of, a child abuse crime: full name, race, sex, date of birth, height, weight, a brief description of the child abuse crime or offenses for which the person has been arrested or is under indictment or has been convicted, the disposition of the charge, and any other information that the Attorney General determines may be useful in identifying persons arrested for, under indictment for, or convicted of, a child abuse crime;

(7) the term "child care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children;

(8) the term "domestic violence" means a felony or misdemeanor involving the use or threatened use of force by—

(A) a present or former spouse of the victim;

(B) a person with whom the victim shares a child in common;

(C) a person who is cohabiting with or has cohabited with the victim as a spouse; or

(D) any person defined as a spouse of the victim under the domestic or family violence laws of a State;

(9) the term "exploitation" means child pornography and child prostitution;

(10) the term "mental injury" means harm to a child's psychological or intellectual functioning, which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors or by a change in behavior, emotional response, or cognition;

(11) the term "national criminal background check system" means the system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

(12) the term "negligent treatment" means the failure to provide, for a reason other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of a child;

(13) the term "physical injury" includes lacerations, fractured bones, burns, internal injuries, severe bruising, and serious bodily harm;

(14) the term "provider" means—

(A) a person who—

(i) is employed by or volunteers with a qualified entity;

(ii) who owns or operates a qualified entity; or

(iii) who has or may have unsupervised access to a child to whom the qualified entity provides child care; and

(B) a person who—

(i) seeks to be employed by or volunteer with a qualified entity;

(ii) seeks to own or operate a qualified entity; or

(iii) seeks to have or may have unsupervised access to a child to whom the qualified entity provides child care;

(15) the term "qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services;

(16) the term "sex crime" means an act of sexual abuse that is a criminal act;

(17) the term "sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children or incest with children; and

(18) the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

**SEC. 104. REPORTING BY THE STATES.**

(a) IN GENERAL.—An authorized criminal justice agency of a State shall report child abuse crime information to, or index child abuse crime information in, the national criminal background check system.

(b) PROVISION OF STATE CHILD ABUSE CRIME RECORDS THROUGH THE NATIONAL CRIMINAL BACKGROUND CHECK SYSTEM.—(1) Not later than 180 days after the date of enactment of this Act, the Attorney General shall—

(A) investigate the criminal records of each State and determine for each State a timetable by which the State should be able to provide child abuse crime records on an on-line capacity basis through the national criminal background check system;

(B) establish guidelines for the reporting or indexing of child abuse crime information, including guidelines relating to the format, content, and accuracy of child abuse crime information and other procedures for carrying out this Act; and

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of the State timetable that the State—

(A) achieve, by not later than the date that is 3 years after the date of enactment of this Act, at least 80 percent currency of final case dispositions in computerized criminal history files for all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years;

(B) continue to maintain at least 80 percent currency of final case dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and

(C) take steps to achieve full disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

(c) LIAISON.—An authorized agency of a State shall maintain close liaison with the National Center on Child Abuse and Neglect, the National Center for Missing and Exploited Children, and the National Center for the Prosecution of Child Abuse for the exchange of technical assistance in cases of child abuse.

(d) ANNUAL SUMMARY.—(1) The Attorney General shall publish an annual statistical summary of the child abuse crime information reported under this title.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may reveal the identity of any particular victim or alleged violator.

(e) ANNUAL REPORT.—The Attorney General shall publish an annual summary of each State's progress in reporting child abuse crime information to the national criminal background check system.

(f) STUDY OF CHILD ABUSE OFFENDERS.—(1) Not later than 180 days after the date of enactment of this Act, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall begin a study based on a statistically significant sample of convicted child abuse offenders and other relevant information to determine—

(A) the percentage of convicted child abuse offenders who have more than 1 conviction for an offense involving child abuse;

(B) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than 1 State;

(C) whether there are crimes or classes of crimes, in addition to those defined as background check crimes in section 3, that are indicative of a potential to abuse children; and

(D) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes.

(2) Not later than 1 year after the date of enactment of this Act, the Administrator shall submit a report to the Chairman of the Committee on the Judiciary of the Senate and the Chairman of the Committee on the Judiciary of the House of Representatives containing a description of and a summary of the results of the study conducted pursuant to paragraph (1).

**SEC. 105. BACKGROUND CHECKS.**

(a) IN GENERAL.—(1) A State may have in effect procedures (established by or under State statute or regulation) to permit a qualified entity to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether there is a report that a provider is under indictment for, or has been convicted of, a background check crime.

(2) The authorized agency shall access and review State and Federal records of background check crimes through the national criminal background check system and shall respond promptly to the inquiry.

(b) GUIDELINES.—(1) The Attorney General shall establish guidelines for State background check procedures established under subsection (a), which guidelines shall include the requirements and protections of this title.

(2) The guidelines established under paragraph (1) shall require—

(A) that no qualified entity may request a background check of a provider under subsection (a) unless the provider first completes and signs a statement that—

(i) contains the name, address, and date of birth appearing on a valid identification document (as defined by section 1028(d)(1) of title 18, United States Code) of the provider;

(ii) the provider is not under indictment for, and has not been convicted of, a background check crime and, if the provider is under indictment for or has been convicted of a background check crime, contains a description of the crime and the particulars of the indictment or conviction;

(iii) notifies the provider that the entity may request a background check under subsection (a);

(iv) notifies the provider of the provider's rights under subparagraph (B); and

(v) notifies the provider that prior to the receipt of the background check the qualified entity may choose to deny the provider unsupervised access to a child to whom the qualified entity provides child care;

(B) that each State establish procedures under which a provider who is the subject of a background check under subsection (a) is entitled—

(i) to obtain a copy of any background check report and any record that forms the basis for any such report; and

(ii) to challenge the accuracy and completeness of any information contained in any such report or record and obtain a prompt determination from an authorized agency as to the validity of such challenge;

(C) that an authorized agency to which a qualified entity has provided notice pursuant to subsection (a) make reasonable efforts to complete research in whatever State and local recordkeeping systems are available and in the national criminal background check system and respond to the qualified entity within 15 business days;

(D) that the response of an authorized agency to an inquiry pursuant to subsection (a) inform the qualified entity that the background check pursuant to this section—

(i) may not reflect all indictments or convictions for a background check crime; and

(ii) may not be the sole basis for determining the fitness of a provider;

(E) that the response of an authorized agency to an inquiry pursuant to subsection (a) be limited to the conviction or pending indictment information reasonably required to accomplish the purposes of this title;

(F) that the qualified entity may choose to deny the provider unsupervised access to a child to whom the qualified entity provides child care on the basis of a background check under subsection (a) until the provider has obtained a determination as to the validity of any challenge under subparagraph (B) or waived the right to make such challenge; and

(G) that each State establish procedures to ensure that any background check under subsection (a) and the results thereof shall be requested by and provided only to—

(i) qualified entities identified by States;

(ii) authorized representatives of a qualified entity who have a need to know such information;

(iii) the provider who is the subject of a background check;

(iv) law enforcement authorities; or

(v) pursuant to the direction of a court of law;

(H) that background check information conveyed to a qualified entity pursuant to subsection (a) shall not be conveyed to any person except as provided under subparagraph (G);

(I) that an authorized agency shall not be liable in an action at law for damages for failure to prevent a qualified entity from taking action adverse to a provider on the basis of a background check;

(J) that a State employee or a political subdivision of a State or employee thereof responsible for providing information to the national criminal background check system shall not be liable in an action at law for damages for failure to prevent a qualified entity from taking action adverse to a provider on the basis a background check; and

(K) that a State or Federal provider of criminal history records, and any employee thereof, shall not be liable in an action at law for damages for failure to prevent a qualified entity from taking action adverse to a provider on the basis of a criminal background check, or due to a criminal history record's being incomplete.

(c) EQUIVALENT PROCEDURES.—(1) Notwithstanding anything to the contrary in this section, the Attorney General may certify that a State licensing or certification procedure that differs from the procedures described in subsections (a) and (b) shall be deemed to be the equivalent of such procedures for purposes of this Act, but the procedures described in subsections (a) and (b) shall continue to apply to those qualified entities, providers, and background check crimes that are not governed by or included within the State licensing or certification procedure.

(2) The Attorney General shall by regulation establish criteria for certifications under this subsection. Such criteria shall include a finding by the Attorney General that the State licensing or certification procedure accomplishes the purposes of this Act and incorporates a nationwide review of State and Federal records of background check offenses through the national criminal background check system.

(d) REGULATIONS.—(1) The Attorney General may by regulation prescribe such other measures as may be required to carry out the purposes of this title, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping.

(2) The Attorney General shall, to the maximum extent possible, encourage the use of the best technology available in conducting background checks.

**SEC. 106. FUNDING FOR IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.**

(a) USE OF FORMULA GRANTS FOR IMPROVEMENTS IN STATE RECORDS AND SYSTEMS.—Section 509(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(A) in paragraph (2) by striking "and" after the semicolon;

(B) in paragraph (3) by striking the period and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(4) the improvement of State record systems and the sharing of all of the records described in paragraphs (1), (2), and (3) and the records required by the Attorney General under section 914 of the National Child Protection Act of 1991 with the Attorney General for the purpose of implementing the National Child Protection Act of 1991.".

(b) ADDITIONAL FUNDING GRANTS FOR THE IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.—(1) The Attorney General shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used—

(A) for the computerization of criminal history files for the purposes of this title;

(B) for the improvement of existing computerized criminal history files for the purposes of this title;

(C) to improve accessibility to the national criminal background check system for the purposes of this title; and

(D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history record in, the national criminal background check system for the purposes of this title.

(2) There are authorized to be appropriated for grants under paragraph (1) a total of $20,000,000 for fiscal years 1992, 1993, and 1994.

(c) WITHHOLDING STATE FUNDS.—Effective 1 year after the date of enactment of this Act, for a fiscal year the Attorney General may reduce by up to 25 percent the amount allocated that exceeds the allocation to a State for fiscal year 1993 under title I of the Omnibus Crime Control and Safe Streets Act of 1968 of a State that is not in compliance with the timetable established for that State under section 104 of this Act.

## TITLE II—NOTIFICATION OF RELEASE OF PRISONERS

**SEC. 201. NOTIFICATION OF RELEASE OF PRISONERS.**

Section 4042 of title 18, United States Code, is amended—

(1) by striking "The Bureau" and inserting "(a) IN GENERAL.—The Bureau";

(2) by striking "This section" and inserting "(c) Application of Section.—This section";

(3) in paragraph (4) of subsection (a), as designated by paragraph (1) of this subsection—

(A) by striking "Provide" and inserting "provide"; and

(B) by striking the period at the end and inserting "; and";

(4) by inserting after paragraph (4) of subsection (a), as designated by paragraph (1) of this subsection, the following new paragraph:

"(5) provide notice of release of prisoners in accordance with subsection (b).''; and

(5) by inserting after subsection (a), as designated by paragraph (1) of this subsection, the following new subsection:

"(b) NOTICE OF RELEASE OF PRISONERS.—(1) Except in the case of a prisoner being protected under chapter 224, the Bureau of Prisons shall, at least 5 days prior to the date on which a prisoner described in paragraph (3) is to be released on supervised release, or, in the case of a prisoner on supervised release, at least 5 days prior to the date on which the prisoner changes residence to a new jurisdiction, cause written notice of the release or change of residence to be made to the chief law enforcement officer of the State and of the local jurisdiction in which the prisoner will reside.

"(2) A notice under paragraph (1) shall disclose—

"(A) the prisoner's name;

"(B) the prisoner's criminal history, including a description of the offense of which the prisoner was convicted; and

"(C) any restrictions on conduct or other conditions to the release of the prisoner that are imposed by law, the sentencing court, or the Bureau of Prisons or any other Federal agency.

"(3) A prisoner is described in this paragraph if the prisoner was convicted of—

"(A) a drug trafficking crime, as that term is defined in section 924(c)(2); or

"(B) a crime of violence, as that term is defined in section 924(c)(3).

"(4) The notice provided under this section shall be used solely for law enforcement purposes.".

**SEC. 202. APPLICATION TO PRISONERS TO WHICH PRIOR LAW APPLIES.**

In the case of a prisoner convicted of an offense committed prior to November 1, 1987, the reference to supervised release in section 4042(b) of title 18, United States Code, shall be deemed to be a reference to probation or parole.

## TITLE III—BAIL POSTING REPORTING

**SEC. 301. SHORT TITLE.**

This title may be cited as the "Illegal Drug Profits Act of 1991".

**SEC. 302. REQUIRED REPORTING BY CRIMINAL COURT CLERKS.**

(a) IN GENERAL.—Each clerk of a Federal or State criminal court shall report to the Internal Revenue Service, in a form and manner as prescribed by the Secretary of the Treasury, the name and taxpayer identification number of—

(1) any individual charged with any criminal offense who posts cash bail, or on whose behalf cash bail is posted, in an amount exceeding $10,000, and

(2) any individual or entity (other than a licensed bail bonding individual or entity) posting such cash bail for or on behalf of such individual.

(b) CRIMINAL OFFENSES.—For purposes of subsection (a), the term "criminal offense" means—

(1) any Federal criminal offense involving a controlled substance,

(2) racketeering (as defined in section 1951, 1952, or 1955 of title 18, United States Code),

(3) money laundering (as defined in section 1956 or 1957 of title 18, United States Code), or

(4) any violation of State criminal law involving offenses substantially similar to the offenses described in the preceding paragraphs.

(c) COPY TO PROSECUTORS.—Each clerk shall submit a copy of each report of cash bail described in subsection (a) to—

(1) the office of the United States Attorney, and

(2) the office of the local prosecuting attorney, for the jurisdiction in which the defendant resides (and the jurisdiction in which the criminal offense occurred, if different).

(d) REGULATIONS.—The Secretary of the Treasury shall promulgate such regulations as are necessary within 90 days of the enactment of this title.

(e) EFFECTIVE DATE.—This section shall become effective 60 days after the date of the promulgation of regulations under subsection (c).

## TITLE IV—INSURANCE FRAUD

**SEC. 401. CRIMES BY OR AFFECTING PERSONS ENGAGED IN THE BUSINESS OF INSURANCE WHOSE ACTIVITIES AFFECT INTERSTATE COMMERCE.**

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

**"§ 1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce**

"(a)(1) Whoever is engaged in the business of insurance whose activities affect interstate commerce and, with the intent to deceive, knowingly makes any false material statement or report or willfully and materially overvalues any land, property or security—

"(A) in connection with any financial reports or documents presented to any insurance regulatory official or agency or an agent or examiner appointed by such official or agency to examine the affairs of such person, and

"(B) for the purpose of influencing the actions of such official or agency or such an appointed agent or examiner,

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under paragraph (1) is a fine as established under this title or imprisonment for not more than 10 years, or both, except that the term of imprisonment shall be not more than 15 years if the statement or report or overvaluing of land, property, or security jeopardizes the safety and soundness of an insurer.

"(b)(1) Whoever—

"(A) acting as, or being an officer, director, agent, or employee of, any person engaged in the business of insurance whose activities affect interstate commerce, or

"(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business,

willfully embezzles, abstracts, purloins, or misappropriates any of the moneys, funds, premiums, credits, or other property of such person so engaged shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if such embezzlement, abstraction, purloining, or misappropriation described in paragraph (1) jeopardizes the safety and soundness of an insurer, such imprisonment shall be not more than 15 years. If the amount or value so embezzled, abstracted, purloined, or misappropriated does not exceed $5,000, whoever violates paragraph (1) shall be fined as provided in this title or imprisoned not more than one year, or both.

"(c)(1) Whoever is engaged in the business of insurance and whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business, knowingly makes any false entry of material fact in any book, report, or statement of such person engaged in the business of insurance with intent to—

"(A) deceive any person about the financial condition or solvency of such business, or

"(B) deceive any officer, employee, or agent of such person engaged in the business of insurance, any insurance regulatory official or agency, or any agent or examiner appointed by such official or agency to examine the affairs of such person about the financial condition or solvency of such business,

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if the false entry in any book, report, or statement of such person jeopardizes the safety and soundness of an insurer, such imprisonment shall be not more than 15 years.

"(d) Whoever, by threats or force or by any threatening letter or communication, corruptly influences, obstructs, or impedes or endeavors corruptly to influence, obstruct, or impede the due and proper administration of the law under which any proceeding involving the business of insurance whose activities affect interstate commerce is pending before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of a person engaged in the business of insurance whose activities affect interstate commerce, shall be fined as provided in this title or imprisoned not more than 10 years, or both.

"(e)(1)(A) Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

"(B) Any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

"(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

"(f) As used in this section—

"(1) the term 'business of insurance' means—

"(A) the writing of insurance, or

"(B) the reinsuring of risks,

by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons;

"(2) the term 'insurer' means any entity the business activity of which is the writing of insurance or the reinsuring of risks or any receiver or similar official or any liquidating agent for such an entity, in his or her capacity as such, and includes any person who acts as, or is, an officer, director, agent, or employee of that business;

"(3) the term 'interstate commerce' means—

"(A) commerce within the District of Columbia, or any territory or possession of the United States;

"(B) all commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof;

"(C) all commerce between points within the same State through any place outside such State; or

"(D) all other commerce over which the United States has jurisdiction; and

"(4) the term 'State' includes any State, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

**"§ 1034. Civil penalties and injunctions for violations of section 1033**

"(a) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 1033 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. If the offense has contributed to the decision of a court of appropriate jurisdiction to issue an order directing the conservation, rehabilitation, or liquidation of an insurer, such penalty shall be remitted to the regulatory official for the benefit of the policyholders, claimants, and creditors of such insurer. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

"(b) If the Attorney General has reason to believe that a person is engaged in conduct constituting an offense under section 1033, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging

in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of such title is amended by adding at the end the following new item:

"1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce.

"1034. Civil penalties and injunctions for violations of section 1033.".

(c) MISCELLANEOUS AMENDMENTS TO TITLE 18, UNITED STATES CODE.—(1) TAMPERING WITH INSURANCE REGULATORY PROCEEDINGS.—Section 1515(a)(1) of title 18, United States Code, is amended—

(A) by striking "or" at the end of subparagraph (B);

(B) by inserting "or" at the end of subparagraph (C); and

(C) by adding at the end the following new subparagraph:

"(D) a proceeding involving the business of insurance whose activities affect interstate commerce before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of any person engaged in the business of insurance whose activities affect interstate commerce;".

(2) LIMITATIONS.—Section 3293 of such title is amended by inserting "1033," after "1014,".

(3) OBSTRUCTION OF CRIMINAL INVESTIGATIONS.—Section 1510 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(d)(1) Whoever—

"(A) acting as, or being, an officer, director, agent or employee of a person engaged in the business of insurance whose activities affect interstate commerce, or

"(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business,

with intent to obstruct a judicial proceeding, directly or indirectly notifies any other person about the existence or contents of a subpoena for records of that person engaged in such business or information that has been furnished to a Federal grand jury in response to that subpoena, shall be fined as provided by this title or imprisoned not more than 5 years, or both.

"(2) As used in paragraph (1), the term 'subpoena for records' means a Federal grand jury subpoena for records that has been served relating to a violation of, or a conspiracy to violate, section 1033 of this title.".

## TITLE V—ART THEFT

**SEC. 501. THEFTS OF MAJOR ART WORKS.**

(a) OFFENSE.—Chapter 31 of title 18, United States Code, is amended by adding at the end thereof the following:

**"§ 668. Theft of a major art work**

"(a) Whoever steals or obtains by fraud any object of cultural heritage held in a museum, or knowing the same to have been stolen, converted, or taken by fraud receives, conceals, stores, sells, exhibits, or disposes of such goods, shall be fined under this title, imprisoned for not more than the maximum term of imprisonment for a class C felony, or both.

"(b) Notwithstanding section 3282 of this title, the statute of limitations for an offense under this section shall be 20 years.

"(c) The property of a person convicted of an offense under this section shall be subject to criminal forfeiture under section 982 of this title.

"(d) For purposes of this section—

"(1) The term 'museum' means an organized and permanent institution, situated in the United States, essentially educational or aesthetic in purpose with professional staff, which owns and utilizes tangible objects, cares for them, and exhibits them to the public on some regularly scheduled period.

"(2) The term 'stolen object of cultural heritage' means an object stolen from a museum after the effective date of this title reported to law enforcement authorities as stolen and registered with the International Foundation for Art Research, or any equivalent registry.".

(b) CHAPTER ANALYSIS.—The chapter analysis for chapter 31 of title 18, United States Code, is amended by adding at the end thereof the following:

"668. Theft of a major art work.".

## TITLE VI—TRAFFICKING IN COUNTERFEIT GOODS

**SEC. 601. INCREASED PENALTIES FOR TRAFFICKING IN COUNTERFEIT GOODS AND SERVICES.**

(a) IN GENERAL.—Section 2320(a) of title 18, United States Code, is amended—

(1) in the first sentence by striking "imprisoned not more than five years" and inserting "imprisoned not more than 10 years"; and

(2) in the second sentence by striking "imprisoned not more than fifteen years" and inserting "imprisoned not more than 20 years".

(b) LAUNDERING MONETARY INSTRUMENTS.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking "or section 2319 (relating to copyright infringement)," and inserting "section 2319 (relating to copyright infringement), or section 2320 (relating to trafficking in counterfeit goods and services),".

## TITLE VII—CRIME VICTIMS

**SEC. 701. SHORT TITLE.**

This title may be cited as the "Victims' Rights and Restitution Act of 1992".

**SEC. 702. AVAILABILITY OF FUNDS.**

Section 1402 of the Victims of Crime Act of 1984, as amended, is amended—

(a) by striking subsection (c) and redesignating (d), (e), (f) and (g) as subsections (c), (d), (e), and (f), respective; and

(b) by adding a new subsection (c) to read as follows:

"(c) Availability of funds for expenditure; grant program percentages

"(1) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation.

"(2) The Fund shall be available as follows:

"(A) The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code.

"(B) Of the first $100,000,000 deposited in the Fund in a particular fiscal year—

"(i) 49.5 percent shall be available for grants under section 10602 of this title;

"(ii) 45 percent shall be available for grants under section 10603(a) of this title;

"(iii) 1 percent shall be available for grants under section 10603(c) of this title; and

"(iv) 4.5 percent shall be available for grants as provided in section 10603a of this title.

"(C) The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants as provided in section 10603a of this title.

"(D) The next $4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 10603(a) of this title.

"(E) Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under subparagraphs (A) through (D) shall be available as follows:

"(i) 47.5 percent shall be available for grants under section 10602 of this title;

"(ii) 47.5 percent shall be available for grants under section 10603(a) of this title; and

"(iii) 5 percent shall be available for grants under section 10603(c)(1)(B) of this title.".

## TITLE VIII—SENTENCING PROVISIONS

**SEC. 801. IMPOSITION OF SENTENCE.**

Section 3553(a)(4) of title 18, United States Code, is amended to read as follows:

"(4) the kinds of sentence and the sentencing range established for—

"(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that are in effect on the date the defendant is sentenced; or

"(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code;".

**SEC. 802. TECHNICAL AMENDMENT TO MANDATORY CONDITIONS OF PROBATION.**

Section 3563(a)(3) of title 18, United States Code, is amended by striking "possess illegal controlled substances" and inserting "unlawfully possess a controlled substance".

**SEC. 803. REVOCATION OF PROBATION.**

(a) IN GENERAL.—Section 3565(a) of title 18, United States Code, is amended—

(1) in paragraph (2) by striking "impose any other sentence that was available under subchapter A at the time of the initial sentencing" and inserting "resentence the defendant under subchapter A"; and

(2) by striking the last sentence.

(b) MANDATORY REVOCATION.—Section 3565(b) of title 18, United States Code, is amended to read as follows:

"(b) MANDATORY REVOCATION FOR POSSESSION OF CONTROLLED SUBSTANCE OR FIREARM OR REFUSAL TO COOPERATE IN DRUG TESTING.—If the defendant—

"(1) possesses a controlled substance in violation of the condition set forth in section 3563(a)(3);

"(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of probation prohibiting the defendant from possessing a firearm; or

"(3) refuses to cooperate in drug testing, thereby violating the condition imposed by section 3563(a)(4),

the court shall revoke the sentence of probation and resentence the defendant under subchapter A to a sentence that includes a term of imprisonment.".

**SEC. 804. SUPERVISED RELEASE AFTER IMPRISONMENT.**

Section 3583 of title 18, United States Code, is amended—

(1) in subsection (d), by striking "possess illegal controlled substances" and inserting "unlawfully possess a controlled substance";

(2) in subsection (e)—

(A) by striking "person" each place such term appears in such subsection and inserting "defendant"; and

(B) by amending paragraph (3) to read as follows:

"(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or"; and

(3) by striking subsection (g) and inserting the following:

"(g) MANDATORY REVOCATION FOR POSSESSION OF CONTROLLED SUBSTANCE OR FIREARM OR FOR REFUSAL TO COOPERATE WITH DRUG TESTING.—If the defendant—

"(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

"(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm; or

"(3) refuses to cooperate in drug testing imposed as a condition of supervised release;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

"(h) SUPERVISED RELEASE FOLLOWING REVOCATION.—When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized under subsection (e)(3), the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

"(i) DELAYED REVOCATION.—The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.".

## TITLE IX—SENTENCING AND MAGISTRATES AMENDMENTS

### SEC. 901. AUTHORIZATION OF PROBATION FOR PETTY OFFENSES IN CERTAIN CASES.

Section 3561(a)(3) of title 18, United States Code, is amended by adding at the end: "However, this paragraph does not preclude the imposition of a sentence to a term of probation for a petty offense if the defendant has been sentenced to a term of imprisonment at the same time for another such offense.".

### SEC. 902. TRIAL BY A MAGISTRATE IN PETTY OFFENSE CASES.

Section 3401 of title 18, United States Code, is amended—

(1) in subsection (b) by adding "other than a petty offense" after "misdemeanor"; and

(2) in subsection (g) by amending the first sentence to read as follows: "The magistrate judge may, in a petty offense case involving a juvenile, exercise all powers granted to the district court under chapter 403 of this title.".

### SEC. 903. CONFORMING AUTHORITY FOR MAGISTRATES TO REVOKE SUPERVISED RELEASE IN ADDITION TO PROBATION IN MISDEMEANOR CASES IN WHICH THE MAGISTRATE IMPOSED SENTENCE.

Section 3401(d) of title 18, United States Code, is amended by adding at the end the following: "A magistrate judge who has sentenced a person to a term of supervised release shall also have power to revoke or modify the term or conditions of such supervised release.".

## TITLE X—ATTORNEYS' FEES REIMBURSEMENT ACT

### SEC. 1001. AWARDS OF ATTORNEY'S FEES.

Section 526 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(c)(1)(A) A current or former Department of Justice attorney, agent, or employee who supervises an agent who is the subject of a criminal or disciplinary investigation, instituted on or after the date of enactment of this subsection, arising out of acts performed in the discharge of his or her duties in prosecuting or investigating a criminal matter, who is not provided representation under Department of Justice regulations, shall be entitled to reimbursement of reasonable attorney's fees incurred during and as a result of the investigation if the investigation does not result in adverse action against the attorney, agent, or employee.

"(B) A current or former attorney, agent, or employee who supervises an agent employed as or by a Federal public defender who is the subject of a criminal or disciplinary investigation instituted on or after the date of enactment of this subsection, arising out of acts performed in the discharge of his or her duties in defending or investigating a criminal matter in connection with the public defender program, who is not provided representation by a Federal public defender or the Administrative Office of the United States Courts is entitled to reimbursement of reasonable attorney's fees incurred during and as a result of the investigation if the investigation does not result in adverse action against the attorney, agent, or employee.

"(2) For purposes of paragraph (1), an investigation shall be considered not to result in adverse action against an attorney, agent, or employee if—

"(A) in the case of a criminal investigation, the investigation does not result in indictment of, the filing of a criminal complaint against, or the entry of a plea of guilty by the attorney, agent, or supervising employee; and

"(B) in the case of a disciplinary investigation, the investigation does not result in discipline or results in only discipline less serious than a formal letter of reprimand finding actual and specific wrongdoing.

"(3) The Attorney General shall provide notice in writing of the conclusion and result of an investigation described in paragraph (1).

"(4) An attorney, agent, or supervising employee who was the subject of an investigation described in paragraph (1) may waive his or her entitlement to reimbursement of attorney's fees under paragraph (1) as part of a resolution of a criminal or disciplinary investigation.

"(5) An application for attorney fee reimbursement under this subsection shall be made not later than 180 days after the attorney, agent, or employee is notified in writing of the conclusion and result of the investigation.

"(6) Upon receipt of a proper application under this subsection for reimbursement of attorney's fees, the Attorney General and the Director of the Administrative Office of the United States Courts shall award reimbursement for the amount of attorney's fees that are found to have been reasonably incurred by the applicant as a result of an investigation.

"(7) The official making an award under this subsection shall make inquiry into the reasonableness of the amount requested, and shall consider—

"(A) the sufficiency of the documentation accompanying the request;

"(B) the need or justification for the underlying item;

"(C) the reasonableness of the sum requested in light of the nature of the investigation; and

"(D) current rates for equal services in the community in which the investigation took place.

"(8)(A) Reimbursements of attorney's fees ordered under this subsection by the Attorney General shall be paid from the appropriation made by section 1304 of title 31, United States Code.

"(B) Reimbursements of attorney's fees ordered under this Act by the Director of the Administrative Office of the United States Courts shall be paid from appropriations authorized by section 3006A(i) of title 18, United States Code.

"(9) The Attorney General and the Director of the Administrative Office of the United States Courts may delegate their powers and duties under this subsection to an appropriate subordinate.".

## TITLE XI—PRECURSOR CHEMICALS ACT

### SEC. 1101. SHORT TITLE.

This title may be cited as the "Chemical Control Amendments Act of 1992".

### SEC. 1102. DEFINITION AMENDMENTS.

(a) DEFINITIONS.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) in paragraph (33) by striking "any listed precursor chemical or listed essential chemical" and inserting "any list I chemical or any list II chemical";

(2) in paragraph (34)—

(A) by striking "listed precursor chemical" and inserting "list I chemical"; and

(B) by striking "critical to the creation" and inserting "important to the manufacturer";

(3) in paragraph (34) (A), (F), and (H), by inserting ", its esters" before "and";

(4) in paragraph (35)—

(A) by striking "listed essential chemical" and inserting "list II chemical";

(B) by inserting "(other than a list I chemical)" before "specified";

(C) by striking "as a solvent, reagent, or catalyst"; and

(5) in paragraph (38) by inserting "or who acts as a broker or trader for an international transaction involving a listed chemical, a tableting machine, or an encapsulating machine" before the period;

(6) in paragraph (39)(A)—

(A) by striking "importation or exportation of" and inserting "importation, or exportation of, or an international transaction involving shipment of,";

(B) in clause (iii) by inserting "or any category of transaction for a specific listed chemical or chemicals" after "transaction";

(C) by amending clause (iv) to read as follows:

"(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) unless—

"(I)(aa) the drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine and therapeutically insignificant quantities of another active medicinal ingredient; or

"(bb) the Attorney General has determined under section 204 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

"(II) the quantity of ephedrine or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General."; and

(D) in clause (v) by striking the semicolon and inserting "which the Attorney General has by regulation designated as exempt from the application of this title and title II based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered;";

(7) in paragraph (40) by striking "listed precursor chemical or a listed essential chemical" each place it appears and inserting "list I chemical or a list II chemical"; and

(8) by adding at the end the following new paragraphs:

"(43) The term 'international transaction' means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

"(44) The terms 'broker' and 'trader' mean a person that assists in arranging an international transaction in a listed chemical by—

"(A) negotiating contracts;

"(B) serving as an agent or intermediary; or

"(C) bringing together a buyer and seller, buyer, and transporter, or a seller and transporter.".

(b) REMOVAL OF EXEMPTION OF CERTAIN DRUGS.—

(1) PROCEDURE.—Part B of the Controlled Substances Act (21 U.S.C. 811 et seq.) is amended by adding at the end the following new section:

"REMOVAL OF EXEMPTION OF CERTAIN DRUGS

"SEC. 204. (a) REMOVAL OF EXEMPTION.—The Attorney General shall by regulation remove from exemption under section 102(39)(A)(iv)(II) a drug or group of drugs that the Attorney General finds is being diverted to obtain a listed chemical for use in the illicit production of a controlled substance.

"(b) FACTORS TO BE CONSIDERED.—In removing a drug or group of drugs from exemption under subsection (a), the Attorney General shall consider, with respect to a drug or group of drugs that is proposed to be removed from exemption—

"(1) the scope, duration, and significance of the diversion;

"(2) whether the drug or group of drugs is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance; and

"(3) whether the listed chemical can be readily recovered from the drug or group of drugs.

"(c) SPECIFICITY OF DESIGNATION.—The Attorney General shall limit the designation of a drug or a group of drugs removed from exemption under subsection (a) to the most particularly identifiable type of drug or group of drugs for which evidence of diversion exists unless there is evidence, based on the pattern of diversion and other relevant factors, that the diversion will not be limited to that particular drug or group of drugs.

"(d) REINSTATEMENT OF EXEMPTION WITH RESPECT TO PARTICULAR DRUG PRODUCTS.—

"(1) REINSTATEMENT.—On application by a manufacturer of a particular drug product that has been removed from exemption under subsection (a), the Attorney General shall by regulation reinstate the exemption with respect to that particular drug product if the Attorney General determines that the particular drug product is manufactured and distributed in a manner that prevents diversion.

"(2) FACTORS TO BE CONSIDERED.—In deciding whether to reinstate the exemption with respect to a particular drug product under paragraph (1), the Attorney General shall consider—

"(A) the package sizes and manner of packaging of the drug product;

"(B) the manner of distribution and advertising of the drug product;

"(C) evidence of diversion of the drug product;

"(D) any actions taken by the manufacturer to prevent diversion of the drug product; and

"(E) such other factors as are relevant to and consistent with the public health and safety, including the factors described in subsection (b) as applied to the drug product.

"(3) STATUS PENDING APPLICATION FOR REINSTATEMENT.—A transaction involving a particular drug product that is the subject of a bona fide pending application for reinstatement of exemption filed with the Attorney General not later than 60 days after a regulation removing the exemption is issued pursuant to subsection (a) shall not be considered to be a regulated transaction if the transaction occurs during the pendency of the application and, if the Attorney General denies the application, during the period of 60 days following the date on which the Attorney General denies the application, unless—

"(A) the Attorney General has evidence that, applying the factors described in subsection (b) to the drug product, the drug product is being diverted; and

"(B) the Attorney General so notifies the applicant.

"(4) AMENDMENT AND MODIFICATION.—A regulation reinstating an exemption under paragraph (1) may be modified or revoked with respect to a particular drug product upon a finding that—

"(A) applying the factors described in subsection (b) to the drug product, the drug product is being diverted; or

"(B) there is a significant change in the data that led to the issuance of the regulation.".

(2) TECHNICAL AMENDMENT.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236) is amended by adding at the end of the section relating to part B of title II the following new item:

"Sec. 204. Removal of exemption of certain drugs.".

(c) REGULATION OF LISTED CHEMICALS.—Section 310 of the Controlled Substances Act (21 U.S.C. 830) is amended—

(1) in subsection (a)(1)—

(A) by striking "precursor chemical" and inserting "list I chemical"; and

(B) in subparagraph (B) by striking "an essential chemical" and inserting "a list II chemical"; and

(2) in subsection (c)(2)(D) by striking "precursor chemical" and inserting "chemical control".

**SEC. 1103. REGISTRATION REQUIREMENTS.**

(a) RULES AND REGULATIONS.—Section 301 of the Controlled Substances Act (21 U.S.C. 821) is amended by striking the period and inserting "and to the registration and control of regulated persons and of regulated transactions.".

(b) PERSONS REQUIRED TO REGISTER UNDER SECTION 302.—Section 302 of the Controlled Substances Act (21 U.S.C. 822) is amended—

(1) in subsection (a)(1) by inserting "or list I chemical" after "controlled substance" each place it appears;

(2) in subsection (b)—

(A) by inserting "or list I chemicals" after "controlled substances"; and

(B) by inserting "or chemicals" after "such substances";

(3) in subsection (c) by inserting "or list I chemical" after "controlled substance" each place it appears; and

(4) in subsection (e) by inserting "or list I chemicals" after "controlled substances".

(c) REGISTRATION REQUIREMENTS UNDER SECTION 303.—Section 303 of the Controlled Substances Act (21 U.S.C. 823) is amended by adding at the end the following new subsection:

"(h) The Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the distribution of a drug product that is exempted under section 102(39)(A)(iv). In determining the public interest for the purposes of this subsection, the Attorney General shall consider—

"(1) maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

"(2) compliance by the applicant with applicable Federal, State and local law;

"(3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

"(4) any past experience of the applicant in the manufacture and distribution of chemicals; and

"(5) such other factors as are relevant to and consistent with the public health and safety.".

(d) DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION.—Section 304 of the Controlled Substances Act (21 U.S.C. 824) is amended—

(1) in subsection (a)—

(A) by inserting "or a list I chemical" after "controlled substance" each place it appears; and

(B) by inserting "or list I chemicals" after "controlled substances";

(2) in subsection (b) by inserting "or list I chemical" after "controlled substance";

(3) in subsection (f) by inserting "or list I chemicals" after "controlled substances" each place it appears; and

(4) in subsection (g)—

(A) by inserting "or list I chemicals" after "controlled substances" each place it appears; and

(B) by inserting "or list I chemical" after "controlled substance" each place it appears.

(e) PERSONS REQUIRED TO REGISTER UNDER SECTION 1007.—Section 1007 of the Controlled Substances Import and Export Act (21 U.S.C. 957) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by inserting "or list I chemical" after "controlled substance"; and

(B) in paragraph (2) by striking "in schedule I, II, III, IV, or V," and inserting "or list I chemical,"; and

(2) in subsection (b)—

(A) in paragraph (1) by inserting "or list I chemical" after "controlled substance" each place it appears; and

(B) in paragraph (2) by inserting "or list I chemicals" after "controlled substances".

(f) REGISTRATION REQUIREMENTS UNDER SECTION 1008.—Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958) is amended—

(1) in subsection (c)—

(A) by inserting "(1)" after "(c)"; and

(B) by adding at the end the following new paragraph:

"(2)(A) The Attorney General shall register an applicant to import or export a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the import or export of a drug product that is exempted under section 102(39)(A)(iv).

"(B) In determining the public interest for the purposes of subparagraph (A), the Attorney General shall consider the factors specified in section 303(h).";

(2) in subsection (d)—

(A) in paragraph (3) by inserting "or list I chemical or chemicals," after "substances,"; and

(B) in paragraph (6) by inserting "or list I chemicals" after "controlled substances" each place it appears;

(3) in subsection (e) by striking "and 307" and inserting "307, and 310"; and

(4) in subsections (f), (g), and (h) by inserting "or list I chemicals" after "controlled substances" each place it appears.

(g) PROHIBITED ACTS C.—Section 403(a) of the Controlled Substances Act (21 U.S.C. 843(a)) is amended—

(1) by striking "or" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(9) if the person is a regulated person, to distribute, import, or export a list I chemical without the registration required by this Act.".

**SEC. 1104. REPORTING OF LISTED CHEMICAL MANUFACTURING.**

Section 310(b) of the Controlled Substances Act (21 U.S.C. 830(b)) is amended—

(1) by inserting "(1)" after "(b)";

(2) by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively;

(3) by striking "paragraph (1)" each place it appears and inserting "subparagraph (A)";

(4) by striking "paragraph (2)" and inserting "subparagraph (B)";

(5) by striking "paragraph (3)" and inserting "subparagraph (C)"; and

(6) by adding at the end the following new paragraph:

"(2) A regulated person that manufactures a listed chemical shall report annually to the Attorney General, in such form and manner and containing such specific data as the Attorney General shall prescribe by regulation, information concerning listed chemicals manufactured by the person. The requirement of the preceding sentence shall not apply to the manufacture of a drug product that is exempted under section 102(39)(A)(iv).".

**SEC. 1105. REPORTS BY BROKERS AND TRADERS; CRIMINAL PENALTIES.**

(a) NOTIFICATION, SUSPENSION OF SHIPMENT, AND PENALTIES WITH RESPECT TO IMPORTATION AND EXPORTATION OF LISTED CHEMICALS.—Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971) is amended by adding at the end the following new subsection:

"(d) A person located in the United States who is a broker or trader for an international transaction in a listed chemical that is a regulated transaction solely because of that person's involvement as a broker or trader shall, with respect to that transaction, be subject to all of the notification, reporting, recordkeeping, and other requirements placed upon exporters of listed chemicals by this title and title II.".

(b) PROHIBITED ACTS A.—Section 1010(d) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)) is amended to read as follows:

"(d) A person who knowingly or intentionally—

"(1) imports or exports a listed chemical with intent to manufacture a controlled substance in violation of this title or title II;

"(2) exports a listed chemical in violation of the laws of the country to which the chemical is exported or serves as a broker or trader for an international transaction involving a listed chemical, if the transaction is in violation of the laws of the country to which the chemical is exported;

"(3) imports or exports a listed chemical knowing, or having reasonable cause to believe, that the chemical will be used to manufacture a controlled substance in violation of this title or title II; or

"(4) exports a listed chemical, or serves as a broker or trader for an international transaction involving a listed chemical, knowing, or having reasonable cause to believe, that the chemical will be used to manufacture a controlled substance in violation of the laws of the country to which the chemical is exported,

shall be fined in accordance with title 18, imprisoned not more than 10 years, or both.".

**SEC. 1106. EXEMPTION AUTHORITY; ADDITIONAL PENALTIES.**

(a) NOTIFICATION REQUIREMENT.—Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971), as amended by section 5(a), is amended by adding at the end the following new subsection:

"(e)(1) The Attorney General may by regulation require that the 15-day notification requirement of subsection (a) apply to all exports of a listed chemical to a specified country, regardless of the status of certain customers in such country as regular customers, if the Attorney General finds that such notification is necessary to support effective chemical diversion control programs or is required by treaty or other international agreement to which the United States is a party.

"(2) The Attorney General may by regulation waive the 15-day notification requirement for exports of a listed chemical to a specified country if the Attorney General determines that such notification is not required for effective chemical diversion control. If the notification requirement is waived, exporters of the listed chemical shall be required to submit to the Attorney General reports of individual exportations or periodic reports of such exportation of the listed chemical, at such time or times and containing such information as the Attorney General shall establish by regulation.

"(3) The Attorney General may by regulation waive the 15-day notification requirement for the importation of a listed chemical if the Attorney General determines that such notification is not necessary for effective chemical diversion control. If the notification requirement is waived, importers of the listed chemical shall be required to submit to the Attorney General reports of individual importations or periodic reports of the importation of the listed chemical, at such time or times and containing such information as the Attorney General shall establish by regulation.".

(b) PROHIBITED ACTS A.—Section 1010(d) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)), as amended by section 5(b),. is amended—

(1) by striking "or" at the end of paragraph (3);

(2) by striking the comma at the end of paragraph (4) and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(5) imports or exports a listed chemical, with the intent to evade the reporting or recordkeeping requirements of section 1018 applicable to such importation or exportation by falsely representing to the Attorney General that the importation or exportation qualifies for a waiver of the 15-day notification requirement granted pursuant to section 1018(e) (2) or (3) by misrepresenting the actual country of final destination of the listed chemical or the actual listed chemical being imported or exported; or

"(6) imports or exports a listed chemical in violation of section 1007 or 1018,".

**SEC. 1107. AMENDMENTS TO LIST I.**

Section 102(34) of the Controlled Substances Act (21 U.S.C. 802(34)) is amended—

(1) by striking subparagraphs (O), (U), and (W);

(2) by redesignating subparagraphs (P) through (T) as (O) through (S), subparagraph (V) as (T), and subparagraphs (X) and (Y) as (U) and (X), respectively;

(3) in subparagraph (X), as redesignated by paragraph (2), by striking "(X)" and inserting "(U)"; and

(4) by inserting after subparagraph (U), as redesignated by paragraph (2), the following new subparagraphs:

"(V) benzaldehyde.

"(W) nitroethane.".

**SEC. 1108. ELIMINATION OF REGULAR SUPPLIER STATUS AND CREATION OF REGULAR IMPORTER STATUS.**

(a) DEFINITION.—Section 102(37) of the Controlled Substances Act (21 U.S.C. 802(37)) is amended to read as follows:

"(37) The term 'regular importer' means, with respect to a listed chemical, a person that has an established record as an importer of that listed chemical that is reported to the Attorney General.".

(b) NOTIFICATION.—Section 1018 of the Controlled Substances Act (21 U.S.C. 971) is amended—

(1) in subsection (b)—

(A) in paragraph (1) by striking "regular supplier of the regulated person" and inserting "to an importation by a regular importer"; and

(B) in paragraph (2)—

(i) by striking "a customer or supplier of a regulated person" and inserting "a customer of a regulated person or to an importer"; and

(ii) by striking "regular supplier" and inserting "the importer as a regular importer"; and

(2) in subsection (c)(1) by striking "regular supplier" and inserting "regular importer".

**SEC. 1109. ADMINISTRATIVE INSPECTIONS AND AUTHORITY.**

Section 510 of the Controlled Substances Act (21 U.S.C. 880) is amended—

(1) by amending subsection (a)(2) to read as follows:

"(2) places, including factories, warehouses, and other establishments, and conveyances, where persons registered under section 303 (or exempt from registration under section 302(d) or by regulation of the Attorney General) or regulated persons may lawfully hold, manufacture, distribute, dispense, administer, or otherwise dispose of controlled substances or listed chemicals or where records relating to those activities are maintained."; and

(2) in subsection (b)(3)—

(A) in subparagraph (B) by inserting ", listed chemicals," after "unfinished drugs"; and

(B) in subparagraph (C) by inserting "or listed chemical" after "controlled substance" and inserting "or chemical" after "such substance".

**SEC. 1110. THRESHOLD AMOUNTS.**

Section 102(39)(A) of the Controlled Substances Act (21 U.S.C. 802(39)(A)), as amended by section 2, is amended by inserting "of a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical," before "a threshold amount, including a cumulative threshold amount for multiple transactions".

**SEC. 1111. MANAGEMENT OF LISTED CHEMICALS.**

(a) IN GENERAL.—Part C of the Controlled Substances Act (21 U.S.C. 821 et seq.) is amended by adding at the end the following new section:

"MANAGEMENT OF LISTED CHEMICALS

"SEC. 311. (a) OFFENSE.—It is unlawful for a person who possesses a listed chemical with the intent that it be used in the illegal manufacture of a controlled substance to manage the listed chemical or waste from the manufacture of a controlled substance otherwise than as required by regulations issued under sections 3001, 3002, 3003, 3004, and 3005 of the Solid Waste Disposal Act (42 U.S.C. 6921, 6922, 6923, 6924, and 6925).

"(b) ENHANCED PENALTY.—(1) In addition to a penalty that may be imposed for the illegal manufacture, possession, or distribution of a listed chemical or toxic residue of a clandestine laboratory, a person who violates subsection (a) shall be assessed the costs described in paragraph (2) and shall be imprisoned as described in paragraph (3).

"(2) Pursuant to paragraph (1) a defendant shall be assessed the following costs to the United States, a State, or another authority or person that undertakes to correct the results of the improper management of a listed chemical:

"(A) The cost of initial cleanup and disposal of the listed chemical and contaminated property.

"(B) The cost of restoring property that is damaged by exposure to a listed chemical for rehabilitation under Federal, State, and local standards.

"(3)(A) A violation of subsection (a) shall be punished as a class D felony, or in the case of a willful violation, as a class C felony.

"(B) It is the sense of the Congress that guidelines issued by the Sentencing Commission regarding sentencing under this paragraph should recommend that the term of imprisonment for a violation of subsection (a) should not be less than 5 years, nor less than 10 years in the case of a willful violation.

"(4) A court may order that all or a portion of the earnings from work performed by a defendant in prison be withheld for payment of costs assessed under paragraph (2).

"(c) USE OF FORFEITED ASSETS.—The Attorney General may direct that assets forfeited under section 511 in connection with a prosecution under this section be shared with State agencies that participated in the seizure or cleaning up of a contaminated site.".

(b) EXCEPTION TO DISCHARGE IN BANKRUPTCY.—Section 523(a) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (11);

(2) by striking the period at the end of paragraph (12) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(13) for costs assessed under section 311(b) of the Controlled Substances Act.".

**SEC. 1112. FORFEITURE EXPANSION.**

Section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)) is amended—

(1) in paragraph (6) by inserting "or listed chemical" after "controlled substance"; and

(2) in paragraph (9) by striking "a felony provision of".

**SEC. 1113. REGULATIONS AND EFFECTIVE DATE.**

(a) REGULATIONS.—The Attorney General shall, not later than 90 days after the date of enactment of this Act, issue regulations necessary to carry out this title.

(b) EFFECTIVE DATE.—This title and the amendments made by this title shall become effective on the date that is 120 days after the date of enactment of this Act.

## TITLE XII—RESTITUTION IMPROVEMENTS ACT

**SEC. 1201. RESITUTION AMENDMENTS.**

Section 3663(b) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (4) the following new paragraph:

"(4) in any case, reimburse the victim for necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and".

## TITLE XIII—PARENTAL KIDNAPPING

**SEC. 1301. SHORT TITLE.**

This title may be cited as the "International Parental Kidnapping Crime Act of 1992".

**SEC. 1302. TITLE 18 AMENDMENT.**

(a) IN GENERAL.—Chapter 55 (relating to kidnapping) of title 18, United States Code, is amended by adding at the end the following:

**"§ 1204. International parental kidnapping**

"(a) Whoever removes a child from the United States or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.

"(b) As used in this section—

"(1) the term 'child' means a person who has not attained the age of 16 years; and

"(2) the term 'parental rights', with respect to a child, means the right to physical custody of the child—

"(A) whether joint or sole (and includes visiting rights); and

"(B) whether arising by operation of law, court order, or legally binding agreement of the parties.

"(c) It shall be an affirmative defense under this section that—

"(1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act and was in effect at the time of the offense;

"(2) the defendant was fleeing an incidence or pattern of domestic violence;

"(3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

"(d) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980.".

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that, inasmuch as use of the procedures under the Hague Convention on the Civil Aspects of International Parental Child Abduction has resulted in the return of many children, those procedures, in circumstances in which they are applicable, should be the option of first choice for a parent who seeks the return of a child who has been removed from the parent.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of title 18, United States Code, is amended by adding at the end the following:

"1204. International parental kidnapping.".

**SEC. 1303. STATE COURT PROGRAMS REGARDING INTERSTATE AND INTERNATIONAL PARENTAL CHILD ABDUCTION.**

There is authorized to be appropriated $250,000 to carry out under the State Justice Institute Act of 1984 (42 U.S.C. 10701–10713) national, regional, and in-State training and educational programs dealing with criminal and civil aspects of interstate and international parental child abduction.

## TITLE XIV—MAIL FRAUD EXTENSION

**SEC. 1401. MAIL FRAUD.**

Section 1341 of title 18, United States Code, is amended—

(1) by inserting "or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier," after "Postal Service,"; and

(2) by inserting "or such carrier" after "causes to be delivered by mail".

## TITLE XV—FORFEITURE AUDIT REQUIREMENT

**SEC. 1501. AUDIT REQUIREMENT FOR STATE AND LOCAL LAW ENFORCEMENT AGENCIES RECEIVING FEDERAL ASSET FORFEITURE FUNDS.**

(a) STATE REQUIREMENT.—Section 524(c)(7) of title 28, United States Code, is amended to read as follows:

"(7)(A) The Fund shall be subject to annual audit by the Comptroller General.

"(B) The Attorney General shall require that any State or local law enforcement agency receiving funds conduct an annual audit detailing the uses and expenses to which the funds were dedicated and the amount used for each use or expense and report the results of the audit to the Attorney General.".

(b) INCLUSION IN ATTORNEY GENERAL'S REPORT.—Section 524(c)(6)(C) of title 28, United States Code, is amended by adding at the end the following flush sentence: "The report should also contain all annual audit reports from State and local law enforcement agencies required to be reported to the Attorney General under subparagraph (B) of paragraph (7).".

**SEC. 1502. REPORT TO CONGRESS ON ADMINISTRATIVE AND CONTRACTING EXPENSES.**

Section 524(c)(6) of title 28, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(D) a report for such fiscal year containing a description of the administrative and contracting expenses paid from the Fund under paragraph (1)(A).".

## TITLE XVI—RECEIPT OF STOLEN PROPERTY AMENDMENTS

**SEC. 1601. UNDERCOVER OPERATIONS.**

(a) IN GENERAL.—Chapter 1 of title 18, United States Code, is amended by adding at the end the following new section:

**"§ 21. Stolen or counterfeit nature of property for certain crimes defined**

"(a) Wherever in this title it is an element of an offense that—

"(1) any property was embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated; and

"(2) the defendant knew that the property was of such character;

such element may be established by proof that the defendant, after or as a result of an official representation as to the nature of the property, believed the property to be embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated.

"(b) For purposes of this section, the term 'official representation' means any representation made by a Federal law enforcement officer (as defined in section 115) or by another person at the direction or with the approval of such an officer.".

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 1 of title 18, United States Code, is amended by adding at the end the following new item:

"21. Stolen or counterfeit nature of property for certain crimes defined.".

## TITLE XVII—TELEMARKETING FRAUD

**SEC. 1701. CONSUMER PROTECTION AGAINST CREDIT CARD FRAUD ACT OF 1992.**

(a) SHORT TITLE.—This section may be cited as the "Consumer Protection Against Credit Card Fraud Act of 1992".

(b) FRAUD AND RELATED ACTIVITY IN CONNECTION WITH ACCESS DEVICES.—Section 1029 of title 18, United States Code, is amended—

(1) in subsection (a) by inserting after paragraph (4) the following new paragraphs:

"(5) knowingly and with intent to defraud effects transactions, with one or more access devices issued to another person or persons, to receive payment or any other thing of value during any one-year period the aggregate value of which is equal to or greater than $1,000;

"(6) without the authorization of the issuer of the access device, knowingly and with intent to defraud solicits a person for the purpose of—

"(A) offering an access device; or

"(B) selling information regarding or an application to obtain an access device; or

"(7) without the authorization of the credit card system member or its agent, knowingly and with intent to defraud causes or arranges for another person to present to the member or its agent, for payment, one or more evidences or records of transactions made by an access device;".

(c) TECHNICAL AMENDMENTS.—Section 1029 of title 18, United States Code, as amended by subsection (b), is amended—

(1) in subsection (a) by striking "or" at the end of paragraph (3);

(2) in subsection (c)(1) by striking "(a)(2) or (a)(3)" and inserting "(a) (2), (3), (5), (6), or (7)"; and

(3) in subsection (e) by—

(A) striking "and" at the end of paragraph (5);

(B) adding "and" at the end of paragraph (6); and

(C) adding at the end thereof the following new paragraph:

"(7) the term 'credit card system member' means a financial institution or other entity that is a member of a credit card system, including an entity, whether it is affiliated with or identical to the credit card issuer, that is the sole member of a credit card system.".

## TITLE XVIII—DNA TESTING

**SEC. 1801. SHORT TITLE.**

This title may be cited as the "DNA Identification Act of 1992".

**SEC. 1802. FUNDING TO IMPROVE THE QUALITY AND AVAILABILITY OF DNA ANALYSES FOR LAW ENFORCEMENT IDENTIFICATION PURPOSES.**

(a) DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT PROGRAM.—Section 501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751(b)) is amended—

(1) in paragraph (20) by striking "and" at the end,

(2) in paragraph (21) by striking the period at the end and inserting "; and", and

(3) by adding at the end the following:

"(22) developing or improving in a forensic laboratory a capability to analyze deoxyribonucleic acid (hereinafter in this title referred to as 'DNA') for identification purposes.".

(b) STATE APPLICATIONS.—Section 503(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)) is amended by adding at the end thereof the following new paragraph:

"(12) If any part of a grant made under this part is to be used to develop or improve a DNA analysis capability in a forensic laboratory, a certification that—

"(A) DNA analyses performed at such laboratory will satisfy or exceed then current standards for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 3 of the DNA Identification Act of 1992;

"(B) DNA samples obtained by, and DNA analyses performed at, such laboratory will be accessible only—

"(i) to criminal justice agencies for law enforcement identification purposes;

"(ii) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

"(iii) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes; and

"(C) such laboratory, and each analyst performing DNA analyses at such laboratory, will undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 3 of the DNA Identification Act of 1992.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended—

(1) by redesignating the last 3 paragraphs sequentially as paragraphs (7), (8), and (9); and

(2) by adding at the end the following:

"(10) There are authorized to be appropriated for each of the fiscal years 1993 through 1997 $10,000,000 for grants to the States for DNA analysis.".

**SEC. 1803. QUALITY ASSURANCE AND PROFICIENCY TESTING STANDARDS.**

(a) PUBLICATION OF QUALITY ASSURANCE AND PROFICIENCY TESTING STANDARDS.—(1) Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall appoint an advisory board on DNA quality assurance methods. The Director shall appoint members of the board from among nominations proposed by the head of the National Academy of Sciences and professional societies of crime laboratory officials. The advisory board shall include as members scientists from state and local forensic laboratories, molecular geneticists and population geneticists not affiliated with a forensic laboratory, and a representative from the National Institute of Standards and Technology. The advisory board shall develop, and if appropriate, periodically revise, recommended standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(2) The Director of the Federal Bureau of Investigation, after taking into consideration such recommended standards, shall issue (and revise from time to time) standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(3) The standards described in paragraphs (1) and (2) shall specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analyses used by forensic laboratories. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

(4) Until such time as the advisory board has made recommendations to the Director of the Federal Bureau of Investigation and the Director has acted upon those recommendations, the quality assurance guidelines adopted by the technical working group on DNA analysis methods shall be deemed the Director's standards for purposes of this section.

(b) ADMINISTRATION OF THE ADVISORY BOARD.—For administrative purposes, the advisory board appointed under subsection (a) shall be considered an advisory board to the Director of the Federal Bureau of Investigation. Section 14 of the Federal Advisory Committee Act (5. U.S.C. App.) shall not apply with respect to the advisory board appointed under subsection (a). The board shall cease to exist on the date 5 years after the initial appointments are made to the board, unless the existence of the board is extended by the Director of the Federal Bureau of Investigation.

**SEC. 1804. INDEX TO FACILITATE LAW ENFORCEMENT EXCHANGE OF DNA IDENTIFICATION INFORMATION**

(a) IN GENERAL.—The Director of the Federal Bureau of Investigation may establish an index of—

(1) DNA identification records of persons convicted of crimes;

(2) analyses of DNA samples recovered from crime scenes; and

(3) analyses of DNA samples recovered from unidentified human remains.

(b) CONTENT OF INDEX.—Such index may include only information on DNA identification records and DNA analyses that are—

(1) based on analyses performed in accordance with publicly available standards that satisfy or exceed the guidelines for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 3 of the DNA Identification Act of 1992;

(2) prepared by laboratories, and DNA analysts, that undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 3 of the DNA Identification Act of 1992; and

(3) maintained by Federal, State, and local criminal justice agencies pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only—

(A) to criminal justice agencies for law enforcement identification purposes;

(B) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

(C) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) The exchange of records authorized by this section is subject to cancellation if the quality control and privacy requirements described in subsection (b) of this section are not met.

**SEC. 1805. FEDERAL BUREAU OF INVESTIGATION**

(a) PROFICIENCY TESTING REQUIREMENTS.—

(1) GENERALLY.—Personnel at the Federal Bureau of Investigation who perform DNA analyses shall undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 3(b). Within one year of the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall arrange for periodic blind external tests to determine the proficiency of DNA analysis performed at the Federal Bureau of Investigation laboratory. As used in this paragraph, the term "blind external test" means a test that is presented to the laboratory through a second agency and appears to the analysts to involve routine evidence.

(2) REPORT.—For five years after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the Committees on the Judiciary of the House and Senate an annual report on the results of each of the tests referred to in paragraph (1).

(b) PRIVACY PROTECTION STANDARDS.—

(1) GENERALLY.—Except as provided in paragraph (2), the results of DNA tests performed for a Federal law enforcement agency for law enforcement purposes may be disclosed only—

(A) to criminal justice agencies for law enforcement identification purposes; or

(B) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged.

(2) EXCEPTION.—If personally identifiable information is removed, test results may be disclosed for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) CRIMINAL PENALTY.—(1) Whoever—

(A) by virtue of employment or official position, has possession of, or access to, individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency; and

(B) willfully discloses such information in any manner to any person or agency not entitled to receive it;

shall be fined not more than $100,000.

(2) Whoever, without authorization, willfully obtains DNA samples or individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency shall be fined not more than $100,000.

**SEC. 1806. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Federal Bureau of Investigation $2,000,000 for each of fiscal years 1993 through 1997 to carry out sections 1803, 1804, and 1805 of this Act.

## TITLE XIX—TORTURE CONVENTION

**SEC. 1901. TORTURE.**

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 113A the following new chapter:

**"CHAPTER 113B—TORTURE**

"Sec.
2340. Definitions.
2340A. Torture.
2340B. Exclusive remedies.

**"§ 2340. Definitions**

"As used in this chapter—

"(1) 'torture' means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.

"(2) 'severe mental pain or suffering' means the prolonged mental harm caused by or resulting from: (a) the intentional infliction or threatened infliction of severe physical pain or suffering; (b) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (c) the threat of imminent death; or (d) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

"(3) 'United States' includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1301(38)).

**"§ 2340A. Torture**

"(a) Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than twenty years, or both; and if death results to any person from conduct prohibited by this subsection, shall be imprisoned for any term of years or for life.

"(b) There is jurisdiction over the prohibited activity in subsection (a) if: (1) the alleged offender is a national of the United States; or (2) the alleged offender is present in the United States, irrespective of the nationality of the victim or the alleged offender.

**"§ 2340B. Exclusive remedies**

"Nothing in this chapter shall be construed as precluding the application of State or local laws on the same subject, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding.".

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for chapter 113A the following new item:

**"113B. Torture ..... 2340.".**

(c) EFFECTIVE DATE.—This section shall take effect on the later of—

(1) the date of enactment of this section; or

(2) the date the United States has become a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## TITLE XX—TECHNICAL PROVISIONS

**SEC. 2001. TERRITORIAL SEA EXTENDING TO TWELVE MILES INCLUDED IN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.**

The Congress hereby declares that all the territorial sea of the United States, as defined by Presidential Proclamation 5928 of December 27, 1988, is part of the United States, subject to its sovereignty, and, for purposes of Federal criminal jurisdiction, is within the special maritime and territorial jurisdiction of the United States wherever that term is used in title 18, United States Code.

**SEC. 2002. JURISDICTION OVER CRIMES AGAINST UNITED STATES NATIONALS ON CERTAIN FOREIGN SHIPS.**

Section 7 of title 18, United States Code (relating to the special maritime and territorial jurisdiction of the United States), is amended by inserting at the end thereof the following new paragraph:

"(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.".

**SEC. 2003. RECEIVING THE PROCEEDS OF EXTORTION OR KIDNAPPING.**

(a) PROCEEDS OF EXTORTION.—Chapter 41 of title 18, United States Code, is amended—

(1) by adding at the end the following new section:

**"§ 880. Receiving the proceeds of extortion**

"Whoever receives, possesses, conceals, or disposes of any money or other property which was obtained from the commission of any offense under this chapter that is punishable by imprisonment for more than one year, knowing the same to have been unlawfully obtained, shall be imprisoned not more than three years, fined under this title, or both."; and

(2) in the table of sections, by adding at the end the following new item:

"880. Receiving the proceeds of extortion.".

(b) RANSOM MONEY.—Section 1202 of title 18, United States Code, is amended—

(1) by designating the existing matter as subsection "(a)"; and

(2) by adding the following new subsections:

"(b) Whoever transports, transmits, or transfers in interstate or foreign commerce any proceeds of a kidnapping punishable under State law by imprisonment for more than one year, or receives, possesses, conceals, or disposes of any such proceeds after they have crossed a State or United States boundary, knowing the proceeds to have been unlawfully obtained, shall be imprisoned not more than ten years, fined under this title, or both.

"(c) For purposes of this section, the term 'State' has the meaning set forth in section 245(d) of this title.".

**SEC. 2004. RECEIVING THE PROCEEDS OF A POSTAL ROBBERY.**

Section 2114 of title 18, United States Code, is amended—

(1) by designating the existing matter as subsection (a); and

(2) by adding at the end the following new subsection:

"(b) Whoever receives, possesses, conceals, or disposes of any money or other property which has been obtained in violation of this section, knowing the same to have been unlawfully obtained, shall be imprisoned not more than ten years, fined under this title, or both.".

**SEC. 2005. ADDITION OF ATTEMPTED ROBBERY, KIDNAPPING, SMUGGLING, AND PROPERTY DAMAGE OFFENSES TO ELIMINATE INCONSISTENCIES AND GAPS IN COVERAGE.**

(a) ROBBERY AND BURGLARY.—(1) Section 2111 of title 18, United States Code, is amended by inserting "or attempts to take" after "takes".

(2) Section 2112 of title 18, United States Code, is amended by inserting "or attempts to rob" after "robs".

(3) Section 2114 of title 18, United States Code, is amended by inserting "or attempts to rob" after "robs".

(b) KIDNAPPING.—Section 1201(d) of title 18, United States Code, is amended by striking "Whoever attempts to violate subsection (a)(4) or (a)(5)" and inserting "Whoever attempts to violate subsection (a)".

(c) SMUGGLING.—Section 545 of title 18, United States Code, is amended by inserting "or attempts to smuggle or clandestinely introduce" after "smuggles, or clandestinely introduces".

(d) MALICIOUS MISCHIEF.—(1) Section 1361 of title 18, United States Code, is amended—

(A) by inserting "or attempts to commit any of the foregoing offenses" before "shall be punished", and

(B) by inserting "or attempted damage" after "damage" each place it appears.

(2) Section 1362 of title 18, United States Code, is amended by inserting "or attempts willfully or maliciously to injure or destroy" after "willfully or maliciously injures or destroys".

(3) Section 1366 of title 18, United States Code, is amended—

(A) by inserting "or attempts to damage" after "damages" each place it appears;

(B) by inserting "or attempts to cause" after "causes"; and

(C) by inserting "or would if the attempted offense had been completed have exceeded" after "exceeds" each place it appears.

**TITLE XXI—COMPUTER ABUSE**

**SEC. 2101. COMPUTER ABUSE AMENDMENTS ACT OF 1992.**

(a) SHORT TITLE.—This title may be cited as the "Computer Abuse Amendments Act of 1992".

(b) PROHIBITION.—Section 1030(a)(5) of title 18, United States Code, is amended to read as follows:

"(5)(A) through means of a computer used in interstate commerce or communications, knowingly causes the transmission of a program, information, code, or command to a computer or computer system if—

"(i) the person causing the transmission intends that such transmission will—

"(I) damage, or cause damage to, a computer, computer system, network, information, data, or program; or

"(II) withhold or deny, or cause the withholding or denial, of the use of a computer, computer services, system or network, information, data or program; and

"(ii) the transmission of the harmful component of the program, information, code, or command—

"(I) occurred without the knowledge and authorization of the persons or entities who own or are responsible for the computer system receiving the program, information, code, or command; and

"(II)(aa) causes loss or damage to one or more other persons of value aggregating $1,000 or more during any 1-year period; or

"(bb) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or

"(B) through means of a computer used in interstate commerce or communication, knowingly causes the transmission of a program, information, code, or command to a computer or computer system—

"(i) with reckless disregard of a substantial and unjustifiable risk that the transmission will—

"(I) damage, or cause damage to, a computer, computer system, network, information, data or program; or

"(II) withhold or deny or cause the withholding or denial of the use of a computer, computer services, system, network, information, data or program; and

"(ii) if the transmission of the harmful component of the program, information, code, or command—

"(I) occurred without the knowledge and authorization of the persons or entities who own or are responsible for the computer system receiving the program, information, code, or command; and

"(II)(aa) causes loss or damage to one or more other persons of a value aggregating $1,000 or more during any 1-year period; or

"(bb) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals;".

(c) PENALTY.—Section 1030(c) of title 18, United States Code is amended—

(1) in paragraph (2)(B) by striking "and" after the semicolon;

(2) in paragraph (3)(A) by inserting "(A)" after "(a)(5)"; and

(3) in paragraph (3)(B) by striking the period at the end thereof and inserting "; and"; and

(4) by adding at the end thereof the following:

"(4) a fine under this title or imprisonment for not more than 1 year, or both, in the case of an offense under subsection (a)(5)(B).".

(d) CIVIL ACTION.—Section 1030 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) Any person who suffers damage or loss by reason of a violation of the section, other than a violation of subsection (a)(5)(B), may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief. Damages for violations of any subsection other than subsection (a)(5)(A)(ii)(II)(bb) or (a)(5)(B)(ii)(II)(bb) are limited to economic damages. No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of or the date of the discovery of the damage.".

(e) REPORTING REQUIREMENTS.—Section 1030 of title 18 United States Code, is amended by adding at the end thereof the following new subsection:

"(h) The Attorney General and the Secretary of the Treasury shall report to the Congress annually, during the first 3 years following the date of the enactment of this subsection, concerning investigations and prosecutions under section 1030(a)(5) of title 18, United States Code.".

(f) PROHIBITION.—Section 1030(a)(3) of title 18 United States Code, is amended by inserting "adversely" before "affects the use of the Government's operation of such computer".

**TITLE XXII—FBI SUBSCRIBER**

**SEC. 2201. F.B.I. ACCESS TO TELEPHONE SUBSCRIBER INFORMATION.**

(a) REQUIRED CERTIFICATION.—Section 2709(b) of title 18, United States Code, is amended to read as follows:

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director, may—

"(1) request the name, address, length of service, and toll billing records of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

"(2) request the name, address, and length of service of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

"(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

"(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.".

(b) REPORT TO JUDICIARY COMMITTEES.—Section 2709(e) of title 18, United States Code, is amended by adding after "Senate" the following: ", and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,".

## ARMORED CAR INDUSTRY RECIPROCITY ACT

Mr. BRADLEY. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of S. 3229, the armored car industry bill, and that the Senate then proceed to its immediate consideration, that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table, and that any statements relating to this bill appear in the RECORD at the appropriate place.

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

Mr. EXON. Mr. President, this summer I was contacted by Joe Shea, the president of Rochester Armored Car Co. in Omaha, NE, about a serious problem facing America's armored car industry. I was pleased to introduce the Armored Car Industry Reciprocity Act to address this problem and help protect the security of goods, currency, and securities moving in interstate commerce. I am delighted that the U.S. Senate will soon pass this important legislation and am hopeful that the House of Representatives can send this bill to the President for his signature. Identical legislation has been introduced by Congresswoman CARDISS COLLINS in the House of Representatives.

America transports billions of dollars of cash, securities, food stamps, bullion, and other valuables by armored car. Without armored car transportation, interstate commerce would come to a grinding halt. This mode of transportation which is used extensively by Federal and State governments is absolutely vital to our Nation's economy.

The legislation the Senate adopts today addresses a problem which threatens to impedes the efficient movement of valuables. That problem occurs when States and localities have various rules relating to the licensing of weapons which are used by crews working on armored cars.

In recent years, there have been several instances where interstate armored cars have been stopped and armed guards have been arrested or had their weapons confiscated by local authorities. These individuals were licensed to carry their weapons in their home States. Unfortunately, those permits were not honored in the arresting States.

This legislation would grant reciprocity to qualified weapons licenses for armed guards working on armored cars. The legislation establishes minimum State standards for armored car crew weapons licenses. These standards will require criminal background checks, and annual classroom and range training. The legislation will not require States to adopt these minimum standards but will provide reciprocity for the licenses of those States which do so. Most States already meet these standards.

As chairman of the Senate Surface Transportation Subcommittee, I am pleased to support this legislation which will facilitate the safe and efficient transport of currency and valuables, improve law enforcement and gun safety. It is a commonsense proposal which has the support of Federal agencies and has not sparked any known opposition. I encourage my colleagues to support The Armored Car Industry Reciprocity Act.

So, the bill (S. 3229) was deemed read the third time and passed, as follows:

S. 3229

*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 "Armored Car Industry Reciprocity Act of 1992".

**SEC. 2. FINDINGS.**

Congress finds that—

(1) the distribution of goods and services to consumers in the United States require the free flow of currency, bullion, securities food stamps in which such member is primarily employed by such company) to carry a weapon while acting in the service of such company in that State, and such State agency meets the minimum State requirements under subsection (b), then such crew member shall be entitled to lawfully carry any weapon to which such license relates in any State while such crew member is acting in the service of such company.

(b) MINIMUM STATE REQUIREMENTS.—A State agency meets the minimum State requirements of this subsection if in issuing a weapon's license to an armored car crew member described in subsection (a), the agency requires the crew member to provide information on an annual basis to the satisfaction of the agency that the crew member—

(1) has received classroom and range training in weapon's safety and marksmanship during the current year by a qualified instructor for each weapon that the crew member is licensed to carry; and

(2) has not been convicted of a felony under any Federal or State law, determined on the basis of a criminal record background check conducted during the current year.

**SEC. 4. RELATION TO OTHER LAWS.**

This Act shall supersede any provision of State law (or any subdivision thereof) that is inconsistent with this Act.

**SEC. 5. DEFINITIONS.**

As used in this Act:

(1) The term "armored car crew member" means an individual who provides protection for goods transported by an armored car company.

(2) The term "armored car company" means a company—

(A) subject to regulation under subchapter II of chapter 105 of title 49, United States Code; and

(B) holding the appropriate certificate, permit, or license issued under subchapter II of chapter 109 of such title, in order to engage in the business of transporting and protecting currency, bullion, securities, precious metals, food stamps, and other articles of unusual value in interstate commerce.

(3) The term "State" includes the several States and the District of Columbia.

## PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT

Mr. BRADLEY. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 474.

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

*Resolved*, That the bill from the Senate (S. 474) entitled "An Act to prohibit sports gambling under State law", do pass with the following amendments:

Strike out all after the enacting clause and insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Professional and Amateur Sports Protection Act".*

***SEC. 2. PROFESSIONAL AND AMATEUR SPORTS PROTECTION.***

*(a) IN GENERAL.—Part VI of title 28 of the United States Code is amended by adding at the end the following:*

***"CHAPTER 178—PROFESSIONAL AND AMATEUR SPORTS PROTECTION***

*"Sec.*
*"3701. Definitions.*
*"3702. Unlawful sports gambling.*
*"3703. Injunctions.*
*"3704. Applicability.*

***"§3701. Definitions***

*"For purposes of this chapter—*

*"(1) the term 'amateur sports organization' means—*

*"(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more amateur athletes participate, or*

*"(B) a league or association of persons or governmental entities described in subparagraph (A),*

*"(2) the term 'governmental entity' means a State, a political subdivision of a State, or an entity or organization, including an entity or organization described in section 4(5) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(5)), that has governmental authority within the territorial boundaries of the United States, including on lands described in section 4(4) of such Act (25 U.S.C. 2703(4)),*

*"(3) the term 'professional sports organization' means—*

*"(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more professional athletes participate, or*

*"(B) a league or association of persons or governmental entities described in subparagraph (A),*

*"(4) the term 'person' has the meaning given such term in section 1 of title 1, and*

*"(5) the term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States.*

***"§ 3702. Unlawful sports gambling***

*"It shall be unlawful for—*

*"(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or*

*"(2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity,*

*a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.*

***"§ 3703. Injunctions***

*"A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.*

***"§ 3704. Applicability***

*"(a) Section 3702 shall not apply to—*

*"(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990;*

*"(2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both—*

*"(A) such scheme was authorized by a statute as in effect on October 2, 1991; and*

*"(B) a scheme described in section 3702 (other than one based on parimutuel animal racing or jai-alai games) actually was conducted in that State or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity;*

*"(3) a betting, gambling, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that—*

*"(A) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and*

*"(B) any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State's constitution and applicable solely to such municipality; or*

*"(4) parimutuel animal racing or jai-alai games.*

*"(b) Except as provided in subsection (a), section 3702 shall apply on lands described in section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4)).".*

*(b) CLERICAL AMENDMENTS.—The table of chapters for part VI of title 28, United States Code, is amended—*

*(1) by amending the item relating to chapter 176 to read as follows:*

***"176. Federal Debt Collection Procedure ..... 3001",***

*and*

*(2) by adding at the end the following:*

***"178. Professional and Amateur Sports Protection ..... 3701".***

***SEC. 3. EFFECTIVE DATE.***

*This Act shall take effect on January 1, 1993.*

Amend the title so as to read: *"An Act to prohibit sports gambling under State law, and for other purposes.".*

Mr. BRADLEY. Mr. President, I rise today to thank my colleagues for approving the Professional and Amateur Sports Protection Act.

Mr. President, initiatives to sanction wagering on sporting events have become increasingly attractive to States in recent years. We all recognize the fiscal constraints under which States operate in these tough economic times. But we must not forget the consequences of sports betting. Based on what I know about the dangers of sports betting, I am not prepared to risk the values that sports instill in youth just to add a few more dollars to state coffers.

Mr. President, State-sanctioned sports betting conveys the message that sports are more about money than personal achievement and sportsmanship. In these days of scandal and disillusionment, it is important that our youngsters not receive this message. As a former professional basketball player, I have witnessed firsthand some of the negative effects of sports gambling. If the dangers of State-sponsored sports betting are not confronted, the character of sports and youngsters' view of them could be seriously threatened.

Sports betting threatens the integrity of and public confidence in professional and amateur team sports, converting sports from wholesome athletic entertainment into a vehicle for gambling. Sports gambling raises people's suspicions about point-shaving and game-fixing. Where sports gambling occurs, fans cannot help but wonder if a missed free throw, dropped fly ball, or a missed extra point was part of a player's scheme to fix the game. If sports betting spreads, more and more fans will question every coaching decision and official's call. All of this puts undue pressure on players, coaches and officials. State-sponsored sports betting could change forever the relationship between the players and the game and between the game and the fans. Sports would become the gamblers' game and not the fans' game.

Mr. President, the bill the Senate has passed today contains a provision which effectively allows the State of New Jersey 1 year to establish casino-based sports betting by referendum. While I wish this bill did not contain such a provision, I am convinced that it would not have been possible to pass a ban on sports betting without it. My hope is that New Jersey will decide not to exercise this right.

The good news, Mr. President, is that this bill bans sports betting outright in 44 States and given one state, New Jersey, only 1 year to act before it too would be prohibited from allowing sports betting.

Again, I congratulate my colleagues for acting in the best interest of youngsters and athletes by passing this bill.

Mr. DOMENICI. Mr. President, I am extremely pleased that the House has passed the Professional and Amateur Sports Protection Act, S. 474. As a cosponsor of this legislation I believe that we must eliminate State-sanctioned betting on the outcomes of organized sports contests in our Nation. Sadly, some of our nations greatest scandals have been the result of our sports heroes betting on sporting events. With the passage of this legislation, we clearly eliminate any State-sanctions that would encourage athletes to participate in changing the outcome of any organized sporting event.

Shortly after the Senate-passage of S. 474, I was made aware of a situation that could be interpreted to fall under the provisions of this bill. The New Mexico State Legislature passed a law that would allow our State to be the first in the Nation to venture into what is a $13 billion industry in Japan—parimutuel bicycle racing, or as its known in Japan, Keirin. This sport is structured in a fashion that is similar to parimutuel horse racing, except that horses and riders are replaced with bicyclists.

In S. 474, the Senate included provisions that exempted both parimutuel animal racing and jai alai. Since Keirin is still in its developmental stages and is still relatively obscure, it was obviously not included on the exempted list.

I discussed this situation with my good friend from Arizona, Senator DECONCINI. Upon reviewing a description of Keirin, the Senator from Arizona also noted the similarities between this sport and those exempted in the bill. I then suggested the possibility of including Keirin in this language. My good friend saw no initial reasons why that would be problem.

Mr. DECONCINI. That is correct. When the Senator first brought this to my attention in late June, the bill had already passed the Senate. At that time I indicated that if there was an opportunity to resolve this issue in conference, it would be done. Unfortunately, that opportunity did not occur.

Mr. DOMENICI. Clearly, my intent is not to undermine the effectiveness of S. 474. So, it is my understanding that my good friend from Arizona cleared the possibility of exempting Keirin from the provisions of this bill with our Nation's major sports organizations, the national Football League, the National Basketball Association, Major League Baseball, the National Hockey League, and the National Collegiate Athletic Association, to ensure that they had no concerns.

Mr. DECONCINI. It is my understanding that the leagues and the NCAA do not object to this type of parimutuel bike racing and did not intend for the bill to cover such a sport. Clearly, this type of bicycle racing does not possess the same threat as other forms of State-sponsored sports betting.

Mr. DOMENICI. I would like to note that this legislation is designed to protect the pure competitiveness of sports in our Nation. Athletes in both amateur and professional sports contend with a great deal of pressure to excel in each contest just by the very nature of sport. State-sanctioned betting only increases the likelihood that some athletes will be compelled to participate in changing the outcomes of contests. There is no reason for our States to add pressure and tension to this setting. Sports enthusiasts cheer their teams to clean, fair outcomes—we should continue to encourage this attitude and practice. Could I ask my friend from Arizona to explain why jai-alai and horse racing were exempted from this legislation?

Mr. DECONCINI. The reason jai alai and horse racing were exempted from this bill was because jai-alai, like horse racing, is played primarily for the purpose of gambling. The purpose of this act is to protect the integrity of professional and amateur sports, not parimutuel betting schemes. Therefore, Keirin racing should not be covered by this bill and was not intended to be covered.

Mr. DOMENICI. As the Senator has stated, it is clear in S. 474 that parimutuel betting contests are not considered to be sports in the same way as those events contested in our major professional and amateur sports organizations. Obviously, Keirin's obscurity as a parimutuel betting scheme was the factor for its exclusion from those exempted in the legislation. Would the Senator from Arizona agree that the Professional and Amateur Sports Protection Act was not designed to prohibit the State of New Mexico from sanctioning Keirin?

Mr. DECONCINI. Yes, I agree. This bill prohibits State-sponsored betting "on one or more competitive games in which amateur or professional athletes participate, or are intended to participate * * *" It is my interpretation of this prohibition that it would not apply to parimutuel bicycle racing because it does not constitute a "game." At the time this bill was introduced, I argued against the need to specifically exclude horse racing for the same reason. However, because of the importance of horse racing to the economies of a number of States and our intention for this bill not to apply to horse racing, language was included to clarify that the bill did not apply to such racing.

This bill is meant to prohibit States from changing the nature of baseball, football, hockey, and basketball from wholesome entertainment for the entire family to a game played for the purpose of gambling. Clearly, this is not meant to apply to a sport such as Keirin racing.

Mr. DOMENICI. I thank my good friend, the distinguished Senator from Arizona, for his thoughtful clarification and remarks.

Mr. WALLOP. Mr. President, I would like to ask my colleague from Arizona, the sponsor of the Professional and Amateur Sports Protection Act a question regarding his intent as to the effect of the bill on certain actions in my home State of Wyoming. They are legal now under State law and I want to assure that they will continue.

My concern centers in particular on the practice of calcutta wagering. For those unfamiliar with this tradition, Wyoming law defines it as follows. Calcutta wagering means wagering on the outcome of amateur contests, cutter horse racing, professional rodeo events, or professional golf tournaments in which those who wager bid at auction for the exclusive right to purchase or wager upon a particular contestant or entrant in the event and when the outcome of the event has been decided the total wagers comprising the pool, less a percentage take-out by the event's sponsor, is distributed to those who "purchased" or wagered upon the winning contestants or entrants.

Not only are the calcuttas extremely popular, they are also beneficial as a minimum of 10 percent of the total wagers must be donated to a charitable or benevolent purpose.

In addition, I would like to know whether this bill is intended to affect the other gambling devices, practices or all other bona fide contests currently allowed under Wyoming State law such as raffles, bingo, tickets for raffle, or pull tabs.

Mr. DECONCINI. I appreciate the Senator's point of view and I can assure him that the practices which are now authorized and conducted under Wyoming State law, including calcutta wagering and the other provisions which he mentioned will not be affected by enactment of this legislation.

Mr. WALLOP. I thank the Senator. I would like to ask the ranking member of the Judiciary Committee, Senator THURMOND, if that is his understanding also.

Mr. THURMOND. I assure the Senator from Wyoming that is my understanding.

Mr. WALLOP. I thank my colleagues for their help in clarifying that this will not affect what the people of Wyoming have currently put in place with regard to their State gambling laws.

Mr. BRADLEY. I move the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. BRADLEY. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGES FROM THE HOUSE

At 3:56 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following joint resolutions, each without amendment:

S.J. Res. 166. Joint resolution designating the week of October 4 through 10, 1992, as "National Customer Service Week";

S.J. Res. 304. Joint resolution designating January 3, 1993, through January 9, 1993, as "National Law Enforcement Training Week";

S.J. Res. 309. Joint resolution designating the week beginning November 8, 1992, as "National Women Veterans Recognition Week"; and

S.J. Res. 318. Joint resolution designating November 13, 1992, as "Vietnam Veterans Memorial 10th Anniversary Day".

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4016) to amend the Comprehensive Environmental Response, Compensation, and Liability Act to 1980 to require the Federal Government, before termination of Federal activities on any real property owned by the Government, to identify real property where no hazardous substance was stored, released, or disposed of.

The message further announced that the House agrees to the amendment of the Senate to the amendments of the House to the bill—S. 1583—to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations and to improve pipeline safety, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amend-

ments of the House to the bill (S. 2532) entitled the "Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act."

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 1216) to modify the boundaries of the Indiana Dunes Lakeshore, and for other purposes; with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendment of the Senate to the text of the bill (H.R. 2130) to authorize appropriations for the National Oceanic and Atmospheric Administration for fiscal year 1992; with an amendment in which it requests the concurrence of the Senate, and that the House agrees to the amendment of the Senate to the title of the bill.

The message further announced that the House agrees to the amendment of the Senate to the text of the bill (H.R. 939) to amend title 38, United States Code, with respect to housing loans for veterans, and for other purposes; with an amendment, in which it requests the concurrence of the Senate, and that the House agrees to the amendment of the Senate to the title of the bill.

The message also announced that the House agrees to the amendment of the Senate to the text of the bill (H.R. 1578) to amend title 38, United States Code, with respect to employment and reemployment rights of veterans and other members of the uniformed services; with an amendment, in which it requests the concurrence of the Senate, and that the House agrees to the amendment of the Senate to the title of the bill.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1671) to withdraw certain public lands and to otherwise provide for the operation of the Waste Isolation Pilot Plant in Eddy County, NM, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to each of the following bills:

H.R. 2114. An act to restore the Federal trust relationship of the United Auburn Indian Community to establish the Advisory Council on California Indian Policy, and for other purposes;

H.R. 3665. An act to establish the Little River Canyon National Preserve in the State of Alabama; and

H.R. 5686. An act to make technical amendments to certain Federal Indian statutes.

The message further announced that the House agrees to the amendments of the Senate to each of the following bills:

H.R. 2324. An act to amend title 28, United States Code, with respect to witness fees; and

H.R. 5954. An act to amend the Rural Electrification Act of 1936 to clarify the status of the Rural Electrification Act of 1936 to clarify the status of the Rural Telephone Bank, and for other purposes.

The message also announced that the House has passed the following bills, each with an amendment, in which it requests the concurrence of the Senate:

S. 1577. An act to amend the Alzheimer's Disease and Related Dementias Services Research Act of 1986 to reauthorize the Act, and for other purposes;

S. 1704. An act to improve the administration and management of public lands, National Forests, units of the National Park System, and related areas by improving the availability of adequate, appropriate, affordable, and cost effective housing for employees needed to effectively manage the public lands; and

S. 2880. An act to authorize appropriations for fiscal years 1993 and 1994 for the Office of the United States Trade Representative, the United States International Trade Commission, and the United States Custom Service, and for other purposes.

The message further announced that the House has passed the following bills, each with amendments, in which it requests the concurrence of the Senate:

S. 474. An act to prohibit sports gambling under State law; and

S. 3312. An act entitled the "Cancer Registries Amendment Act".

The message also announced that the House has passed the following bills and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 3316. An act to amend title 18, United States Code, to authorize the Federal Bureau of Investigation to obtain certain telephone subscriber information;

H.R. 6162. An act to designate an area for which environmental and other streambank restoration measures are authorized as the "Joseph G. Minish Passaic River Waterfront Park and Historic Area";

H.R. 6164. An act to amend the John F. Kennedy Center Act to authorize appropriations for maintenance, repair, alteration, and other services necessary for the John F. Kennedy Center for the Performing Arts;

H.R. 6179. An act to amend the Wild and Scenic Rivers Act;

H.R. 6187. An act to amend the Foreign Assistance Act of 1961 with respect to international narcotics control programs and activities, and for other purposes;

H.R. 6191. An act to protect the public interest and the future development of pay-per-call technology by providing for the regulation and oversight of the applications and growth of the pay-per-call industry, and for other purposes;

H.J. Res. 399. Joint resolution designating the week beginning November 1, 1992, as "National Medical Staff Services Awareness Week";

H.J. Res. 458. Joint resolution designating the week beginning October 25, 1992, as "World Population Awareness Week";

H.J. Res. 471. Joint resolution designating October 14, 1992, as "National Occupational Therapy Day";

H.J. Res. 489. Joint resolution designating February 21, 1993, through February 27, 1993, as "American Wine Appreciation Week", and for other purposes;

H.J. Res. 538. Joint resolution designating December 1, 1992, as "World AIDS Day";

H.J. Res. 543. Joint resolution designating November 30, 1992, through December 6, 1992, as "National Education First Week";

H.J. Res. 547. Joint resolution designating May 2, 1993, through May 8, 1993, as "National Walking Week"; and

H.J. Res. 563. Joint resolution providing for the convening of the First Session of the One Hundred Third Congress.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message also announced that the Speaker has signed the following enrolled bills and joint resolution:

S. 1880. An act to amend the District of Columbia Spouse Equity Act;

S. 3007. An act to authorize financial assistance for the construction and maintenance of the Mary McLeod Bethune Memorial Arts Center;

S. 3095. An act to restore and clarify the Federal relationship with the Jena Band of Choctaws of Louisiana; and

S.J. Res. 287. Joint resolution to designate the week of October 4, 1992, through October 10, 1992, as "Mental Illness Awareness Week".

The enrolled bills and joint resolution were subsequently signed by the President pro tempore [Mr. BYRD].

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3987. A communication from the Secretary of Agriculture, transmitting, pursuant to law, a report entitled "New York-New Jersey Highlands Regional Study"; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3988. A communication from the President of the United States, transmitting, pursuant to law, a report on a schedule for resumption of nuclear testing talks; to the Committee on Armed Services.

EC-3989. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a plan for strategic forces consistent with the START Treaty; to the Committee on Armed Services.

EC-3990. A communication from the Comptroller of the Department of Defense, transmitting, pursuant to law, a report on the transfer of certain funds; to the Committee on Armed Services.

EC-3991. A communication from the Chairman of the Federal Housing Finance Board, transmitting, pursuant to law, the annual report of the Board covering the years 1989 through 1991; to the Committee on Banking, Housing, and Urban Affairs.

EC-3992. A communication from the Acting Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on the Presidential determination under the Trade Act with respect to Romania; to the Committee on Banking, Housing, and Urban Affairs.

EC-3993. A communication from the President of the United States, transmitting, pursuant to law, a report on developments since the last report concerning the continued blocking of Panamanian government assets; to the Committee on Banking, Housing, and Urban Affairs.

EC-3994. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, a report on the Section 221(g)(4) Project Mortgage Auc-

tion; to the Committee on Banking, Housing, and Urban Affairs.

EC-3995. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on direct spending or receipts legislation; to the Committee on the Budget.

EC-3996. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, a report on the determination to use less than full and open competition; to the Committee on Commerce, Science, and Transportation.

EC-3997. A communication from the Secretary of the Interior, transmitting, pursuant to law, a report entitled "Federal Coal Management Report, Fiscal Year 1991"; to the Committee on Energy and Natural Resources.

EC-3998. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3999. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on physician participation, assign, and extra billing in the Medicare program; to the Committee on Finance.

EC-4000. A communication from the Acting Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report stating that it is in the national interest to authorize a defense drawdown to provide counter-narcotics assistance to Colombia; to the Committee on Foreign Relations.

EC-4001. A communication from the Acting Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report stating that it is in the national interest to authorize a defense drawdown to provide disaster relief assistance to Pakistan; to the Committee on Foreign Relations.

EC-4002. A communication from the Secretary of Commerce, transmitting, pursuant to law, the second progress report regarding contracting for the rebuilding of Kuwait; to the Committee on Governmental Affairs.

EC-4003. A communication from the Director of Human Resources, U.S. Army Community and Family Support Center, transmitting, pursuant to law, the annual report on the United States Army Nonappropriated Fund Employee Retirement plan for the plan year ended September 30, 1991; to the Committee on Governmental Affairs.

EC-4004. A communication from the Director of Human Resources, U.S. Army COmmunity and Family Support Center, transmitting, pursuant to law, the annual report on the United States Army Nonappropriated Fund Employee Retirement plan for the plan year ended September 30, 1990; to the Committee on Governmental Affairs.

EC-4005. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on the activities of Federal agencies in implementing the Computer Matching and Privacy Protection Act covering calendar year 1990; to the Committee on Governmental Affairs.

EC-4006. A communication from the Administrator of the Panama Canal Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC-4007. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation to implement the Protocol relating to the Madrid Agreement concerning the International Registration of Marks; to the Committee on the Judiciary.

EC-4008. A communication from the Director of the National Science Foundation, transmitting, pursuant to law, a report entitled "Scientific and Engineering Research Facilities at Universities and Colleges, 1992"; to the Committee on Labor and Human Resources.

EC-4009. A communication from the Secretary of Education, transmitting, pursuant to law, notice of final priority—Business and Education Standards Program; to the Committee on Labor and Human Resources.

EC-4010. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the fiscal year 1991 Low Income Home Energy Assistance Program; to the Committee on Labor and Human Resources.

EC-4011. A communication from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, sections 8101(2) and 8109(h), United States Code, to delete the reference therein to "working drawings" and substitute therefor the words "construction documents", and to further delete the references therein to "preliminary plans" and to substitute therefor the words "design development"; to the Committee on Veterans Affairs.

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN, from the Committee on Judiciary:

Timothy K. Lewis, of Pennsylvania, to be United States Circuit Judge for the Third Circuit;

Ursula Mancusi Ungaro, of Florida, to be United States District Judge for the Southern District of Florida;

John W. Sedwick, of Alaska, to be United States District Judge for the District of Alaska;

John S. Unpingco, of Guam, to be Judge for the District Court of Guam for the term of ten years;

Kathryn H. Vratil, of Kansas, to be United States District Judge for the District of Kansas;

Paul J. Barbadora, of New Hampshire, to be United States District Judge for the District of New Hampshire;

Steven J. McAuliffe, of New Hampshire, to be United States District Judge for the District of New Hampshire;

Annette L. Kent, of Hawaii, to be United States Marshal for the District of Hawaii for the term of four years;

Edward Ernest Kubasiewicz, of Virginia, to be an Assistant Commissioner of Patents and Trademarks.

## 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. FOWLER:

S. 3362. A bill to provide that the Georgia Baptist Hospital College of Nursing shall be deemed as satisfying, for academic year 1992–1993, the accreditation requirements described in section 1201(a)(5) of the Higher Education Act of 1965; considered and passed.

By Mr. MITCHELL:

S. 3363. A bill to amend the John F. Kennedy Center Act (20 U.S.C. 76h et seq.) to provide authorization of appropriations for fiscal years 1993 through 1997 for the John F. Kennedy Center for the Performing Arts, and for other purposes; considered and passed.

By Mr. SYMMS:

S. 3364. A bill to amend certain provisions of law relating to establishment, in the District of Columbia or its environs, of a memorial to honor Thomas Paine; considered and passed.

By Mr. SEYMOUR:

S. 3365. A bill entitled the "Central Valley Project Fish and Wildlife Act of 1992"; considered and passed.

By Mr. KENNEDY (for himself and Mr. HATCH):

S. 3366. A bill cited as the "ADAMHA" Reorganization Technical Amendments Act of 1992; considered and passed.

By Mr. JEFFORDS:

S. 3367. A bill to amend the Employee Retirement Income Security Act of 1974 to provide for the treatment of settlement agreements reached with the Pension Benefit Guaranty Corporation; considered and passed.

By Mr. DOLE:

S. 3368. A bill to provide for the establishment of the Brown versus Board of Education National Historic Site in the State of Kansas, and for other purposes; considered and passed.

By Mr. DECONCINI:

S. 3369. A bill to allow certain political subdivisions of the State of Arizona continued access to FBI identification records for a period of 180 days pending restoration of statutory authorization by the legislature of the State of Arizona; considered and passed.

By Mr. HELMS (for himself and Mr. SANFORD):

S. 3370. A bill to provide for the full settlement of all claims of Swain County, North Carolina, against the United States under the agreement dated July 30, 1943, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SHELBY:

S. 3371. A bill to amend the Public Health Service Act to provide for excellence in research with respect to juvenile arthritis, and for other purposes; considered and passed.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. WOFFORD (for himself, Mr. SPECTER, and Mr. WIRTH):

S. Res. 356. A resolution to establish a John Heinz Senate Fellowship Program; considered and agreed to.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HELMS (for himself and Mr. SANFORD):

S. 3370. A bill to provide for the full settlement of all claims of Swain County, NC, against the United States under the agreement dated July 30, 1943, and for other purposes; to the Committee on Energy and Natural Resources.

SWAIN COUNTY SETTLEMENT ACT OF 1992

Mr. HELMS. Mr. President, today I meet a promise I made to the people of tiny Swain County, NC, many years ago. I told them that I would do everything in my power to force the Federal Government to keep a commitment it made to them back in 1943, almost a half-century ago. Unfortunately, my absence from the Senate prevented me from carrying through with my pledge earlier this year.

On October 22, 1991, I introduced, the Swain County Settlement Act of 1991. The amendment at the desk contains the provision of that bill. It directs the Secretary of the Interior and the Secretary of the Treasury to fully honor the 1943 contract between the people of western North Carolina and the Federal Government.

Mr. President, at the outset I make this point: At issue here is whether the U.S. Government will keep its word, and live up to a very clear commitment made 49 years ago in exchange for the Federal Government being given the right to flood thousands of acres of Swain County land to create the Fontana Lake. The integrity of the Federal Government, and those of us who serve in Congress today, will be decided by what we do, or fail to do, in the minds of people who have been waiting for 48 years.

The Helms amendment proposes three things: First, it orders the Secretary of the Interior to begin construction of the road promised by the Federal Government in 1943; second, it directs the Secretary of the Treasury to pay Swain County, NC, the sum of $16 million to compensate the county for the destruction of North Carolina Highway 288; and third, it orders the Park Service to erect a historical marker at Soco Gap to honor the contributions of the Cherokee Nation to the people of North Carolina and to the United States.

This amendment requires the Secretary of the Treasury and the Secretary of the Interior to meet their obligations to Swain County by paying the $16 million and building the road from their unobligated funds in fiscal year 1993. If the funds available are not sufficient to meet the needs of Swain County then the amendment authorizes the appropriation of such sums as are necessary for the Government to honor its obligation.

Senators should be aware of what happened 48 years ago to understand why I so vigorously support full settlement of this matter. In 1943 the Federal Government and the Tennessee Valley Authority decided they needed to flood land from the farmers in Swain County, in order to generate hydroelectric power. Literally thousands of Swain County residents packed up and left their homes because the Federal Government needed their land. The Government did not relocate them, nor did Government give North Carolina families additional land. The Government merely offered a few dollars for the land, but Swain County citizens have told me that they never received even a dime for their land.

I don't have to remind Senators, Mr. President, that in 1943, World War II war was raging in Europe and the Pacific. Many of the men from the Swain County area were overseas fighting for their country's freedom—at the very time their land back home was being taken by the Federal Government.

When the Government took the 44,400 acres of land north of Fontana Lake, it agreed: First, to reimburse Swain County for an existing highway that would be flooded in order to create Fontana Lake and second, to build an around-the-park road to, among other things, provide access to gravesites left behind when the people were forced off the land. In case anyone cares to see it, I have a copy of the North Shore Road contract signed by FDR's Interior Secretary Harold Ickes and North Carolina's Governor J. Melville Broughton.

In July 1943, shortly after the agreement was signed, a Tennessee Valley Authority supervisor wrote the families about gravesite removal. The letter stated:

> The construction of Fontana Dam necessitates the flooding of the road leading to the Proctor Cemetery located in Swain County, NC, and to reach this cemetery in the future will be necessary to walk a considerable distance until a road is constructed in the vicinity of the cemetery, which is proposed to be completed after the war has ended. We are informed that you are the nearest surviving relative of a deceased who is buried in this cemetery.

Because of the understanding mentioned in this letter—that the road would be completed shortly after the war—families agreed to leave their deceased relatives on the land taken by the Federal Government.

Mr. President, documents dating back to 1943 show that the Government did fulfill its promise to pay for Highway 288. In 1943 the Government paid to the State of North Carolina approximately $400,000, an amount which represents the principal which Swain County owed on outstanding bonds.

According to my information, the Federal Government paid that amount to the State of North Carolina as trustee. A letter dated November 22, 1943 from the Treasurer of the Tennessee Valley Authority to the Treasurer of the State of North Carolina confirms that payment was made.

The full payment never reached Swain County and the Federal Government never fulfilled its obligation to build the road. There were a few false starts, though. In 1963, the Federal Government built 2.5 miles of the road; in 1965 it built 2.1 miles; and in 1969 it built one additional mile and a 1,200-foot-long tunnel. Then the environmentalists got into the act and the project was shut down. Now you can visit one of western North Carolina's best-known sites, the "Road to Nowhere". It is a travesty—a monument to a broken promise by the U.S. Government.

Senator SANFORD suggested last year that Swain County has not been able to grow because it has not received the payment of $16 million—which the Federal Government owes the county for destroying NC Hwy 288 in 1943. I disagree. Swain County and most of western North Carolina have suffered economic distress because—I repeat: because—as each year goes by, more and more land in North Carolina is taken off the tax rolls and placed off limits. Over the years, people in western North Carolina have watched the Federal Government seize their land for one purpose or another. They have very little industry. They have no tax base. The unemployment rate is high.

No one can fully appreciate how the government has crippled the economy in western North Carolina until he looks at how much land the Federal Government has already seized. In Swain County alone, out of 345,715 acres, the Federal Government has taken 276,577 acres. Nearby Graham County has the same problem. Of the 193,216 acres in that county, the Federal Government has taken 138,813 acres. Of the 353,452 acres in the Haywood County, the Federal Government has taken 131,111 acres.

I mention all this to emphasize the frustration in western North Carolina. Meanwhile, in the four Tennessee counties bordering the Great Smoky Mountains National Park for instance, the Federal Government owns less than two fifths of the land. I have no quarrel with our friends in Tennessee but facts are facts.

Although the Great Smoky Mountains National Park is the most visited national park in the country, few tourists who travel through the Smokies have a place to pause on the North Carolina side of the park. The road in Swain County, promised over 49 years ago, would change that. It would attract industry and tourists, not to the detriment of the scenic beauty of the Smokies but for the betterment of the citizens of western North Carolina. Senator SANFORD himself stated that he would like the road to become a part of the Blue Ridge Parkway system.

Senator SANFORD stated prior to his December meeting in Swain County, that Department of the Interior regulations and so-called environmental guidelines prevent the construction of the road and, for that reason, he would not support full compliance with the 1943 agreement. The Helms legislation should ease Senator SANFORD's concerns because it orders, notwithstanding any other provision of law, the Secretary of the Interior to build the road.

As Paul Harvey would say, "now you know the rest of the story".

Make no mistake about it, the radical environmentalists will not be satisfied until all of western North Carolina is locked up and the key is thrown away. They have opposed my efforts to achieve fairness for western North Carolina.

I tried to compromise with the environmentalists and with senator SANFORD. I introduced legislation in the 98th, the 99th, and the 100th Congresses. I agreed to place approximately 200,000 acres of North Carolina land into wilderness in exchange for three things: First, reimbursement for Highway 288 and a Farmers Home loan; second, exclusion of 44,000 acres of North Carolina land from wilderness; and third, the authorization of money for a primitive road to be built to the cemeteries north of Fontana Lake.

Mr. President, nothing happened.

I made a commitment to the people of western North Carolina years ago. I promised to fight for their interest. If I lose, the Federal Government will lose the respect and confidence of thousands of North Carolinians.

Finally, Mr. President, I thank my able colleague for joining me, Governor Martin, the people of Swain County, the Eastern Band of Cherokee Indians, and all of the other citizens of western North Carolina in supporting my effort to get Swain County moving toward a more prosperous future.

Mr. President, I ask unanimous consent that a letter from the Governor of North Carolina, a history of the North Carolina Shore Road-Wilderness controversy, a letter I wrote to the Fontana Agreement Bi-Partisan Committee on July 12, 1991, a copy of the 1943 agreement, an article from the Winston-Salem Journal, a statement by the principal chief of the Cherokee Nation Jonathan Taylor, be printed in the RECORD at the conclusion of my remarks.

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

STATE OF NORTH CAROLINA,
OFFICE OF THE GOVERNOR,
*Raleigh, NC, September 18, 1991.*

Hon. JESSE HELMS,
*Dirksen Senate Office Building,*
*Washington, DC.*

DEAR JESSE. I understand that an amendment to the Interior Appropriations regarding payment to Swain County, North Carolina in lieu of a road on the north shore of Fontana Lake is expected to be offered by Senator Terry Sanford. I would like to voice my opposition to that amendment.

The North Shore Road was promised to the people of Swain County in 1943, when the Tennessee Valley Authority flooded their lands and an existing road to create what is now Fontana Lake. The 1943 agreement required that a new road be built so that the people of Swain County would have access to ancestral lands and cemeteries that are now part of the Great Smoky Mountains National Park. In the ensuing years, the lack of federal action in carrying out the agreement has engendered a deep distrust of the federal government on the part of the people of Swain County. Only construction of the road would show that the federal government is true to its word and help alleviate that mistrust.

There are some who believe that the federal government should discharge its 1943 obligation via a $16 million cash payment to the Swain County government in lieu of building the promised road. That would, in effect, compensate a third party instead of keeping the promise to the first party. I oppose this travesty, but urge that no such resolution be authorized without a referendum to show the will of the people of Swain County.

Thank you for your attention to this matter.

Sincerely,

JAMES G. MARTIN.

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U.S. SENATE,
*Washington, DC, July 12, 1991.*

THE FONTANA AGREEMENT BI-PARTISAN COMMITTEE,
*Bryson City, NC.*

DEAR FRIENDS: Many thanks for your letter of July 3, requesting my opinion of the legislation by Senator Sanford, authorizing the payment of $16 million as a final settlement for the federal government's failure to keep its 1943 promise to the people of Swain County.

While I sincerely appreciate Senator Sanford's efforts to settle this matter, I must be frank with you: I cannot support any proposal which does not require the United States Government to honor its full and complete pledge—and that means the construction of the road.

Literally thousands of people who have written to me during the last five years feel the same way, and it is not my intent to turn my back on them. To me a commitment is a commitment, whether it is made by one person or the United States Government.

You also asked if I think that a two lane paved road will be built in the future. My answer to that must also be frank. The only way this road will be constructed is for the entire North Carolina congressional delegation to stand together and demand that the 1943 agreement be upheld.

For too long this issue has been dominated by special interest groups outside our state. These groups have promoted divisions among us—and you see the result. Our elected leadership can no longer permit these outside forces to dictate the economic future of a splendid section of Western North Carolina.

I will soon offer an alternative to Senator Sanford's legislation designed to bring the United States Government in full compliance with its 1943 commitment. This is not time to back down and compromise what was clearly promised to us.

I stand ready to work with you, Senator Sanford, and the Department of the Interior, to help Swain County and all of Western North Carolina move toward a prosperous future as we approach the 21st century.

Kindest regards.

Sincerely,

JESSE HELMS.

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THE GREAT SMOKY MOUNTAINS WILDERNESS CONTROVERSY: THE REAL STORY

(By Charlene Hogue Triplett)

Hardy pioneers, mostly Scotch-Irish, English and German, settled the mountains of Western North Carolina (WNC) in the 1800s. By the late 1800s, the area was very prosperous; unemployment was an unknown thing. The area was rich in natural resources, there were lumber companies, copper mines, farms, orchards, and prosperous towns with their own theatres, churches, and businesses. This was a time when a man's word was his bond and a handshake was sufficient for a contractual agreement.

The Great Smoky Mountains National Park (GSMNP) was authorized in 1927. The first land was purchased for the Park in 1928, and the original GSMNP was dedicated in 1934 by President Roosevelt. The mountain people in the region were proud that their beautiful homeland had been chosen to be a National Park "for the enjoyment of all people"; even the school children raised money to help pay for the land, which was largely owned by huge lumber companies. Park land was paid for not only by donations from private citizens, but also towns, the States of North Carolina and Tennessee; and a large grant from J.D. Rockefeller.

The GSMNP lies between North Carolina and Tennessee; the majority in North Carolina. One mountain county of North Carolina, Swain, sacrificed more of its land than any other county to be included in the GSMNP. The total acreage held by the Park today within Swain County is 217,565 acres, or 65 percent of the county. More than 40 percent of the Park is in Swain County.[1]

Prior to the early 1940s, there was one area of Swain County which was originally intended for inclusion in the Park, an area lying south of the original Park boundary and north of the Little Tennessee River. Originally, this strip of land was not purchased, partly because of lack of funds but also because the people who lived in that area vigorously refused to sell their land. But this area was later taken in the early 40s in another federal project.

As early as 1920, Alcoa, (Aluminum Corporation of America), a large corporation in neighboring Tennessee, began buying water rights and power plants in WNC. Later, when the Tennessee Valley Authority (TVA) was created, it became partners with Alcoa in many projects. With the onset of World War II, the United States' industrial sector began operating at full production, and TVA was called upon to produce more electric power to expedite the production of war materials. The eastern Tennessee region was a leader in the production of aluminum and war munitions, and more electricity was needed in this area for those existing industries. Alcoa already had plans to construct a dam on the Tennessee River in the region to provide more hydroelectric power. Therefore a deal was made between TVA and Alcoa, in which Alcoa transferred to TVA the land which it had already purchased, as well as other rights and interests in the Fontana Project and other Little Tennessee River projects; and TVA would pay Alcoa with electric power.[2]

Congress authorized construction of Fontana Dam on December 17, 1941, as part of TVA's third wartime emergency program. The Fontana project was the biggest ever to be undertaken by TVA. Hydroelectricity from the dam was to be used primarily to produce aluminum for airplanes in the big factories in eastern Tennessee. On completion, the dam was to be 480 feet high, the highest dam East of the Rockies and the fourth highest in the world at the time. Construction on the dam began January 1, 1942, and was completed by round the clock construction in record time. The closure of the

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Footnotes at end of article.

dam occurred on November 7, 1944, and it began generating power January 20, 1945. "* * * in time to be of considerable value in the closing phases of the war."[3]

The creation of Fontana Reservoir necessitated the acquisition of 11,800 acres of prime land in WNC, for the dam site and reservoir. The reservoir would also flood a State Highway, 288, leaving approximately 44,400 acres on the north shore of the planned reservoir isolated. (This area has been termed the "North Shore".) The land area acquired for the Project, which could have been about 12,000 acres, finally totaled 68,291 acres.[4]

The official TVA document which recorded the project, The Fontana Project, gives us an account by which the land was acquired:

"Prices to be paid for the land were fixed by TVA's appraisal staff. No price-trading was permitted to enter into the negotiations and the property was either purchased at the appraised price or condemned * * * TVA's governing price policy is to purchase land and rights required at prices which will enable owners to relocate or re-establish themselves on properties at least equal in value to those they previously owned."[5]

TVA has its account of how the land was taken; the natives of the North Shore area also have their account.

"I might say a few things that I really do not like to say about the U.S. Government, but I believe I lost part of my heritage when it was taken over by the U.S. Government. My grandfather, Andrew J. Posey, owned 300-plus acres of land on Pilkey's Creek. [Which is on the North Shore.] He was not asked if he could sell it. He wasn't asked what he would take for it. He was told that he would get $2,000 for it. Then when he refused to sign a deed, he was forced to watch a judge sign a deed for him," thus states Joyce Posey Breedlove at a Senate Subcommittee Hearing.[6]

Obviously "TVA's governing price policy" was not used or taken into account in buying land for this project. Taylor Kirkland, a native of the North Shore, also testified at this March 14, 1984 field hearing held in Bryson City, NC, by the Senate Subcommittee on Public Lands and Reserved Waters, stating: "We had 99.9 acres of property. We were given $1,435 . . . We came up here and relocated about 2½ miles north of Bryson City, and we got 12 acres for $1,300."[7]

Reverend Buford Woodard of the Deep Creek Baptist Church in Bryson City, NC, also testified at the hearing. He remembers how the TVA came and took his family's land:

"My mother was a widow. My father passed away in 1935 . . . and she was left with six children. At the time that the TVA came, of course, to take over the property, she had four children left. . . . She would never sign the deed because she felt that 600 acres was the inheritance of her family that she had worked hard to rear. But it was carried to the court . . . and there in the court of this country the deed was made to the TVA and $5,000 put in the Bryson City Bank, . . . $5,000 for 600 acres, 3 houses, 350 fruit-bearing trees."[8]

Countless testimonies at this 1984 Senate Hearing clearly show that these people were not given fair market value for their land and homes. Some people's land was taken for county back taxes they owed. Others claim that they were never given a cent for their land. These testimonies question the constitutionality of how the TVA took the people's land.

Most private citizens were usually only given about six dollars an acre for their land. Mining property and developed industrial property brought the average price up to $37.76 an acre, still the second lowest price in TVA history. (The lowest price paid by TVA was for a reservoir which did not affect any towns or communities, nor did it contain rich copper mines or a prosperous industrial sector, as the Fontana Project did.) TVA tried to justify these low averages by stating that they ". . . reflect the mountainous character and remoteness of the reservoir settings."[9]

But to the people who had chosen to live there, the land was invaluable. A price could not be placed on land which had been in one's family for generations. The mountain people recognized the land then, for what the "preservationists" (so called environmentalists) are proclaiming it today: as "crown jewels."

It is no wonder these people, who had been taken advantage of, are bitter and mistrustful of the United States Government. Reverend Buford Woodard's story tells of how he was drafted into the armed service a year after his family's land was taken: "* * * I received greetings from the President of the United States, saying that 'You have been selected to honor your country.' I had a hard time dealing with that, because I had just gone through the trauma and the experience of seeing the Nation that called upon me to bear arms and defend its freedom take my own mother's home and take my inheritance * * *"[10]

Not only were these mountain people cheated out of their land; they were misled by TVA officials. The Fontana Project reports that, of the land "* * * secured for the project, 88.4 percent [was acquired] by voluntary sell * * * [the rest] by condemnation."[11] These figures probably would have been reversed if the people affected had realized how they were being taken advantage of.

The TVA officials told the people almost anything which would appeal and get them to agree to give up their land.

This was a time when feelings of patriotism were high and everyone was trying to help in the war effort. Many of the husbands and sons were overseas fighting the war. TVA officials played on the feelings of these patriotic people, telling them that, if they did not move off the land, thousands more American boys would lose their lives in the war; or that the war would be over much more quickly if they would sell their land and make way for the project.

Everyone was assured, by TVA officials personally, and by official TVA letters, that as soon as the war was over and more resources were available, a road would be built back into the area. Some people were told that they could return to their land if it was not flooded. Millie Vickery once lived in Possum Hollow on the North Shore. "When the TVA came to take the land they told me and my husband that a road would be built which would allow us to come back and move our house, if we wanted to," she stated at the March, 1984 Senate Hearing.[12] But when the people moved out, practically all the homes and buildings which were left were torched. In preparing land to be flooded for a dam reservoir, the proper method is to clear way everything which would be underwater. However, the land on the North Shore was above the high water mark; it was not necessary to burn existing buildings, especially since the people were promised they could return. Natives and descendants of the North Shore believe this was done to ensure they would never try to come back home to live.

Another major aspect of the TVA deception concerns the ancestral cemeteries in the area. Several cemeteries and graves in the planned reservoir area were moved either above the high water mark on the North Shore or to other areas in WNC, most in Swain County. Over 1,000 graves were left in the 28-plus cemeteries on the North Shore which was to be isolated. The people there were strongly encouraged by the TVA, which was trying to minimize grave relocation costs, not to move these cemeteries, as the new road would provide access back into the area.

As a July, 1943 official TVA letter to Mr. L.B. Cook of Marion, NC, reads:

"The construction of Fontana Dam necessitates the flooding of the road leading to the Proctor Cemetery located in Swain County, NC, and to reach this cemetery in the future will be necessary to walk a considerable distance until a road is constructed in the vicinity of the cemetery, which is proposed to be completed after the war has ended."[13]

In 1943 a four-party agreement was signed among Swain County, the State of North Carolina, the TVA, and the Department of the Interior, in which TVA transferred the land on the north shore of Fontana Lake to the Department of the Interior to be added to the GSMNP. In turn, the Park Service agreed to build a road "* * * when constructed shall as a minimum standard the finished throughout its length with a dustless surface not less than twenty (20) feet in width * * *" from Bryson City to Fontana Dam to link up with Deal's Gap, Tennessee.[14] Swain County assumed the bond debt of State Highway 288, and the interest of this debt, a total sum of $694,000. The State of North Carolina would contribute $100,000 to assist in TVA's acquisition of the North Shore. TVA would contribute $400,000 to the State of North Carolina to be held in trust for Swain County to help pay off the bond debt for Highway 288. North Carolina would construct a road from Bryson City to the Park Boundary line to connect with the new Park highway.[15]

The Bryson City Times, a local paper, reports of the contract, termed the 1943 Agreement, on August 5, 1943:

"* * * it would appear that Swain County came out on the losing end of the deal. But happily, this isn't the case. * * * The National Park Service says that as soon as money is made available after the war it will build a modern highway along the shores of Fontana Lake connecting Bryson City with the TVA access highway at Fontana Dam. * * * Anyone with the smallest amount of imagination can visualize what a road of this kind will mean to Bryson City * * * there is nothing that can keep Bryson City from becoming the tourist center of Eastern America."[16]

The 1943 Agreement reflects the schemes of high United States Government officials to take the North Shore and make it a part of the GSMNP. According to The Fontana Project: "In the Fontana Reservoir vicinity * * * there was a strip of mountainous land [the North Shore] * * * which had not been acquired by the Department of the Interior because of lack of funds."[17] The reason that Swain County agreed to accept the bond debt "* * * was influenced by the fact that the National Park Service desired to acquire this land lying between existing park boundary and the river and to build a park highway paralleling the river from Fontana Dam to near Bryson City as soon as the necessary funds were available."[18]

The land on the North Shore was taken under false pretense by TVA officials who told the people the land was needed for the dam project when actually it was being taken for inclusion in the Park. Due to the speed of removal of the people and the lack of communication in the early 1940s, the vast majority of people did not know that their vacated land was going to be transferred to the Park Service. Many actually thought they were going to be allowed to return and live on the land.

To add insult to injury, the Department of the Interior has failed to live up to its end of the agreement; the promised Park Highway which was supposed to compensate so much, has not been constructed to this date. The Department of the Interior has tried to get out of building the road because the terminology in the 1943 Agreement reads, "If and when funds are made available by the Congress * * *" the road will be built.[19]

However, the Department's own actions have clearly proven that they have a legal responsibility to construct the road. The State of North Carolina fulfilled its part of the contract; the road from Bryson City to the Park boundary was completed in 1959. The National Park Service then started construction on this "New Fontana Highway," completed almost nine miles of road into the Park, at which point construction was stopped due to outcry from "environmental" or preservationist groups.[20] Swain County also fulfilled its end of the bargain; the flooded Highway 288 was finally paid off in 1974. Not only did Swain County pay a huge amount of money for this flooded road, it also sacrificed financially when the excessive amount of land was taken from its tax rolls.

In return for these sacrifices, Swain County has received nothing but so-far broken promises.

The people who were living on what is now the North Shore of Fontana Lake would never have peacefully agreed to leave their homes and cemeteries had they envisioned a future of broken promises and no access back. Over the years few trips were made back across the lake to the North Shore; these trips were made by individuals in private boats. After several trips over a period of years, it became obvious that the National Park Service was neglecting the upkeep of the cemeteries. After people bagan protesting, this care was started. Finally, in 1977, the North Shore Cemetery Assocaiation was organized by former residents. They organized homecomings and scheduled annual visits to the cemeteries by pooling resources and renting boats. A couple of years later, the Park Service started helping with access and later, providing yearly access. Today this access consists of a boat ride across Fontana Lake, then a bumpy ride on the back of a truck, on hay bales, in jeeps, or in Suburbans. The transportation is insufficient and slow. This bittersweet journey is an arduous ordeal for the elderly and many are physically unable to continue to make the trip. But the religious tradition of cemetery visitation as well as the bitterness toward the Federal Government is passed on to children and grand-children who still insist that the Park Service build the promised road.

Road construction was stopped by cries of "environmental damage" by "environmental groups" which had gained public recogniztion and political power in the 60s. Costly studies were then conducted by the Park Service, heavily influenced by preservationist sentiments, which found tht further road construction "* * * would result in extreme cuts and fills and unstable conditions would cause environmental damage.* * *[21] Another argument used by the preservationists is that further damage would be done by Anakeesta rock which would be uncovered by road construction. This is a type of rock in which the surface emits acid when exposed to air and water. Senator Al Gore, debating on the Senate Floor, stated on Anakeesta rock: "* * * when uncovered by road builders this acidic material washes into nearby streams and kills them."[22] Other environmentalists; using this argument, have said that all the fish in Fontana Lake would be killed when the acid "leaches" down into the lake. Users of such arguments either have not done their research or are deliberately misleading the public.

Anakeesta rock is commonly found by WNC road builders and methods have been developed to deal with it. A Federal geological survey states that the banks of Fontana Lake are lined with this acidic rock. Also, a recent Federal study has found that acid rain is more acidic than Anakeesta rock. If the Anakeesta rock argument was true, the fish in Fontana would have all died long ago; instead, the fish population is thriving.

Tales of environmental damage road construction would cause are greatly exaggerated and often false. Joseph E. Beck, a professor of Environmental Health Sciences at Western Carolina University, has written: "Arguments that this * * * road could not be constructed without serious environmental damage makes a mockery of our technological abilities."[23]

In the late 1960s, the road construction issue became complicated by talk of Federal Wilderness by environmental groups. These preservationists worked to pass the Wilderness Act of 1964, which placed repressive restrictions on National Forests and Parks. The highest level of preservation given land by law is Wilderness designation.

Ron Arnold is the Executive Director of the Center for the Defense of Free Enterprise, in Bellevue, Washington; he is also a writer and a Wilderness expert. In his book, Ecology Wars: Environmentalism as if People Mattered, Arnold discusses Wilderness:

"Wilderness, at first blush, has a wholesome ring in modern America * * * A 1978 survey by Opinion Research, Inc., found that more than 75 percent of all Americans still didn't realize the difference between just any woodsy recreation spot and officially designated wilderness. The difference is monumental. The Wilderness Act of 1964, which created the National Wilderness Preservation System, mandated that wilderness is an area of at least 5,000 federally-owned acres and defined it thus:

'A Wilderness, in contrast to those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain.' In practical terms, that means no roads, no buildings, no watershed management, severely restricted fire, insect, disease, and wildlife management, and in most places, not even toilets. It's the law. But the average American never even heard of it."[24]

When land is designated as a wilderness area, it is made inaccessible to a large majority of American Citizens. Because of the "no roads" language in the Wildness Act, the only people who can enjoy the land are those who have access to it, and who have the time, money, and physical capability to explore a "wilderness." The Wilderness Act is clearly discriminatory in this way.

According to expert Grant Gerber, founder of the Wilderness Impact Research Foundation in Elko, Nevada, when land is designated Wilderness, restrictions are placed on any kind of activity within. This activity can include such things as hunting, livestock grazing, and access to water. In many cases landowners adjacent to the Wilderness Area are affected with the establishment of "buffer zones.", or restricted zones outside the Wilderness boundary.[25]

The Wilderness Act of 1964 contained a directive for all federal land agencies to study all units under their jurisdiction and recommend which units were suitable for Wilderness designation. Units so recommended were/are then managed as Wilderness until Congress passed legislation officially designating those units Federal Wilderness or releasing them from Wilderness management.

In 1975 the GSMNP was recommended for inclusion in the Wilderness Preservation System, therefore, any road construction would have been in direct conflict with the Wilderness management plan of the Park.[26]

In 1980, after several proposals on how to resolve the North Shore road issue, the Secretary of the Interior supported a cash settlement being paid to Swain County in lieu of completing the road. Under this plan, the Park Service, would provide cemetery access to the North Shore Cemetery Association.[27] This proposal was exactly what the environmental groups wanted; once the road issue was settled, the Department of the Interior would be relieved of their legal obligation which would expedite the passage of a Great Smoky Mountain Bill. But the North Shore Association and Swain County people, who had been fighting for the road for years, were not satisfied with this proposal.

The North Shore of Fontana Lake contains a few old cabins, which were missed by the TVA, several building foundations, other historical structures, many old relics, old roads and trails, not to mention some 28-plus cemeteries. The area does not even meet the criteria for Wilderness designation; according to the Wilderness Act, a Wilderness is an area "untrammeled by man." The people from the area are very concerned that the Park Service will slowly remove all "signs of man" from the area, wiping out the remains of their heritage. Reportedly, the Park Service has been seen destroying non-native plants such as rose bushes; and rainbow trout, which is also not native to the Smokies. In effect, the Park Service may be trying to "create" an area suitable for Federal Wilderness designation where none exists.

Concerned people have asked that at minimum the North Shore be exempt from Wilderness designation. However, top preservationist groups such as the Sierra Club have said, in effect, that all the Park be designated Wilderness, or the county will not receive the monetary settlement for the road. In effect, this amounts to blackmail, considering the power such groups have in Congress. Swain County is legally and morally owed a road and was promised other tourism-related developments by the Park Service prior to the signing of the 1943 agreement. Environmental groups, which were not party to this agreement, should have no place in negotiating proposals.

Various Wilderness bills have been sponsored since 1975, usually by Tennessee Senators, but none have passed. Senator Jesse Helms has led the fight against these bills. Helms promised that as long as he was in the United States Senate, he would do his best to see that the Government kept its word to Swain County people.

The most recent battle over Wilderness for the Smokies started in 1987 with the introduction of more Wilderness Bills. At this point a group of concerned property owners adjacent to the GSMNP organized to form "Non-Partisan Citizens Against Wilderness in Western North Carolina". Their primary goal was to block a Wilderness Bill which would affect the entire Park, including the North Shore.

On a current membership form, the Citizens group clearly lists their guiding philosophies:

We are for multiple use of Public Land. We are for private ownership of land. We are for the fulfillment of the 1943 Agreement. We actively oppose any Wilderness legislation. We seek to elect officials who represent us, regardless of party affiliation. We work to educate the public concerning these issues."[28]

In 1987 and 1988, this group sent a total of over 11,000 petitions and letters to Washington, DC. In July of 1988, when a Great Smoky Mountains Wilderness Bill was being debated on the Senate floor, the group distributed hundreds of "Action Alerts" which asked people to telephone targeted Senators and listed their phone numbers. The group has also secured several resolutions against Wilderness designations and for the fulfillment of the 1943 agreement. Resolutions were secured from: the Swain County Board of Commissioners, the Graham County Commissioners, the Bryson City Board of Aldermen, The Swain County Chamber of Commerce. The Swain County Board of Education, the Swain County Coonhunters Club, The Republican Party of Swain County, the Democrat Men's Club (of Swain County), and several Democratic Precincts in Swain County. Swain, a county in which the Democrat to Republican ratio is 3 to 1, strongly supports the efforts of Senator Jesse Helms, a conservative Republican leader.

Additionally, the local Veterans of Foreign Wars Post voted to support the National VFW Resolution against any further Wilderness designation nationally. The Eastern and Western Cherokee Indian Nations also passed resolutions against Wilderness. Also, approximately 95 percent of the businesses in Bryson City signed a petition calling for the completion of the road as called for in the 1943 Agreement. All these efforts would have been in vain had it not been for Senator Jesse Helms, who courageously stood up for the people of WNC and blocked passage of the Wilderness Bill in the summer of 1988. In the following January, (1989), a Jesse Helms Appreciation Day was named, and Citizens Against Wilderness sponsored a dinner at which the Senator was the honored guest speaker.

The North Shore Road was intended to be much more than a cemetery access road. It was intended to secure Swain County's future. The proposed cash settlement for the road, (which totaled 15 million in 1988), is nothing compared to what Swain County could have been making through tourism, had the road been completed, along with promised National Park Service developments constructed on the North Carolina side of the Park.

According to The Fontana Project, the North Shore road was planned to diffuse heavy tourist traffic in the Park to Swain County and provide a better Eastern entrance to the Park. When the 1943 agreement was in the negotiating stages, much talk was about developing tourism opportunities in Swain County and along Fontana lake. This tourism industry was supposed to compensate Swain for all the land which had been removed from its tax rolls.

It is easy to understand why Tennessee members of Congress always sponsor Great Smoky Mountain Wilderness Bills. They want to make it impossible for the North Shore Road to be built; this would divert tourists from Tennessee. Tennessee does not want to share their rich tourist industry with North Carolina. In 1983 $150 million was reaped from tourists in Gatlinburg, Tennessee while Swain County generally averages less than one-fifth that amount.[29]

As a direct result of the Government failing to fulfill its agreements, and because of excessive Federal ownership of land, Swain is one of the poorest counties in North Carolina, and consistently has the highest unemployment rate in (non-tourist) winter months. Excessive concern by preservationist groups for a near-pristine environment on private land has caused developers and industry to go elsewhere with their jobs and opportunities.

Swain County is currently 86 percent Federal land, containing parts of land from the GSMNP, TVA, the Cherokee Indian Reservation, Nantahala National Forest, and the Blue Ridge Parkway.

Despite this fact, Swain is still targeted for even more federal "protection" by preservationist groups, which, according to several members of Congress, "undoubtedly are the most powerful lobby in Washington, DC."[30]

Because of these factors, Citizens Against Wilderness plan to become a permanent "watchdog" for private property in Western North Carolina. The group has gained support nationwide, and has become politically effective. At the 1988 National Wilderness Conference in Reno, Nevada, Linda G. Hogue, co-founder and chairman of the Citizens group, was a guest speaker, and was honored with the "Most Effective Grassroots Organization Leader of the Year Award."

Hogue has vowed to continue pushing for the Federal Government to fulfill its agreement to the people of Swain County. "They should either build the road or give the land back," she has stated.[31]

The story of the people displaced by the Fontana Project is among the saddest in American history. What is even more tragic is that perhaps one day this story might be forgotten; these people's "Trail of Tears" is not recorded in history books. These patriotic people made huge sacrifices during a time when their country was at war and should not be overlooked. Many North Shore descendants and Swain County people would like to see this history included among the educational features at Fontana Dam. They also feel that the Park Service should build a museum dedicated to the lost communities and their way of life. The Park Service should construct this museum in Swain County along the completed North Shore Road. These WNC people deserve special recognition as well as the fulfillment of a so-far broken promise; not to have the old relics and cultural heritage permanently destroyed by the Park Service. The people do not deserve the atrocious treatment aimed at them by environmental groups, some who go as far as to call the North Shore people selfish for even wanting a primitive jeep road back to their homelands and cemeteries.

In addition, comprehensive plans to construct once-planned tourism related developments on the North Carolina side of the Park should be completed. Currently, the Tennessee side of the Park has more than twice the development as does North Carolina, even though most of the Park is in North Carolina.

Perhaps if these things were done, some of the harsh feelings Swain County and North Shore people have for the Federal Government might be changed, and a continuing controversy put to rest.

FOOTNOTES

[1] Gibson, Jennifer; Donald Guge, and Chad Killebrew. Testimonies before the Senate Subcommittee on Public Lands and Reserved Waters, concerning Senate Bills S. 1947 and S. 2183. Bryson City, NC. March 16, 1984. (Hereafter the March 16, 1984 Senate Subcommittee Hearing.)

[2] United States. Tennessee Valley Authority. The Fontana Project: A Comprehensive Report on the Planning, Design, Construction, and Initial Operation of the Fontana Project: Technical Report No. 12. Washington: GPO, 1950. pp. 1–13. (Hereafter The Fontana Project.)

[3] The Fontana Project. pp. 1–13.

[4] The Fontana Project. p. 478.

[5] The Fontana Project. p. 478.

[6] Breedlove, Joyce Posey. Testimony at the March 16, 1984 Senate Subcommittee Hearing.

[7] Kirkland, Taylor. Testimony at the March 16, 1984 Senate Subcommittee Hearing.

[8] Woodard, Rev. Buford. Testimony at the March 16, 1984 Senate Subcommittee Hearing.

[9] The Fontana Project. p. 479.

[10] Woodard, Rev. Buford. Testimony at the March 16, 1984 Senate Subcommittee Hearing.

[11] The Fontana Project. p. 478.

[12] Vickery, Millie. Testimony at the March 16, 1984 Senate Subcommittee Hearing.

[13] Turner, H. H., Supervisor, Grave Removal Section, Tennessee Valley Authority. Letter to Mr. L. B. Cook of Marion, NC. 31 July 1943.

[14] United States Department of Interior, Tennessee Valley Authority, State of North Carolina, and Swain County. Contractual agreement. October 8, 1943. (Hereafter the 1943 Agreement.)

[15] The 1943 Agreement.

[16] The Bryson City Times, Bryson City, NC. August 3, 1943.

[17] The Fontana Project. p. 475.

[18] The Fontana Project. p. 43.

[19] The 1943 Agreement.

[20] Hodel. Donald Paul, Secretary of Interior. Letter and Briefing Statement to Senator Jesse Helms. 3 June 1986.

[21] Hodel, Donald Paul. Briefing Statement to Senator Jesse Helms. 3 June 1986.

[22] Gore, Sen. Albert. Congressional Record: Proceedings and Debates of the 100th Congress. Second Session: Vol. 134, No. 92. Washington: GPO, June 21, 1986.

[23] Beck, Joseph E., Professor of Environmental Health Science, Western Carolina University. Letter to Senator Jesse Helms. 13 June 1988.

[24] Arnold, Ron. Ecology Wars: Environmentalism as if People Mattered. Bellevue, Washington: Free Enterprise Press, 1987.

[25] Gerber, Grant, Executive Director, Wilderness Impact Research Foundation. Personal interviews, 1986–1989.

[26] Stewart, Jim, National Park Service. Telephone interview. Summer, 1989.

[27] Hodel, Donald Paul. Letter and Briefing Statement to Senator Jesse Helms. 3 June 1986.

[28] Non-Partisan Citizens Against Wilderness in Western North Carolina. Membership form. 1989.

[29] Carpenter, William L., Executive Director, Chamber of Commerce, Gatlinburg, Tennessee. Testimony at the March 16, 1984 Senate Subcommittee Hearing.

[30] Craig, Larry, Alan Simpson, Richard Stallings. Bob Stump, and Don Young, members of the United States Congress. Personal interviews. Summer, 1989.

[31] Houge, Linda G., Chairman, Non-Partisan Citizens Against Wilderness in Western North Carolina. Public statements and personal interviews. 1986–1989.

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Other source: Personal knowledge.

Special thanks to: Mrs. Ruth Chandler of Waynesville, NC., Mrs. Shirley Crisp of Robinsville, NC., Mr. David Monteith of Bryson City, NC., Mrs. Willa Mae Hall Smathers of Waynesville, NC., and Mr. & Mrs. Frank and Maisie Young of Bryson City, NC.

All the many North Shore natives and descendants who have provided me with their countless stories over the years.

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APPENDIX A

THE 1943 AGREEMENT

(Memorandum of agreement of October 8, 1943 between the Department of the Interior and the Tennessee Valley Authority relating to the acquisition and transfer of certain lands in Fontana Dam area for use as part of Great Smoky Mountains National Park)

This agreement, made and entered into as of the 30th day of July 1943, by and between Tennessee Valley Authority (hereinafter called the "Authority"), a corporation created by an Act of Congress known as the Tennessee Valley Authority Act of 1933; the State of North Carolina (hereinafter called the "State"), acting by and through its Governor, its Council of State, and its State Highway and Public Works Commission; Swain County (hereinafter called the "County"), a political subdivision of the State of North Carolina, acting by and through the Board of Commissioners for the County of Swain; and United States Department of the Interior (hereinafter called the "Department"), acting herein for the use and benefit of the National Park Service of said Department.

Witnesseth:

Whereas, the Authority pursuant to the powers vested in it by the Tennessee Valley Authority Act of 1933, is engaged in the construction of a hydroelectric development, known as the Fontana Project, consisting of a dam and reservoir on the Little Tennessee River in North Carolina, said dam being located approximately ten (10) miles upstream from the Tennessee-North Carolina State line; and

Whereas, the Forney Creek Road District has heretofore issued bonds for and constructed on road or highway extending from Deals Gap on the west to Bryson City on the east, said road following a course north of the Little Tennessee and Tuckasegee Rivers and south of the present southern boundary of the Great Smoky Mountains National Park (hereinafter referred to as the "Park"; and

Whereas, the County has heretofore assumed full liability for all principal of and interest on the bonds issued for the construction of said road as aforesaid, and in 1940 issued its own refunding bonds (and interest funding bonds) in the place of all such bonds then outstanding and unpaid; and

Whereas, the State has heretofore assumed jurisdiction and control of said Deals Gap-Bryson City road, which is now known North Carolina State Highway No. 288, and of all other public road connecting therewith; and

Whereas, the reservoir to be constructed and operated by the Authority as a part of said Fontana Project will submerge, flood, or otherwise adversely affect a substantial portion of said Highway 288 east of the site of the Fontana Dam, together with other public roads connecting with said Highway 288; and

Whereas, the War Production Board has indicated that it would not approve or permit the reconstruction or relocation of said Highway 288 so long as the present war emergency and the shortage of labor, materials, and equipment resulting therefrom continue to exist; and

Whereas, said Highway 288 as now constructed, does not furnish or afford a high standard of service, and it is recognized by the parties hereto that the reconstruction or relocation of said road on an equivalent basis after the war emergency or at any other future time would not constitute a wise or efficient expenditure of public funds; and

Whereas, there are now held in private ownership certain lands (hereinafter described in section 1 of this agreement) aggregating approximately forty-four thousand four hundred (44,400) acres in area located within the limits of the County south of the present southern boundary of the Park and north of the Little Tennessee and Tuckasegee rivers, all of which acreage (along with certain other acreage now in private ownership) was originally proposed for inclusion with the boundaries of the Park; and

Whereas, the acquisition of said land described in section 1 hereof by the United States of America and in the inclusion thereof within the boundaries of the Park would serve to extend said boundaries substantially as originally contemplated; and would also establish a basis for the construction by the Department of a park standard road over and across said land; and

Whereas, the Department regards a park standard road connection between Deals Gap and Bryson City as an important link in a planned "around the Park" road, has included the same as a part of a Master Plan for the development of the park (extended as aforesaid), and subject to inclusion of the aforesaid additional acreage within the Park area, is agreeable to initiating construction of the Park portion of such a road as soon after the present war as funds are made available therefor by Congress; and

Whereas, the parties hereto desire to provide for and agree upon the extension of the Park boundaries as aforesaid, the closing and ultimate replacement of Highway 288, and the immediate and final settlement and disposition of all claims which the State and the County may at any time have against the Authority or the United States of America by reason of the flooding, taking, or closing of said Highway 288 and the other roads hereinafter described or referred to, all in the manner and upon the terms and conditions hereinafter specified, and all to the end and purpose of avoiding unwise and inefficient expenditures of public funds and of capturing certain benefits for the region affected and the public generally;

Now, therefore, in consideration of the premises and of the mutual covenants and promises hereinafter contained, it is hereby mutually agreed by and between the parties hereto as follows:

1. Promptly upon the execution of this agreement, the Authority shall, to the extent it has not already done so, in the name of the United States of America, commence and thereafter prosecute in a systematic, orderly, and diligent manner the acquisition by purchase, the exercise of eminent domain, or otherwise, of the land identified on the map attached to and hereby made a part of this agreement as Exhibit A[1] as "Land Proposed for Transfer to U.S. Department of the Interior," the land to be so acquired being more particularly described as follows:

All that land, except that part hereinafter excluded, lying in Swain County, North Carolina, on the north side of the Little Tennessee and Tuckasegee rivers, and south of the Great Smoky Mountains National Park, extending from Twenty Mile Ridge on the West to the divide between Lands Creek and Peachtree Creek on the East, the east boundary of the area being approximately 2 miles west of Bryson City, North Carolina, the said area being bounded as follows:

1. On the west and north by the present boundary line of the Great Smoky Mountains National Park;

On the east by the divide between Lands Creek and Peachtree Creek (the nearest property line being the true boundary) but including the two tracts along the Tuckasegee River formerly owned by A. E. Lowe and A.L. and W.C. Nichols and acquired by the Authority from Nantahala Power and Light Company under tract designations FR-262 and FR-264;

3. On the south by proposed Fontana Lake (1710 contour) from the east boundary to a point on the edge of the lake approximately 3600 feet as measured along the shore (1710 contour) in a northerly direction from the axis of Fontana Dam; thence first with the north boundaries thence the west boundary of two tracts of land acquired by the Authority from Nantahala Power and Light Company and Carolina Aluminum Company, respectively, under tract designations FR-438 and FR-16 to a point 150 feet north of the center line of the principal access road to Fontana Dam and approximately 100 feet west of Lewellyn Branch; thence along a line parallel to and 150 feet north of said center line in a general westerly direction to an intersection with the boundary line of the Great Smoky Mountains National Park on the south end of Twenty Mile Ridge and east of Twenty Mile Creek.

Excepting and excluding from the area above defined (1) all those lands owned by the North Carolina Exploration Company, consisting of some three or four tracts of land situated in the Eagle Creek and Myers Branch watersheds and containing approximately 1,920 acres, more or less, and (2) all land upstream from Fontana Dam having the elevation of its present ground surface below the plane of the 1710-foot (m.s.l.) contour.

The above described land contains a net total of approximately 44,400 acres, more or less.

Provided, however, that the Authority may at its election postpone the acquisition of the taking of any steps in connection with the acquisition of all or any part of or interest in the following property:

The tract of land owned by the North Carolina Mining Corporation situated on the north side of the Sugar Fork tributary of Hazel Creek approximately 2 miles north of Proctor and being the tract of land conveyed by Walter S. Adams and Wife, Melinda, to the North Carolina Mining Corporation by deed dated March 29, 1901, and recorded in the Office of the Register of Deeds of Swain County, North Carolina, in Deed Book 29, page 238, the said tract containing 196 acres, more or less.

until a date six months after the cessation of the hostilities in which the United States is now engaged, it being recognized by the parties hereto that the mining of said tract of land and the removal of such minerals as may be contained therein may be of importance to the prosecution of the war.

It is recognized and agreed that any or all of the lands acquired by the Authority under this section may be subject to outstanding rights of way, easements, and/or mineral rights; that any of said lands acquired from the Aluminum Company of America or any of its subsidiaries may be subject to rights of way one hundred fifty (150) feet in width for any transmission line or lines of any of said companies which may be constructed to interconnect any of the plants of said companies with the power system of the Authority, the location of such rights of way to be agreed upon from time to time by said companies or any of them and the Authority; and that any of said lands acquired from Carolina Aluminum Company may be subject to any or all of the following perpetual rights, easements, and privileges in favor of Carolina Aluminum Company, its successors and assigns, as the owner or owners of the dam site of the Cheoah Development and as appurtenant thereto:

a. The right at all times without limitation or restriction to flood by the waters of the reservoir impounded by the Cheoah Dam or any other dam erected on or near the site thereof, the said properties to an elevation of 1276.63 feet above mean sea level and to flood said properties to such additional elevations as may result from wave action, floods, and other high water conditions.

b. The right is the discretion of Carolina Aluminum Company, its successors or assigns, to remove from the shore of Cheoah Reservoir and the land under said reservoir and to destroy or otherwise dispose of silt, drift, timber, vegetation, and other matter, and to use said shore and land for such purposes and any other purpose reasonably connected with the maintenance and operation of the Cheoah Development together with the right of ingress, egress, and regress for such purposes * * * tools, vehicles, and equipment egress said properties.

It is further understood and agreed that in the purchase or other acquisition of the aforesaid land as herein provided, the Authority shall be privileged to follow and abide by its standard policies and procedures, as the same may be varied or amended from time to time pertaining to the acquisition of lands or interests therein. The Authority shall not be responsible and shall incur no liability under this section for any delay or delays in the acquisition of title to any of said land caused or attributable to title searches or other studies, condemnation proceedings or other litigation, or caused by or attributable to any act or circumstance which is incident to or reasonably related to such acquisition or which is beyond the Authority's control, it being the intention of the parties that Authority shall incur no liability for any delays in the acquisition of any land under this section resulting from any cause whatsoever other than the willful failure or refusal of the Authority to take any step necessary to effect such acquisition.

2. Immediately following its acquisition in accordance with Section 1 hereof of all of the land described in said section, the Authority shall assign and transfer to the Department, for the use and benefit of the National Park Service and for inclusion as a part of the Park, the right of possession and all other right, title, and interest which the Authority may have in and to said land, and shall also grant to the Department, its agents, servants and invitees the right of access to any use of all lands of the United States in the Authority's custody lying upstream from Fontana Dam between the land to be transferred to the Department hereunder and low watermark on Fontana Lake, together with the right to access to and the use of the waters of said lake, for the purpose of constructing and maintaining thereon boating and recreational facilities, piers, docks, and related xxxx and of performing all other acts which may be reasonable necessary to the administration and use, as a part of the Park, of the lands to be transferred to the Department under this section 2; provided, however, that said assignment, transfer, and grant shall be effected by an agreement of transfer between the Authority and the Department substantially in the form attached to and made a part hereof as Exhibit B[2] and shall be subject to all of the terms, conditions, provisions, exceptions, exclusions, and reservations contained in said Exhibit B, and shall also be subject to all those rights, easements and interests (whether or not now listed or specified in said Exhibit B) which have been or may be reserved or left outstanding at the time of Authority's acquisition of the lands described in Section 1, as permitted or contemplated by said Section 1; provided further that, prior to the execution of said transfer agreement, a metes and bounds description of the lands to be transferred to the Department thereunder shall be incorporated therein in substitution for the description of said lands not contained in Exhibit B; and provide further that if the Authority shall at any time have acquired all of the land described in Section 1, with the exception of all or any part of or interest in the North Carolina Mining Corporation tract separately described in said Section 1, the Authority and the Department shall then enter into an agreement of transfer, as aforesaid, with respect to so much of the land described in Section 1 as the Authority shall then have acquired, and in such case said North Carolina Mining Corporation Tract, or the part thereof or interest therein not initially transferred by the Authority to the Department, shall be the subject of a separate and subsequent agreement of transfer between the Authority and the Department, such subsequent agreement of transfer to be consistent with the provisions of this agreement and substantially in the form attached hereto as Exhibit B, and to be executed immediately following the Authority's acquisition of the part of or interest in said tract not covered by the initial agreement of transfer.

The parties recognize and agree that, as an incident to the construction, maintenance, and operation of the Fontana Project, the Authority will acquire certain lands and rights and interests in land in addition to those specified to be acquired under Section 1 hereof and to be transferred under this Section 2. The acquisition of such additional lands and rights and interests in land shall not give rise to any obligation on the part of the Authority to transfer the same, or any part thereof or interest therein, to the Department, and the Authority's sole obligation under Sections 1 and 2 of this agreement shall be to effect the acquisition of the lands specified in Section 1 and to transfer the possession and control of said lands to the Department along with the additional rights of access and use specified in the preceding paragraphs, all as herein specifically provided.

3. The Department agrees to enter into an agreement or agreements of transfer with the Authority as provided by Section 2 hereof, and pursuant to and subject to the provisions of such agreement or agreements, to accept an assignment and transfer of the lands described in Section 1 hereof, together with the additional rights of access and use specified in Section 2. The Department further agrees that, forthwith upon the execution and delivery of such an agreement of transfer, it will extend the present boundaries of the park to embrace and include the land transferred thereby.

4. The Department represents and states that it has evolved a Master Plan for the development of the Park as extended by the addition of the lands described in Section 1 hereof, and that said Master Plan includes an "around the park" road, of which the Park section of a project road between Deals Gap and Bryson City constitutes an important link. Subject to the transfer by the Authority to the Department of the land described in Section 1 as herein provided, the Department agrees that, as soon as funds are made available for that purpose by Congress after the cessation of the hostilities in which the United States is now engaged, the Department will construct or cause to be constructed the following described sections of road, all of said sections being hereinafter collectively referred to as the "Park Road":

a. A section of road beginning at a point on the Fontana Dam access Road near the crossing of Fax Branch, and extending to a point on the western boundary of the land identified on Exhibit A as the property of North Carolina Exploration Company.

b. A section of road beginning at the eastern boundary of said North Carolina Exploration Company land and extending to the eastern boundary of the Park as extended hereunder.

c. A section of road across said North Carolina Exploration Company land connecting the ends of the sections of road described in paragraphs a. and b. above.

d. A section of road beginning at a point in the road described in paragraph a. above. and extending in a generally southerly direction to the west abutment of Fontana Dam.

Provided, however,that in lieu of the sections of road described in paragraphs a., b., and c above, the Department may at its election construct or cause to be constructed, as a part of the Park Road, a continuous section or road beginning at a point on the Fontana Dam Access Road near the crossing of Fax Branch and extending around the aforesaid property of the North Carolina Exploration Company (through existing Park lands) to the eastern boundary of the Park as extended hereunder. In the event of such election on the park of the Department, the Department shall nevertheless construct or cause to be constructed, as a part of the Park Road, the section of road described in paragraph d. above, which section shall in such case commence on said alternative section of Park Road at a point west of the lands identified on Exhibit A as the property of North Carolina Exploration Company. Upon commencement of construction of the Park Road, the Authority shall transfer and assign to the Department its right of possession, and all its other right, title, and interest in and to the land required for the right of way of that portion of the road described in paragraph d. above which lies within the boundaries of Fontana Dam Reservation. The Department shall secure and provide for itself all such easements and rights of way as may be necessary for the construction and maintenance of any portion of the Park Road which may be located upon or across any of said North Carolina Exploration Company property.

If and when funds are made available by the Congress for said Park Road as aforesaid, the location and type of said road, the method and manner of construction the same, and all standards and specifications therefor shall be determined by the Department in its sole discretion; provided, however, the said Park Road when constructed shall as a minimum standard be finished throughout its length with a dustless surface not less than twenty (20) feet in width; and provided, further that said Park Road shall connect at the eastern boundary of the Park, as extended hereunder, at a point to be selected by the Department, with the road which is to be constructed by the State in accordance with and subject to the provisions of Section 6 hereof.

The obligation of the Department, to construct or provide for the construction of a Park Road as defined in this Section 4 shall be XXX and contingent in all respects under the appropriation by Congress of all funds necessary for such construction, and failure on the part of Congress for any reason to make such appropriations shall not constitute a breach or violation of this agreement by the Department or any other party hereto.

5. Following completion of the Park Road to be constructed by the Department subject to the provisions of Section 4, the Department may in its discretion bar said road to commercial use, and restrict the same solely to pleasure and tourist traffic.

6. At such time as the Department shall commence the construction of the Park Road pursuant to Section 4 hereof, the State shall forthwith proceed to acquire good and sufficient easements and rights of way for and shall construct, a road commencing at a point on U.S. Highway 19 in Bryson City, North Carolina, and extending to a point on the eastern boundary of the Park (as extending hereunder) to be selected and designated by the Department, the point so designated by the Department to be such as to provide for the connection of the State road provided for in this section with the Park Road described in Section 4. The easements and rights of way to be acquired by the State for said Bryson City-Park Boundary Road shall be not less than two hundred (200) feet in width outside the corporate limits of Bryson City. In all other respects, except for the termini thereof as above provided, the location and type of said road, the method and manner of constructing the same, and all standards and specifications therefore shall be determined by the State in its sole discretion; provided, however, that said road when constructed by the State shall as a minimum standard be finished throughout its length with a dustless surface not less than twenty (20) feet in width.

7. Following completion of the construction of the Fontana Project by the Authority, the Authority, on its own behalf and as agent of the United States of America, shall quitclaim to the State all of the right, title, and interest which it or the United States of America may have in and to the so-called Fontana Access Road heretofore constructed by the Authority from U.S. Highway 129 near Deals Gap to the left (east) abutment of the Fontana Dam, including all bridges, culvert, and other facilities constituting a part of the transfer of said access road to the State as aforesaid, the Authority shall also:

a. Transfer and quitclaim or cause to be transferred and quitclaimed to the State all easements and rights of way acquired by the Authority as agent of the United States appurtenant to those portions or sections of said access road which may be located outside the limits of land of the United States in the custody of the Authority, together with such land as the Authority, as agent of the United States, may hold or acquire in fee west of a point on the north right of way line of said access road approximately one hundred (100) feet west of Lewellyn Branch, and between said north right of way line and the Cheoah Reservoir of Carolina Aluminum Company. For the purposes hereof, the north right of way line of said access road west of said point approximately one hundred (100) feet west of Lewellyn Branch shall be deemed to a line parallel to and one hundred fifty (150) feet north of the center line of said access road.

b. Grant and quitclaim or cause to be granted and quitclaimed to the State suitable easements and rights of way for the maintenance of all of the portions of said access road which are located on land of the United States in the custody of the Authority, where such land is not included in the land to be transferred and quitclaimed to the States under paragraph a. immediately preceding.

c. Transfer and assign or cause to be transferred and assigned to the State an agreement between the Authority and Carolina Aluminum Company dated May 5, 1943, relating to an easement for the construction and maintenance of the bridge located on said Fontana Access Road across the Little Tennessee River, together with all rights, privileges, and interests of the Authority and the United States in, to, and under said agreement.

The State agrees that it will, by formal agreement with the Authority and Carolina Aluminum Company, accept an assignment of the aforesaid agreement of May 5, 1943, and assume all of the duties and obligations of the Authority and the United States of America thereunder, so as to effect the substitution of the State for the Authority and the United States of America for all of the purposes of said agreement as contemplated by Section 3 thereof. The State further agrees that, forthwith upon the transfer of said access road as aforesaid, it will open and thereafter maintain said access road for public travel, take over at the expense of the State the maintenance, repair, and upkeep thereof, and thereafter hold the Authority and the United States of America harmless on account of any loss, damage, or injury sustained by any person or persons using the same; provided, however, that in transferring said access road to the State as aforesaid, the Authority may reserve the right, but shall have no obligation to maintain, flatten, plant grass or shrubbery upon, or otherwise modify the slopes of cuts and embankments adjacent to any portion or portions of said access road between the south end of the Little Tennessee River Bridge and the left (east) abutment of Fontana Dam.

8. Forthwith upon the execution of this agreement, the State, as a means of cooperating with and assisting the Authority in the purchase of the land described in Section 1 hereof, and in the settlement of the problems incident or related thereto, shall pay to the Authority the sum of One Hundred Thousand Dollars ($100,000), such payment to be made for the purposes of and pursuant to the authority contained in S.B. 198 enacted at the 1943 Session of the North Carolina Legislature and approved March 5, 1943.

9. Promptly upon the execution of this agreement, the Authority shall pay to the State Treasurer of North Carolina, Treasurer ex officio of the North Carolina Local Government Commission, in trust for the County, the sum of Four Hundred Thousand Dollars ($400,000), said State Treasurer of North Carolina being hereby designated by the County to receive and receipt for said sum on the County's behalf.

Prior to or simultaneously with the payment of said sum to said State Treasurer of North Carolina, the County shall enter into a trust agreement governing the management and disbursement of said trust fund. Said trust agreement shall be subject to the approval of the North Carolina Local Government Commission, and shall provide that said sum shall be applied by the trustee exclusively to the payment of the principal of road bonds of the County which are now outstanding and unpaid. The County agrees that said trust agreements, once entered into with the approval of the North Carolina Local Government Commission, shall not be amended, revoked, or supplemented except with the written consent and approval of said Local Government Commission.

Delivery to said State Treasurer, as Treasurer ex officio of the North Carolina Local Government Commission, of the Authority's check in the amount of Four Hundred Thousand Dollars ($400,000), payable to his order

as trustee for the County, shall operate as a compete fulfillment and discharge of all obligations of the Authority under this Section 9.

10. The State and County hereby agree that they will, forthwith upon receipt of a request from the Authority so to do, by instrument or instruments in form suitable for recording, transfer, assign, convey, and quit claim unto the Authority and the United States of America all right, title, and interest which they and the public may have in and to that portion or section of existing North Carolina State Highway 288 between Fax Branch and Watkins Branch, in and to all other roads or portions for sections of road (irrespective of elevation) located upon or across any of the land described in Section 1 hereof and/or any of the land identified on Exhibit A hereto as the property of North Carolina Exploration Company, and in and to all other roads or portions or sections of road in the County lying north of the Little Tennessee and Tuckasegee rivers each of Fontana Dam below elevation 1716 (m.s.1). including all bridges, culverts, and other facilities constituting a part of any of said roads or portions or sections of road, together with all easements and rights-of-way appurtenant thereto. The State and the County further agree that they will, forthwith upon receipt of a request from the Authority to so, take or procure the taking of any and all action which may be necessary and appropriate to vacate and abandon all of the roads and portions or sections of road to be conveyed and quitclaimed as provided in this paragraph, and to close the same to the use of the public. Until such time as the Authority shall request the conveyance and the vacation, abandonment, and closing of the roads or portions or sections of road referred to in this paragraph, all such roads or portions or sections of road shall retain their present status and continue to be used and maintained as public roads or highways.

In consideration of the premises and of the covenants and promises of the Authority and the Department in and under this agreement, the State and the County, for themselves, their respective successors, representatives, and assigns, shall and do hereby, jointly and severally, release, acquit and discharge the Authority, its successors and assigns, and its agents and employees, and the United States of America, of an from all obligations, liability, claims and demands of every nature, character, or description, whether now or hereafter existing, arising out of or in any way connected with the inundation, closing, or taking, under or as the result of this agreement or as the result of the construction, maintenance, or operation of Fontana Dam or Fontana Reservoir, of North Carolina State Highway 288, or any portion or section thereof, wheresoever located, or of any other road or roads or section or sections of road (irrespective of elevation) located wholly or partially upon or across any of the land described in Section 1 hereof or any of the land identified on Exhibit A hereto as the property of North Carolina Exploration Company, or of any road or roads or section or sections of road lying north of the Little Tennessee and Tuckasegee Rivers below elevation 1715 (m.s.1.), together with all obligations, liability, claims, and demands arising out of or in any way connected with any impairment of the efficiency, value, usability, or convenience of any portion (irrespective of elevation or location) of said Highway 288 or of any of said other roads or sections of road, not so inundated, closed, or taken; and the State and the County expressly agree that they will not, jointly or severally, maintain or attempt to maintain any suit or cause of action against the Authority, its agents or employees, or the United States of America based upon or arising out of any such inundation, closing, taking, or impairment, it being in the intention hereof that the covenants and promises of the Authority and the Department herein contained shall constitute and effect and be accepted as an immediate, complete, and final payment and discharge of all such obligations, liability, claims and demands; provided, however, that nothing herein contained shall apply to or preclude any action by the State or the County to enforce compliance or to recover damages for noncompliance by the Authority or the Department with their respective covenants and promises herein made.

11. Anything in Section 10 to the contrary notwithstanding the State does not release or waive or agree not to enforce any claim, demand, or "action over" which it may now or hereafter have against the Authority or the United States, and which is based upon an obligation or liability which the State may have or incur to any landowner by reason of his being deprived of access to land owned by him in Swain County, North Carolina, where such obligation or liability on the part of the State arises out of the inundation, flooding, closing, or other impairment, under or as the result of this agreement or as the result of the construction, maintenance, or operation of Fontana Dam or Fontana Reservoir, of existing North Carolina State Highway 288 between Fax Branch and Watkins Branch; and the Authority hereby expressly agrees to indemnify the State against and save it harmless from any such obligation or liability; provided, however, that whichever such obligation or liability exists or is alleged or claimed to exist on the part of the State in favor of any landowner, the State shall not, except pursuant to a judicial judgment or decree, pay, compromise, settle, or otherwise dispose of such obligation or liability or any claim, demand, suit, or action based thereon without the written consent of the authority; provided further that the Authority shall at times have and exercise full control over the defense, settlement, and disposition of all claims, demands, suits, and action filed with or against the State in respect of any such obligation or liability, and may compromise, settle, or dispose of the same in any manner or by any method or procedure which it may see fit to adopt in its sole discretion.

Whenever any claim, demand, suit, or action is made or filed with or against the State in respect of an actual or alleged obligation or liability on the part of the State of the kind referred to in the preceding paragraph of this section, the State shall promptly, and in any event within ten (10) days after receipt of formal written notice thereof by the State or summons issued by any court and served on the State, give the Authority written notice of the making or filing of such claim, demand, action, or suit, so as to permit the Authority to defend, compromise, settle, or otherwise dispose of the same as herein contemplated. In the event of failure by the State to give the Authority written notice of any such claim, demand, action, or suit as herein provided, or if the State shall, otherwise than pursuant to judicial judgment or decree, pay, compromise, settle, or otherwise dispose of any such claim, demand, action, or suit without the written consent of the Authority, then and in either or any of such events, the Authority shall be relieved and discharged of any obligation to indemnify the State against or save it harmless from any obligation or liability in respect of such claim, demand, suit, action, or any renewal thereof.

12. This agreement may be simultaneously executed and delivered in any number of counterparts, and each such counterpart shall be deemed an original.

In witness whereof, the parties hereto have caused this agreement to be executed by their proper representatives thereunto duly authorized as of the day and year first above written.

Swain County, North Carolina Tennessee Valley Authority

By the Board of Commissioners for the County of Swain

(SGD) R.D. ESTES,
Chairman.

Date: October 8, 1943.

United States Department of the Interior:

(SGD) HAROLD L. ICKES,
Secretary.

(SGD) ARTHUR S. JANDREY,
Acting General Manager

State of North Carolina:

(SGD) J. MELVILLE BROUGHTON,
Governor.

And by Council of State:

(SGD) J. MELVILLE BROUGHTON,
Chairman.

And by State Highway & Public Works Commission:

(SGD) D.B. MCCRARY,
Acting Chairman.

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SWAIN COUNTY STILL WAITS FOR PROMISED ROAD TO SOMEWHERE

(By Jon Healey)

Ruth Chandler, 71, of Waynesville is a mountain girl who doesn't mind climbing up a slope. She's not too crazy about travel by water, though, and that's why she wants the federal government to build a new road on the north shore of Fontana Lake in Swain County. Like several hundred others who have relatives buried in Swain County, Chandler must cross Fontana Lake by motor launch (a glorified barge) to reach the cemeteries on the north side of the lake.

It's bad enough that the boats only run on Sundays; what's worse is that they ride low in the water, giving Chandler the impression that she'll be looking for Davy Jones' locker someday. Still, she's braver than some of her friends.

The boats deliver visitors to 28 different cemeteries, 25 of which can be reached on foot after a hilly trek. Flatbed trucks take visitors to the other three via narrow mountain roads. Those trips have a pulse pounding quality to them, too. Chandler has visions of the road's shoulder giving way under the weight of a fully loaded truck, sending the truck rolling down the mountain and its passengers to their deaths.

Chandler said that she doesn't care much for the trucks creature comforts—the seats are made of hay—but what really bugs her is getting on and off. This summer, the park service condemned all three bridges on the route driven by the trucks, she said, forcing the trucks to unload their passengers before driving over each one. That meant getting on and off the truck 10 times in the course of one visit, a challenge for anyone over 70, she said. These indignities were forced on folks such as Chandler by the federal government, more particularly by the Tennessee Valley Authority.

To generate more power for its customers in Tennessee, the TVA decided during World War II to build a dam on the Little Tennessee River about 8 miles inside of North Carolina, near the border of Swain and Graham counties. The resulting 20-mile-long lake, called Fontana Lake, flooded a road that the county had just built, cutting off access to the cemeteries.

The government signed an agreement in 1943 to pay for the road that was wiped out and to replace it with a two-lane paved road on the north shore. The new road was delayed for more than a decade, then abandoned after less then one-third of the route was built. The state's maps mark the road with a blue line leading from Bryson City to one edge of the lake, signifying that it literally is a road to nowhere.

Everyone agrees that the federal government has done wrong by Swain County, breaking the promise it made when it flooded the original road. There is sharp, even bitter, division over how to make things right, however.

The side represented by Chandler, which includes the North Shore Cemetery Association and the Fontana Agreement Committee, argues that the government has a moral obligation to build a new road from Bryson to Deals Gap, Tenn. The road is much more to them than just an easier way to reach the cemeteries, it is a chance to tap into tourist dollars that flow into the Great Smoky Mountains National Park, dollars now spent in Tennessee.

Linda Hogue, a spokesman for the Fontana Agreement Committee, said, "Tennessee is getting rich off of the park. * * * Our side is virtually undeveloped." The proroad forces envision the new road being as breathtaking as the Blue Ridge Parkway, and as lucrative.

On the other side are the National Park Service, the county commissioners and environmental groups, all of whom want the county to accept a $16 million settlement from the government in lieu of a new road. In a letter written last week, the three commissioners said, "We as elected officials are convinced there will never be a road built in Swain County as agreed to in the 1943 agreement. * * * A $16 million settlement would provide payment of school bond debts, allow us to address our economic problems, (and) provide the much-needed services to our citizens. Thirty-five percent of our citizens are living at or below the federal poverty level."

Sen. Jesse A. Helms, R-N.C., sides with the pro-road forces. Sen. Terry Sanford, D-N.C., sides with the pro-settlement forces. Because they both are supported by their colleagues from their own political parties, they have been able to block each other. That happened again on Thursday, with Helms stopping Sanford. For Swain County, that means no money and no road.

The odd thing is, Helms and Sanford aren't far apart on the issue. Sanford has given up the idea of designating wilderness in Swain County, which Helms opposed. Sanford's bill also would allow the county to use the $16 million to build a road on the north shore, if the county's residents voted to do so. The language about voting comes from the bill that Helms introduced four years ago. The county couldn't build much of a road for $16 million, though—the estimated cost of a paved road on the rocky north shore is $91 million, according to one of Sanford's aides.

Helms plans to introduce a bill soon calling for the government to pay Swain County for the road it flooded and to build a "primitive" road on the north shore of the lake. The only real difference between the two senators' approaches is the underlying assumption: Helms believes that the county's residents want a road, and Sanford believes that they'd rather have more money. You'd think that the two politicians could have solved that dispute already with a poll.

The Swain County commissioners could also have tried to settle the dispute by holding a referendum to gauge the will of the people. Instead, each side is left with its assumption—Sanford's assumption based on the commissioners' position, and Helms' assumption based on the letters, form letters and petitions he has received, many from people who live outside of Swain County. Meanwhile, the people who live inside Swain County are left with a written agreement from 1943 that's not worth the paper it's printed on.

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TESTIMONY OF THE EASTERN BAND OF CHEROKEE INDIANS PRESENTED TO THE CITIZENS OF SWAIN COUNTY, NC ON THE SWAIN COUNTY SETTLEMENT ACT OF 1991, DECEMBER 12, 1991

TESTIMONY OF CHIEF JONATHAN L. TAYLOR CONCERNING S-1849

Mr. Chairman, my name is Jonathan L. Taylor. I am the Principal Chief of the Eastern Band of Cherokee Indians.

I am pleased to have this opportunity to present our views concerning the proposed Swain County Settlement Act of 1991.

For background information, the Cherokee Indian Reservation consists of over 56,000 acres in Western North Carolina. The Reservation is located in five counties: Swain, Jackson, Graham, Haywood and Cherokee counties. The Great Smoky Mountains National Park forms the northern border of most of the Reservation. More than 8,000 of our enrolled Tribal members live on or near the Reservation.

Over the years, the Cherokees and the United States have negotiated and signed many treaties. Indian history states that the United States broke every one of these treaties with the Cherokee, and the Cherokee lost more and more land with each Treaty. For this reason alone, the Eastern Band of Cherokee Indians is sympathetic with our Swain County neighbors dilemma and the United States Government's reluctance to fulfill an agreement over forty-five years old.

The economy of the Cherokee Indian Reservation, and Southwestern North Carolina revolves around tourism. More than thirteen million people pass through Cherokee via U.S. Highway 441 on their visits to the Great Smoky Mountains National Park.

From this perspective one may imagine the deep concern the Eastern Band of Cherokee Indians, indeed all people of Southwestern North Carolina, have for the possible effects of any federal legislation impacting our neighbor communities.

We support the suggested 16 million dollar settlement of Senate Bill 1849 introduced by Senator Helms of North Carolina. This indebtness is over forty five years old and should be settled now without further delay. We see no need for additional concessions from Swain County or vacillation by the Federal Government to assure the fulfillment of its original agreement. Additionally, we strongly feel that the road should be built by the federal government as promised.

Historically, we as Indian people, are keenly aware that decisions made in Washington will have a continuing effect upon our lives, our livelihoods and the lives of our unborn children. We sincerely hope that our concerns and observations will be given full and positive consideration in this light.

We support an action which will provide access to gravesites left behind when the people were forced off the land. We believe that any people should be able to visit the graves of their ancestors without undue hardship caused by no fault of their own.

We support Senator Helmes' suggestion that the Park Service erect an historical marker at Soco Gap to honor the contributions of the Cherokee Nation to the people of North Carolina and to the United States.

After considerable review and discussion we are opposed to Senator Sanford's solution to this problem in the same way we are opposed to his suggestion that Indian Tribes should be legislatively created as in the case of the Lumbee question. In the first case, his answer to the Swain County concern is not a solution, but rather a partial attempt to placate without understanding the economic loss caused by this unfulfilled commitment. In the second case, the Lumbee legislation if enacted, will cost tax payers of the country some one hundred fifty six million dollars annually and cloud the established definition of Native Americans.

We suggest that a more equitable way to solve the federal commitment to Swain County would be for Senator Sanford to join with Senator Helms in asking that the promised road be built as outlined in S-1849 and that the County be compensated for lost revenues through the years.

Mr. Chairman, I thank you on behalf of the Tribe for this opportunity to make our views known. We believe these ideas, specifically included in the legislation, will assure equitable treatment of North Carolina citizens throughout the area as well as other citizens of our country.

Thank you.

Mr. SANFORD. I would like to clarify the terms of our understanding with regard to the Swain County Settlement Act.

Mr. HELMS. I understand my distinguished friend from North Carolina would like to address several concerns he has about the provisions of the Swain County Settlement Act as it relates to our understanding of the 1943 agreement and I appreciate his cooperation. I would be happy to answer the Senator's inquiries. As the Senator knows, settlement of this issue has been a priority of mine since coming to the Senate 20 years ago. I have traveled the roads, visited the cemeteries, brought delegations of Senators to Swain County and fought everyday to hold the Government to its promise to build the road on the north shore of Fontana Lake and compensate the county for the road it destroyed, not one in lieu of the other.

The "Road to Nowhere" must be turned into the road to a brighter future. There is nothing more important to me than forcing the Government to keep its complete word, that means the road and the payment. I will not allow the narrow special interests to dictate the future of one of the most beautiful parts of North Carolina. The road changes what is a bleak future into one of promise. The $16 million can come and go but the road brings jobs and people and hope.

Mr. SANFORD. I thank the distinguished senior Senator. My friend and I

have been intimately familiar with an agreement that was entered into in 1943 between the Secretary of the Interior, the State of North Carolina, the Tennessee Valley Authority, and Swain County, NC. I believe that we both share the desire of the citizens of Swain County to see this problem settled.

I want to make it clear that my first priority since my days as Governor, and throughout my Senate term, has been to compensate the people of Swain County for the road that was flooded to construct Fontana Reservoir as part of this Nation's war effort in 1943. The county is made up of about 82 percent Federal land and the unemployment in the county remains in double digits. The schools and the infrastructure of the county have suffered due to a lack of economic development—the children and the working families deserve the boost that this legislation will bring.

Mr. HELMS. I agree with the Senator. That is why every version of this legislation I have introduced over the years calls for the complete settlement of all obligations owed to the people of Swain County, including the North Shore Road.

In that light, this Senator and the supporters of the North Shore Road intend this legislation to be the full settlement of all of Swain County's claims. However, we do expect the environmentalists to go to court. Despite that, it does not appear that respecting that intent requires invalidating the directive to pay Swain County if there is a legal or regulatory delay in the construction of the North Shore Road.

Mr. SANFORD. I must make one point clear, and I think the Senator has answered my concern about statutory interpretation. It is my reading that the provision of the bill directing the payment of $16 million to Swain County is independent of and severable from the provision directing the completion of the road. Knowing of the obstacles which the Senator has mentioned, this legislation will be understood to ensure that any such delays will not effect the payment of funds to Swain County.

Mr. HELMS. The Senator is correct. As I noted, after consultation with concerned citizens in Swain County I divided the provisions of the legislation. Section 2(a)(3) directs the Secretary of the Interior to build the road. Section 2(a)(4) directs the Secretary of the Treasury to pay Swain County the money owed it as a result of the 1943 agreement. These are not dependent clauses. If the road is challenged for failure to comply with an environmental statute such a challenge would not affect the directive to pay Swain County. The fact that no language makes one directive depend on the other indicates that the order to the Secretary of the Treasury and the order to the Secretary of the Interior operate independently.

Mr. SANFORD. I thank the senior Senator for his cooperation over the years and know that this issue has been a priority for him since he arrived in the Senate.

I must say that I am also very pleased that we have successfully brought this issue before the Senate and will work to ensure its swift passage in the House. Last December, I had the opportunity to spend a couple of days in Swain County and take the rough boat rides, the truck rides, and hikes that are required to visit the sites of the abandoned townships and old graves that lie across Fontana Lake. It is good that we are able to address the 1943 agreement on behalf of the citizens who remember these areas before the creation of the lake, and on behalf of their grandchildren.

Mr. HELMS. I thank my colleague and I trust that he will work with me to ensure that there are no delays in the House. Its time for real progress to begin in Swain County and this is the important first step.

## ADDITIONAL COSPONSORS

S. 1330

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1330, a bill to enhance the productivity, quality, and competitiveness of United States industry through the accelerated development and deployment of advanced manufacturing technologies, and for other purposes.

S. 1569

At the request of Mr. THURMOND, his name was added as a cosponsor of S. 1569, a bill to implement the recommendations of the Federal Courts Study Committee, and for other purposes.

S. 1931

At the request of Mr. STEVENS, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 1931, a bill to authorize the Air Force Association to establish a memorial in the District of Columbia or its environs.

S. 2160

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 2160, a bill to amend the Internal Revenue Code of 1986 to allow taxpayers to elect a deduction or credit for interest on certain educational loans.

S. 2336

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 2336, a bill to establish a loan program at the Department of Commerce to promote the development and commercialization of advanced technologies and products.

S. 2696

At the request of Mr. DOMENICI, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of S. 2696, a bill to establish a comprehensive policy with respect to the provision of health care coverage and services to individuals with severe mental illnesses, and for other purposes.

S. 2810

At the request of Mr. GORE, the names of the Senator from Pennsylvania [Mr. WOFFORD], the Senator from New Mexico [Mr. BINGAMAN], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 2810, a bill to recognize the unique status of local exchange carriers in providing the public switched network infrastructure and to ensure the broad availability of advanced public switched network infrastructure.

S. 2835

At the request of Mr. HATCH, the names of the Senator from New York [Mr. D'AMATO], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of S. 2835, a bill to amend the Federal Food, Drug, and Cosmetic Act to establish provisions regarding the composition and labeling of dietary supplements.

S. 2941

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 2941, a bill to provide the Administrator of the Small Business Administration continued authority to administer the Small Business Innovation Research Program, and for other purposes.

S. 3177

At the request of Mr. KOHL, the names of the Senator from Ohio [Mr. GLENN], and the Senator from Nebraska [Mr. KERREY] were added as cosponsors of S. 3177, a bill to amend title 13, United States Code, to require the Secretary of Commerce to notify the Senate and House of Representatives about changes in the methodology for producing numbers used in any Federal funding formula.

S. 3291

At the request of Mr. BRADLEY, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 3291, a bill to improve the interstate enforcement of child support and parentage court orders, and for other purposes.

S. 3297

At the request of Mr. KOHL, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 3297, a bill to strengthen the security of Federal computer systems, and for other purposes.

S. 3304

At the request of Mr. LUGAR, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 3304, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to clarify application of the Act with respect to nitrogen stabilizers.

SENATE JOINT RESOLUTION 293

At the request of Mr. SASSER, the names of the Senator from North Dakota [Mr. CONRAD], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of Senate Joint Resolution 293, a joint resolution designating the week beginning November 1, 1992, as "National Medical Staff Services Awareness Week."

SENATE JOINT RESOLUTION 333

At the request of Mr. DECONCINI, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of Senate Joint Resolution 333, a joint resolution designating the week beginning February 7, 1993, as "Lincoln Legacy Week."

SENATE JOINT RESOLUTION 340

At the request of Mr. BRADLEY, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Missouri [Mr. BOND], the Senator from Washington [Mr. ADAMS], the Senator from New York [Mr. D'AMATO], the Senator from Wisconsin [Mr. KASTEN], the Senator from Virginia [Mr. WARNER], the Senator from Indiana [Mr. LUGAR], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Illinois [Mr. SIMON], the Senator from Alabama [Mr. SHELBY], the Senator from Michigan [Mr. LEVIN], the Senator from Ohio [Mr. GLENN], the Senator from Hawaii [Mr. INOUYE], the Senator from Maine [Mr. MITCHELL], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Illinois [Mr. DIXON], the Senator from California [Mr. SEYMOUR], the Senator from Montana [Mr. BURNS], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Ohio [Mr. METZENBAUM], the Senator from Michigan [Mr. RIEGLE], the Senator from Arkansas [Mr. BUMPERS], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Connecticut [Mr. DODD], the Senator from Nebraska [Mr. EXON], the Senator from North Carolina [Mr. SANFORD], the Senator from Rhode Island [Mr. PELL], the Senator from Minnesota [Mr. DURENBERGER], the Senator from California [Mr. CRANSTON], the Senator from Indiana [Mr. COATS], the Senator from Texas [Mr. BENTSEN], the Senator from Kansas [Mr. DOLE], the Senator from New York [Mr. MOYNIHAN], the Senator from Tennessee [Mr. SASSER], the Senator from Oklahoma [Mr. BOREN], the Senator from Rhode Island [Mr. CHAFEE], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Wyoming [Mr. SIMPSON], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Florida [Mr. GRAHAM], the Senator from Oregon [Mr. PACKWOOD], the Senator from Arkansas [Mr. PRYOR], the Senator from Missouri [Mr. DANFORTH], the Senator from Maine [Mr. COHEN], the Senator from Georgia [Mr. NUNN], the Senator from Iowa [Mr. GRASSLEY], the Senator from Delaware [Mr. BIDEN], the Senator from Utah [Mr. GARN], and the Senator from North Dakota [Mrs. BURDICK] were added as cosponsors of Senate Joint Resolution 340, a joint resolution designating the week of February 14 through February 20, 1993, as "National Visiting Nurse Associations Week."

SENATE JOINT RESOLUTION 343

At the request of Mr. MURKOWSKI, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of Senate Joint Resolution 343, a joint resolution to designate the period commencing on October 24, 1992, and ending on November 1, 1992, as "National Red Ribbon Week for a Drug-Free America."

SENATE CONCURRENT RESOLUTION 110

At the request of Mr. SYMMS, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of Senate Concurrent Resolution 110, a concurrent resolution to authorize the construction of a monument on the U.S. Capitol Grounds to honor Thomas Paine.

## SENATE RESOLUTION 356—JOHN HEINZ SENATE FELLOWSHIP PROGRAM RESOLUTION

Mr. FORD (for Mr. WOFFORD for himself, Mr. SPECTER and Mr. WIRTH) submitted the following resolution; which was considered and agreed to.

S. RES. 356

*Resolved,*

**SECTION 1. SHORT TITLE.**

This resolution may be cited as the "John Heinz Senate Fellowship Program Resolution".

**SEC. 2. FINDINGS.**

The Senate finds that—

(1) Senator John Heinz believed that Congress has a special responsibility to serve as the guardian for those who cannot protect themselves;

(2) Senator Heinz dedicated much of his congressional career to improving the lives of children; and

(3) it is especially appropriate to honor the memory of Senator Heinz through the creation of a Senate fellowship program to encourage the identification and training of new leadership in child protection, health, welfare and education policy and to bring experts with firsthand experience of children's issues to the assistance of the Congress in order to advance the development of public policy in issues that affect children.

**SEC. 3. FELLOWSHIP PROGRAM.**

(a) IN GENERAL.—In order to encourage the identification and training of new leadership in issues affecting children and to advance the development of public policy with respect thereto, there is established a John Heinz Senate Fellowship Program.

(b) SENATE FELLOWSHIPS.—The Heinz Family Foundation, in consultation with the Secretary of the Senate, is authorized to select Senate fellowship participants.

(c) SELECTION PROCESS.—The Heinz Family Foundation shall—

(1) publicize the availability of the fellowship program;

(2) develop and administer an application process for Senate fellowships; and

(3) conduct a screening of applicants for the fellowship program.

**SEC. 4. COMPENSATION; NUMBER OF FELLOWSHIPS; PLACEMENT.**

(a) COMPENSATION.—The Secretary of the Senate is authorized, from funds made available under section 5, to appoint and fix the compensation of each eligible participant selected under this resolution for a period determined by the Secretary.

(b) NUMBER OF FELLOWSHIPS.—No more than 2 fellowship participants shall be so employed. Any individual appointed pursuant to this resolution shall be subject to all laws, regulations and rules in the same manner and to the same extent as any other employee of the Senate.

(c) PLACEMENT.—The Secretary of the Senate, after consultation with the Majority Leader and Minority Leader of the Senate, shall place eligible participants in positions in the Senate that are, within practical considerations, supportive of the fellowship participants' areas of expertise.

**SEC. 5. FUNDS.**

The funds necessary to compensate eligible participants under this resolution for fiscal year 1993 shall be paid from the contingent fund of the Senate. Such funds shall not exceed, for fiscal year 1993, $71,000. There are authorized to be appropriated $71,000 for each of the fiscal years 1994 through 1997 to carry out the provisions of this resolution.

## AMENDMENTS SUBMITTED

## FEDERAL PROGRAM IMPROVEMENT ACT

### D'AMATO (AND MOYNIHAN) AMENDMENT NO. 3408

Mr. BRADLEY (for Mr. D'AMATO, for himself and Mr. MOYNIHAN) proposed an amendment to the bill (H.R. 3837) to make certain changes to improve the administration of the Medicare Program, to reform customs overtime pay practices, to prevent the payment of Federal benefits to deceased individuals, and to require reports on employers with underfunded pension plans, as follows:

Strike all after the enacting clause and insert:

The following text is added as subsection 781(c) of the Tariff Act of 1930 (19 U.S.C. 1677j(a)) and subsections (c)-(e) are renumbered subsections (d)-(f) respectively.

"(c) SPECIAL MERCHANDISE COMPLETED OR ASSEMBLED IN THE UNITED STATES OR IN OTHER FOREIGN COUNTRIES—

(1) SPECIAL PROVISION.—If—

"(A) merchandise sold in the United States is the same class or kind as any merchandise that is the subject of an antidumping duty order issued under section 736 on May 9, 1980 or August 28, 1991,

"(B)(i) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the relevant order applies or supplied directly or indirectly by an exporter or producer covered by the order, or from parts or components from suppliers that have historically supplied the parts or components to that exporter or producer or to any other exporter or producer covered by the order, or

from any party related to the exporter, producer, or historical supplier, whether such parts or components are supplied from the foreign country or any third country(ies), or

(ii) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which—

(I) is subject to the relevant order,

(II) is produced in the foreign country with respect to which such order applies, or

(III) is supplied by an exporter or producer covered by the order, or by suppliers, that have historically supplied that merchandise to that explorer or producer or to any other exporter or producer covered by the order, or by any party related to the exporter, producer, or historical supplier, whether such merchandise is supplied from the foreign country or any third country(ies), and

"(C) with respect to merchandise under paragraph (B)(ii), the administering authority determines that action is appropriate under such paragraph to prevent evasion of such order, and

"(D) the difference between the value of such merchandise sold in the United States and the value of the imported parts or components referred to in subparagraph (B)(i), or the merchandise referred to in subparagraph (B)(ii), is small, the administering authority, after taking into account any advice provided by the Commission under subsection (f), may include within the scope of the relevant order the imported parts or components referred to in subparagraph (B)(i) that are used in the completion or assembly of the merchandise in the United States, or such imported merchandise referred to in subparagraph (B)(ii), at any time such order is in effect. Parts or components not identified in subsection (c)(1)(B)(i) and merchandise not identified in subsection (c)(1)(B)(ii) shall not be included within the scope of the outstanding order if a finding of circumvention is made under this section.

"(2) FACTORS TO CONSIDER.—In determining whether to include parts or components, or merchandise assembled or completed in a foreign country, in the relevant antidumping duty order under paragraph (1), the administering authority shall take into account such factors as—

"(A) the pattern of trade,

"(B)(i) whether the manufacturer or exporter of the parts or components described in (1)(B)(i) is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order described in subparagraph (1)(A) applies, or

"(ii) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B)(ii) is related to the person who uses the merchandise described in paragraph (1)(B)(ii) is related to the persons who uses the merchandise described in paragraph (1)(B)(ii) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and

"(iii) whether imports into the United States of the parts or components described in subparagraph (1)(B)(i), or imports into the foreign country of the merchandise described in paragraph (1)(B)(ii) (I), (II), and (III), have increased after the filing of the petition, issuance of such order or, if the allegation of circumvention has been raised more than one year after the issuance of such order, have increased since the time circumvention is alleged to have commenced.

"(C) FORCE AND EFFECT.—This section shall have no force or effect if the petitioner in the investigations referenced in paragraph (a)(1) cease production or final assembly of such products in the U.S. or shifts the sourcing of major components to a foreign country.

## COMPREHENSIVE HEALTH CARE ACT

### CHAFEE (AND OTHERS) AMENDMENT NO. 3409

Mr. FORD (for Mr. CHAFEE, for himself, Mr. MOYNIHAN, and Mr. GRASSLEY) proposed an amendment to the bill (S. 814) as follows:

On page 1, line 5, strike "1991" and insert "1992".

Beginning on page 2, strike line 1 and all that follows through the end of the bill, and insert the following:

**SEC. 2. AMENDMENTS TO THE ENVIRONMENTAL PROGRAMS ASSISTANCE ACT.**

(a) IN GENERAL.—Section 2 of the Environmental Program Assistance Act of 1984 (42 U.S.C. 4368a) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of law, any individual whose talents are authorized by subsection (a) to be used in connection with the programs administered by the Administrator of the Environmental Protection Agency shall have the same access as Federal employees have and shall be subject to the same penalties as Federal employees are subject to for unauthorized disclosure of, trade secrets and confidential business information—

"(1) submitted in connection with—

"(A) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

"(D) the Clean Air Act (42 U.S.C. 7401 et seq.);

"(E) the Public Health Service Act (42 U.S.C. 201 et seq.), including section 1445(d) of such Act (42 U.S.C. 300j-4(d));

"(F) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

"(G) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

"(H) the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), including section 13(b) of such Act (42 U.S.C. 4912(b));

"(I) section 408(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(f)); or

"(J) the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.);

"(2) submitted pursuant to any contract or other agreement with the United States; or

"(3) otherwise obtained by an officer or employee of the Environmental Protection Agency under any authority.

(b) APPLICABILITY OF ETHICS AND CONFLICT OF INTEREST PROVISIONS UNDER TITLE 18, UNITED STATES CODE.—Section 2 of such Act (42 U.S.C. 4368a), as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(e) Any individual whose talents are authorized by subsection (a) to be used in connection with the programs administered by the Administrator of the Environmental Protection Agency shall be subject to the requirements of sections 201 through 209 of title 18, United States Code (relating to ethics and conflict of interest).".

(c) TRADE SECRETS AND CONFIDENTIAL BUSINESS INFORMATION DEFINED.—Section 2 of such Act (42 U.S.C. 4368a), as amended by subsection (b), is further amended by adding at the end the following new subsection:

"(f) For purposes of this section, the term 'trade secrets and confidential business information' includes all information prohibited from disclosure by section 1905 of title 18, United States Code (relating to trade secrets), or by any other law referred to in this section.".

**SEC. 3. SUNSET PROVISION.**

The amendment made by section 2(a) shall be effective during the 2-year period beginning on the date of enactment of this Act.

## CASCADIA CORRIDOR COMMISSION

### ADAMS AMENDMENT NO. 3410

Mr. FORD (for Mr. ADAMS) proposed an amendment to the bill (H.R. 6077) concerning United States participation in a Cascadia Corridor commission, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. It is sense of the Congress that—

(a) CASCADIA CORRIDOR COMMISSION.—The United States should continue negotiations with the Government of Canada and State, provincial, and local governments in the urbanized Cascadia corridor along Interstate 5/Highway 99 from Vancouver, British Columbia (including Vancouver Island), to Eugene, Oregon, in order to establish a commission to—

(1) act as a forum to coordinate consideration of regional issues in the Cascadia area by representatives from the private sector, nonprofit organizations, and local, State, provincial, regional, and national governments;

(2) develop a strategy for environmentally sound economic development in the Cascadia region which includes consideration of environmental issues, urban development, transportation, communications, and education; and

(3) submit a plan, developed by the commission and incorporating such strategy, to the Congress, the Canadian Parliament, the legislature of British Columbia, and the State legislatures of Oregon and Washington.

(b) ADVISORY COMMISSION.—The commission should be authorized to function only in an advisory capacity and should have no authority concerning any local, State, or Federal agency or government.

(c) COMPOSITION OF UNITED STATES DELEGATION.—If the United States and Canada conclude an agreement to establish such a commission concerning the Cascadia region, the United States delegation to the commission should include—

(1) 1 member appointed by the President, who should be a nonvoting member;

(2) a Washington State delegation; and

(3) an Oregon delegation.

(d) COST-SHARING AMONG U.S. DELEGATION.—Upon appointment of a United States delegation to such a commission, the United States delegation should decide the cost-sharing arrangements among the Federal, State, and local participants of the delegation. Federal Government contributions of the United States should not exceed one-fourth of the total budget of the commission for any fiscal year.

If a Cascadia corridor commission is established, it is the sense of the Congress that of funds appropriated for "International Commissions" for the Department of State $200,000 for fiscal year 1993 and $200,000 for fiscal year 1994 should be available for the commission.

## TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT

### INOUYE (AND OTHERS) AMENDMENT NO. 3411

Mr. FORD (for Mr. INOUYE, for himself, Mr. MCCAIN, ands Mr. HOLLINGS) proposed an amendment to the amendments of the House to the bill (S. 1579) to provide for regulation and oversight of the development and application of the telephone technology known as pay-per-call, and for other purposes, as follows:

In lieu of the matter proposed to be inserted by the House amendment to the bill, insert the following:

**SECTION 1. SHORT TITLE, FINDINGS.**

(a) SHORT TITLE.—This Act may be cited as the "Telephone Disclosure and Dispute Resolution Act".

(b) FINDINGS.—The Congress finds the following:

(1) The use of pay-per-call services, most commonly through the use of 900 telephone numbers, has grown exponentially in the past few years into a national, billion-dollar industry as a result of recent technological innovations. Such services are convenient to consumers, cost-effective to vendors, and profitable to communications common carriers.

(2) Many pay-per-call businesses provide valuable information, increase consumer choices, and stimulate innovative and responsive services that benefit the public.

(3) The interstate nature of the pay-per-call industry means that its activities are beyond the reach of individual States and therefore requires Federal regulatory treatment to protect the public interest.

(4) The lack of nationally uniform regulatory guidelines has led to confusion for callers, subscribers, industry participants, and regulatory agencies as to the rights of callers and the oversight responsibilities of regulatory authorities, and has allowed some pay-per-call businesses to engage in practices that abuse the rights of consumers.

(5) Some interstate pay-per-call businesses have engaged in practices which are misleading to the consumer, harmful to the public interest, or contrary to accepted standards of business practices and thus cause harm to the many reputable businesses that are serving the public.

(6) Because the consumer most often incurs a financial obligation as soon as a pay-per-call transaction is completed, the accuracy and descriptiveness of vendor advertisements become crucial in avoiding consumer abuse. The obligation for accuracy should include price-per-call and duration-of-call information, odds disclosure for lotteries, games, and sweepstakes, and obligations for obtaining parental consent from callers under 18.

(7) The continued growth of the legitimate pay-per-call industry is dependent upon consumer confidence that unfair and deceptive behavior will be effectively curtailed and that consumers will have adequate rights of redress.

(8) Vendors of telephone-billed goods and services must also feel confident in their rights and obligations for resolving billing disputes if they are to use this new marketplace for the sale of products of more than nominal value.

**TITLE I—CARRIER OBLIGATIONS AND CONSUMER RIGHTS CONCERNING PAY-PER-CALL TRANSACTIONS**

**SEC. 101. AMENDMENT TO COMMUNICATIONS ACT OF 1934.**

Title II of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

**"SEC. 228. REGULATION OF CARRIER OFFERING OF PAY-PER-CALL SERVICES.**

"(a) PURPOSE.—It is the purpose of this section—

"(1) to put into effect a system of national regulation and review that will oversee interstate pay-per-call services;

"(2) to recognize the Commission's authority to prescribe regulations and enforcement procedures and conduct oversight to afford reasonable protection to consumers of pay-per-call services and to assure that violations of Federal law do not occur.

"(b) GENERAL AUTHORITY FOR REGULATIONS.—The Commission by regulation shall, within 270 days after the date of enactment of this section, establish a system for oversight and regulation of pay-per-call services in order to provide for the protection of consumers in accordance with this Act and other applicable Federal statutes and regulations. The Commission's final rules shall—

"(1) include measures that provide a consumer of pay-per-call services with adequate and clear descriptions of the rights of the caller;

"(2) define the obligations of common carriers with respect to the provision of pay-per-call services;

"(3) include requirements on such carriers to protect against abusive practices by providers of pay-per-call services;

"(4) identify procedures by which common carriers and providers of pay-per-call services may take affirmative steps to protect against nonpayment of legitimate charges; and

"(5) require that any service described in subparagraphs (A) and (B) of subsection (i)(1) be offered only through the use of certain telephone number prefixes and area codes.

"(c) COMMON CARRIER OBLIGATIONS.—Within 270 days after the date of enactment of this section, the Commission shall, by regulation, establish the following requirements for common carriers:

"(1) CONTRACTUAL OBLIGATIONS TO COMPLY.—Any common carrier assigning to a provider of pay-per-call services a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) shall require by contract or tariff that such provider comply with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act and the regulations prescribed by the Federal Trade Commission pursuant to those titles.

"(2) INFORMATION AVAILABILITY.—A common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of a pay-per-call service shall make readily available on request to Federal and State agencies and other interested persons—

"(A) a list of the telephone numbers for each of the pay-per-call services it carries;

"(B) a short description of each such service;

"(C) a statement of the total cost or the cost per minute and any other fees for each such service;

"(D) a statement of the pay-per-call service's name, business address, and business telephone; and

"(E) such other information as the Commission considers necessary for the enforcement of this section and other applicable Federal statutes and regulations.

"(2) COMPLIANCE PROCEDURES.—A common carrier that by contract or tariff assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of pay-per-call services shall terminate, in accordance with procedures specified in such regulations, the offering of a pay-per-call service of a provider if the carrier knows or reasonably should know that such service is not provided in compliance with title II or III of the Telephone Disclosure and Dispute Resolution Act or the regulations prescribed by the Federal Trade Commission pursuant to such titles.

"(3) SUBSCRIBER DISCONNECTION PROHIBITED.—A common carrier shall not disconnect or interrupt a subscriber's local exchange telephone service or long distance telephone service because of nonpayment of charges for any pay-per-call service.

"(4) BLOCKING AND PRESUBSCRIPTION.—A common carrier that provides local exchange service shall—

"(A) offer telephone subscribers (where technically feasible) the option of blocking access from their telephone number to all, or to certain specific, prefixes or area codes used by pay-per-call services, which option—

"(i) shall be offered at no charge (I) to all subscribers for a period of 60 days after the issuance of the regulations under subsection (b), and (II) to any subscriber who subscribes to a new telephone number until 60 days after the time the new telephone number is effective; and

"(ii) shall otherwise be offered at a reasonable fee; and

"(B) offer telephone subscribers (where the Commission determines it is technically and economically feasible), in combination with the blocking option described under subparagraph (A), the option of presubscribing to or blocking only specific pay-per-call services for a reasonable one-time charge.

The regulations prescribed under subparagraph (A)(i) of this paragraph may permit the costs of such blocking to be recovered by contract or tariff, but such costs may not be recovered from local or long-distance ratepayers. Nothing in this subsection precludes a common carrier from filing its rates and regulations regarding blocking and presubscription in its interstate tariffs.

"(5) VERIFICATION OF CHARITABLE STATUS.—A common carrier that assigns by contract or tariff a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of pay-per-call services that the carrier knows or reasonably should know is engaged in soliciting charitable contributions shall obtain from such provider proof of the tax exempt status of any person or organization for which contributions are solicited.

"(6) BILLING FOR 800 CALLS.—A common carrier shall prohibit by tariff or contract the use of any 800 telephone number, or other telephone numbers advertised or widely understood to be toll free, in a manner that would result in—

"(A) the calling party being assessed, by virtue of completing the call, a charge for the call;

"(B) the calling party being connected to a pay-per-call service;

"(C) the calling party being charged for information conveyed during the call unless the calling party has a preexisting agreement to be charged for the information or discloses a credit or charge card number during the call; or

"(D) the calling party being called back collect for the provision of audio information services or simultaneous voice conservation services.

"(d) BILLING AND COLLECTION PRACTICES.—The regulations required by this section shall require that any common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of a pay-per-call service and that offers billing and collection services to such provider—

"(1) ensure that a subscriber is not billed—

"(A) for pay-per-call services that such carrier knows or reasonably should know was provided in violation of the regulations issued pursuant to title II of the Telephone Disclosure and Dispute Resolution Act; or

"(B) under such other circumstances as the Commission determines necessary in order to protect subscribers from abusive practices;

"(2) establish a local or a toll-free telephone number to answer questions and provide information on subscribers' rights and obligations with regard to their use of pay-per-call services and to provide to callers the name and mailing address of any provider of pay-per-call services offered by the common carrier;

"(3) within 60 days after the issuance of final regulations pursuant to subsection (b), provide, either directly or through contract with any local exchange carrier that provides billing or collection services to the common carrier, to all of such common carrier's telephone subscribers, to all new subscribers, and to all subscribers requesting service at a new location, a disclosure statement that sets forth all rights and obligations of the subscriber and the carrier with respect to the use and payment for pay-per-call services, including the right of a subscriber not to be billed and the applicable blocking option; and

"(4) in any billing to telephone subscribers that includes charges for any pay-per-call service—

"(A) display any charges for pay-per-call services in a part of the subscriber's bill that is identified as not being related to local and long distance telephone charges;

"(B) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call; and

"(C) identify the toll-free number established pursuant to paragraph (2).

"(e) LIABILITY.—

"(1) COMMON CARRIERS NOT LIABLE FOR TRANSMISSION OR BILLING.—No common carrier shall be liable for a criminal or civil sanction or penalty solely because the carrier provided transmission or billing and collection for a pay-per-call service unless the carrier knew or reasonably should have known that such service was provided in violation of a provision of, or regulation prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act or any other Federal law. This paragraph shall not prevent the Commission from imposing a sanction or penalty on a common carrier for a violation by that carrier of a regulation prescribed under this section.

"(2) CIVIL LIABILITY.—No cause of action may be brought in any court or administrative agency against any common carrier or any of its affiliates on account of any act of the carrier or affiliate to terminate any pay-per-call service in order to comply with the regulations prescribed under this section, title II or III of the Telephone Disclosure and Dispute Resolution Act, or any other Federal law unless the complainant demonstrates that the carrier or affiliate did not act in good faith.

"(f) SPECIAL PROVISIONS.—

"(1) CONSUMER REFUND REQUIREMENTS.—The regulations required by subsection (d) shall establish procedures, consistent with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act, to ensure that carriers and other parties providing billing and collection services with respect to pay-per-call services provide appropriate refunds to subscribers who have been billed for pay-per-call services pursuant to programs that have been found to have violated this section or such regulations, any provision of, or regulations prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act, or any other Federal law.

"(2) RECOVERY OF COSTS.—The regulations prescribed by the Commission under this section shall permit a common carrier to recover its cost of complying with such regulations from providers of pay-per-call services, but shall not permit such costs to be recovered from local or long distance ratepayers.

"(3) RECOMMENDATIONS ON DATA PAY-PER-CALL.—The Commission, within one year after the date of enactment of this section, shall submit to the Congress the Commission's recommendations with respect to the extension of regulations under this section to persons that provide, for a per-call charge, data services that are not pay-per-call services.

"(g) EFFECT ON OTHER LAW.—

"(1) NO PREEMPTION OF ELECTION LAW.—Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with Federal, State, and local election statutes and regulations.

"(2) CONSUMER PROTECTION LAWS.—Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with any Federal, State, or local statute or regulation relating to consumer protection or unfair trade.

"(3) GAMBLING LAWS.—Nothing in this section shall preclude any State from enforcing its statutes and regulations with regard to lotteries, wagering, betting, and other gambling activities.

"(4) STATE AUTHORITY.—Nothing in this section shall preclude any State from enacting and enforcing additional and complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures govern intrastate services and do not significantly impede the enforcement of this section or other Federal statutes.

"(5) ENFORCEMENT OF EXISTING REGULATIONS.—Nothing in this section shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of this section in fulfilling the requirements of this section to the extent that such regulations are consistent with the provisions of this section.

"(h) EFFECT ON DIAL-A-PORN PROHIBITIONS.—Nothing in this section shall affect the provisions of section 223 of this Act.

"(i) DEFINITION OF PAY-PER-CALL SERVICES.—For purposes of this section—

"(1) The term 'pay-per-call services' means any service—

"(A) in which any person provides or purports to provide—

"(i) audio information or audio entertainment produced or packaged by such person;

"(ii) access to simultaneous voice conversation services; or

"(iii) any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

"(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

"(C) which is accessed through use of a 900 telephone number or other prefix or area code designated by the Commission in accordance with subsection (b)(5).

"(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.".

**SEC. 102. TECHNICAL AMENDMENT.**

Section 3(c) of the Telephone Consumer Protection Act of 1991 is amended by striking "section 228" and inserting "section 227".

## TITLE II—REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH PAY-PER-CALL SERVICES

**SEC. 201. FEDERAL TRADE COMMISSION REGULATIONS.**

(a) IN GENERAL.—

(1) ADVERTISING REGULATIONS.—The Commission shall prescribe rules in accordance with this subsection to prohibit unfair and deceptive acts and practices in any advertisement for pay-per-call services. Such rules shall require that the person offering such pay-per-call services—

(A) clearly and conspicuously disclose in any advertising the cost of the use of such telephone number, including the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred;

(B) in the case of an advertisement which offers a prize or award or a service or product at no cost or for a reduced cost, clearly and conspicuously disclose the odds of being able to receive such prize, award, service, or product at no cost or reduced cost, or, if such odds are not calculable in advance, disclose the factors determining such odds;

(C) in the case of an advertisement that promotes a service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, include at the beginning of such advertisement a clear disclosure that the service is not authorized, endorsed, or approved by any Federal agency;

(D) shall not direct such advertisement at children under the age of 12, unless such service is a bona fide educational service;

(E) in the case of advertising directed primarily to individuals under the age of 18, clearly and conspicuously state in such advertising that such individual must have the consent of such individual's parent or legal guardian for the use of such services;

(F) be prohibited from using advertisements that emit electronic tones which can automatically dial a pay-per-call telephone number;

(G) ensure that, whenever the number to be called is shown in television and print media advertisements, the charges for the call are clear and conspicuous and (when shown in television advertisements) displayed for the same duration as that number is displayed;

(H) in delivering any telephone message soliciting calls to a pay-per-call service, specify clearly, and at no less than the audible volume of the solicitation, the total cost and the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred; and

(I) not advertise an 800 telephone number, or any other telephone number advertised or widely understood to be toll free, from which callers are connected to an access number for a pay-per-call service.

(2) PAY-PER-CALL SERVICE STANDARDS.—The Commission shall prescribe rules to require that each provider of pay-per-call services—

(A) include in each pay-per-call message an introductory disclosure message that—

(i) describes the service being provided;

(ii) specifies clearly and at a reasonably understandable volume the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred;

(iii) informs the caller that charges for the call begin at the end of the introductory message;

(iv) informs the caller that parental consent is required for calls made by children; and

(v) in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on any Federal program, a statement that clearly states that the service is not authorized, endorsed, or approved by any Federal agency;

(B) enable the caller to hang up at or before the end of the introductory message without incurring any charge whatsoever;

(C) not direct such services at children under the age of 12, unless such service is a bona fide educational service;

(D) stop the assessment of time-based charges immediately upon disconnection by the caller;

(E) disable any bypass mechanism which allows frequent callers to avoid listening to the disclosure message described in subparagraph (A) after the institution of any price increase and for a period of time sufficient to give such frequent callers adequate and sufficient notice of the price change;

(F) be prohibited from providing pay-per-call services through an 800 number or other telephone numbers advertised or widely understood to be toll free;

(G) be prohibited from billing consumers in excess of the amounts described in the introductory message and from billing for services provided in violation of the rules prescribed by the Commission pursuant to this section;

(H) ensure that any billing statement for such provider's charges shall—

(i) display any charges for pay-per-call services in a part of the consumer's bill that is identified as not being related to local and long distance telephone charges; and

(ii) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call;

(I) be liable for refunds to consumers who have been billed for pay-per-call services pursuant to programs that have been found to have violated the regulations prescribed pursuant to this section or title III of this Act or any other Federal law; and

(J) comply with such additional standards as the Commission may prescribe to prevent abusive practices.

(3) ACCESS TO INFORMATION.—The Commission shall by rule require a common carrier that provides telephone services to a provider of pay-per-call services to make available to the Commission any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

(4) EVASIONS.—The rules issued by the Commission under this section shall include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this title, including through the use of alternative billing or other procedures.

(5) EXEMPTIONS.—The regulations prescribed by the Commission pursuant to paragraph (2)(A) may exempt from the requirements of such paragraph—

(A) calls from frequent callers or regular subscribers using a bypass mechanism to avoid listening to the disclosure message required by such regulations, subject to the requirements of paragraph (2)(E); or

(B) pay-per-call services provided at nominal charges, as defined by the Commission in such regulations.

(6) CONSIDERATION OF OTHER RULES REQUIRED.—In conducting a proceeding under this section, the Commission shall consider requiring, by rule or regulation, that providers of pay-per-call services—

(A) automatically disconnect a call after one full cycle of the program; and

(B) include a beep tone or other appropriate and clear signal during a live interactive group program so that callers will be alerted to the passage of time.

(7) SPECIAL RULE FOR INFREQUENT PUBLICATIONS.—The rules prescribed by the Commission under subparagraphs (A) and (G) of paragraph (1) may permit, in the case of publications that are widely distributed, that are printed annually or less frequently, and that have an established policy of not publishing specific prices, advertising that in lieu of the cost disclosures required by such subparagraphs, clearly and conspicuously disclose that use of the telephone number may result in a substantial charge.

(8) TREATMENT OF RULES.—A rule issued under this subsection shall be treated as a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) RULEMAKING.—The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule respecting unfair or deceptive acts or practices under section 5 of the Federal Trade Commission Act (15 U.S.C. 45). Notwithstanding section 5(a)(2) of such Act (15 U.S.C. 45(a)(2)), communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this title.

**SEC. 202. ACTIONS BY STATES.**

(a) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice which violates any rule of the Commission under section 201(a), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such pattern or practice, to enforce compliance with such rule of the Commission, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) VENUE.—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(d) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this section, nothing in this Act shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(f) LIMITATION.—Whenever the Commission has instituted a civil action for violation of any rule or regulation under this Act, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(g) ACTIONS BY OTHER STATE OFFICIALS.—

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice which violates a rule of the Commission under section 201(a).

**SEC. 203. ADMINISTRATION AND APPLICABILITY OF TITLE.**

(a) IN GENERAL.—Except as otherwise provided in section 202, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act, except for purposes of this title.

(b) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 201 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this title.

**SEC. 204. DEFINITIONS.**

For purposes of this title:

(1) The term "pay-per-call services" has the meaning provided in section 228 of the Communications Act of 1934.

(2) The term "attorney general" means the chief legal officer of a State.

(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term "Commission" means the Federal Trade Commission.

**TITLE III—BILLING AND COLLECTION**

**SEC. 301. REGULATIONS.**

(a) IN GENERAL.—

(1) RULES REQUIRED.—The Commission shall, in accordance with the requirements of this section, prescribe rules establishing procedures for the correction of billing errors with respect to telephone-billed purchases. The rules prescribed by the Commission shall also include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this title.

(2) SUBSTANTIAL SIMILARITY TO CREDIT BILLING.—The Commission shall promulgate rules under this section that impose requirements that are substantially similar to the requirements imposed, with respect to the resolution of credit disputes, under the Truth in Lending and Fair Credit Billing Acts (15 U.S.C. 1601 et seq.).

(3) TREATMENT OF RULE.—A rule issued under paragraph (1) shall be treated as a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57(a)(1)(B)).

(b) RULEMAKING SCHEDULE AND PROCEDURE.—The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) regarding unfair or deceptive acts or practices. Notwithstanding section 5(a)(2) of such Act (15 U.S.C. 45(a)(2)), communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this title.

(d) CORRECTION OF BILLING ERRORS AND CORRECTION OF CREDIT REPORTS.—In prescribing rules under this section, the Commission shall consider, with respect to telephone-billed purchases, the following:

(1) The initiation of a billing review by a customer.

(2) Responses by billing entities and providing carriers to the initiation of a billing review.

(3) Investigations concerning delivery of telephone-billed purchases.

(4) Limitations upon providing carrier responsibilities, including limitations on a carrier's responsibility to verify delivery of audio information or entertainment.

(5) Requirements on actions by billing entities to set aside charges from a customer's billing statement.

(6) Limitations on collection actions by billing entities and vendors.

(7) The regulation of credit reports on billing disputes.

(8) The prompt notification of credit to an account.

(9) Rights of customers and telephone common carriers regarding claims and defenses.

(10) The extent to which the regulations should diverge from requirements under the Truth in Lending and Fair Credit Billing Acts in order to protect customers, and in order to be cost effective to billing entities.

**SEC. 302. RELATION TO STATE LAWS.**

(a) STATE LAW APPLICABLE UNLESS INCONSISTENT.—This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with, the laws of any State with respect to telephone billing practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Commission is authorized to determine whether such inconsistencies exist. The Commission may not determine that any State law is inconsistent with any provision of this chapter if the Commission determines that such law gives greater protection to the consumer.

(b) REGULATORY EXEMPTIONS.—The Commission shall by regulation exempt from the requirements of this title any class of telephone-billed purchase transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

**SEC. 303. ENFORCEMENT.**

The Commission shall enforce the requirements of this title. For the purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All the functions and powers of the Commission under that Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in that Act. The Commission may prescribe such regulations as are necessary or appropriate to implement the provisions of this title.

**SEC. 304. DEFINITIONS.**

As used in this title—

(1) The term "telephone-billed purchase" means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include—

"(A) a purchase by a caller pursuant to a preexisting agreement with the vendor;

(B) local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines, by rule—

(i) is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(ii) is subject to billing dispute resolution procedures required by Federal or State statute or regulation; or

(C) the purchase of goods or services which is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(2) A "billing error" consists of any of the following:

(A) A reflection on a billing statement for a telephone-billed purchase which was not made by the customer or, if made, was not in the amount reflected on such statement.

(B) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(C) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(D) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(E) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(F) A computation error or similar error of an accounting nature on a statement.

(G) Failure to transmit the billing statement to the last known address of the customer, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(H) Any other error described in regulations prescribed by the Commission pursuant to section 553 of title 5, United States Code.

(3) The term "Commission" means the Federal Trade Commission.

(4) The term "providing carrier" means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint.

(5) The term "vendor" means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(6) The term "customer" means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase.

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## BRYAN AMENDMENT NO. 3412

Mr. FORD (for Mr. BRYAN) proposed an amendment to amendment No. 3411 proposed by Mr. INOUYE (and others) to the amendment of the House to the bill S. 1579, supra, as follows:

At the end of the proposed amendment in the nature of a substitute, add the following new title:

TITLE IV—MISCELLANEOUS

**SEC. 401. EXEMPTION FROM CHAPTER 61 OF TITLE 18, UNITED STATES CODE.**

Section 1307(a)(2) of title 18, United States Code, is amended by striking "that is authorized" and all that follows and inserting "that is conducted in a State in which it is authorized by statute to be conducted throughout the State.".

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## PRESSLER AMENDMENT NO. 3413

Mr. FORD (for Mr. PRESSLER) proposed an amendment to amendment No. 3411 proposed by Mr. INOUYE (and

others) to the amendment of the House to the bill S. 1579, supra, as follows:

**SEC. . INTERCEPTION OF CELLULAR TELECOMMUNICATIONS.**

(a) AMENDMENT.—Section 302 of the Communication Act of 1934 (47 U.S.C. 302) is amended by adding the following new subsection:

"(d)(1) INTERCEPTION OF CELLULAR TELECOMMUNICATIONS.—Within 180 days after the date of enactment of the Telephone Disclosure and Dispute Resolution Act, the Commission shall prescribe and make effective regulations denying equipment authorization (under part 15 of title 47, Code of Federal Regulations, or any other part of that title) for any scanning receiver that is capable of—

"(A) receiving transmissions in the frequencies allocated to the domestic cellular radio telecommunications service,

"(B) readily being altered by the user to receive transmissions in such frequencies, or

"(C) being equipped with decoders that convert digital cellular transmissions to analog voice audio.

"(2) MANUFACTURE OR IMPORT OF NONCOMPLYING EQUIPMENT.—Beginning one year after the effective date of the regulations adopted pursuant to subsection (a), no receiver having the capabilities described in subparagraph (A), (B), or (C) of paragraph (1), as such capabilities are defined in such regulations, shall be manufactured in the United States or imported for use in the United States."

(b) REPORT TO CONGRESS—The Commission shall report to Congress no later than June 1, 1993, on available security features for both analog and digital radio signals. This report shall include a study of security technologies currently available as well as those in development. The study shall assess the capabilities of such technologies, level of security afforded, and cost, with widespread deployment of such technologies.

(c) AFFECT ON OTHER LAWS.—This section shall not affect Section 2512 (2) of Title 18, United States Code."

(d) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of the Telephone Disclosure and Dispute Resolution Act.

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## LEAHY AMENDMENT NO. 3414

Mr. FORD (for Mr. LEAHY) proposed an amendment to amendment No. 3411 proposed by Mr. INOUYE (and others) to the amendment of the House to the bill S. 1579, supra; as follows:

At the appropriate place, insert the following:

**SEC. . FCC STUDY OF SECURITY FEATURES FOR ANALOG AND DIGITAL RADIO SIGNALS.**

"(c) The Commission shall report to Congress, no later than June 1, 1993, on available security features for both analog and digital radio signals. This report shall include a study of security technologies currently available as well as those in development. The study shall assess the technological capabilities, level of security afforded, and cost, with widespread deployment, of any given system."

**SEC. . FBI ACCESS TO TELEPHONE SUBSCRIBER INFORMATION.**

(a) REQUIRED CERTIFICATION.—Section 2709(b) of title 18, United States Code, is amended to read as follows:

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director, may—

"(1) request the name, address, length of service, and toll billing records of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

"(2) request the name, address, and length of service of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

"(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

"(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.".

(b) REPORT TO JUDICIARY COMMITTEES.—Section 2709(e) of title 18, United States Code, is amended by inserting after "Senate" the following: "and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,".

**SEC. . COMPUTER ABUSE AMENDMENTS ACT OF 1992.**

(a) SHORT TITLE.—This section may be cited as the "Computer Abuse Amendments Act of 1992".

(b) AMENDMENTS TO THE COMPUTER FRAUD AND ABUSE ACT.—

(1) PROHIBITION.—Section 1030(a)(5) of title 18, United States Code, is amended to read as follows:

"(5)(A) through means of a computer used in interstate commerce or communications, knowingly causes the transmission of a program, information, code, or command to a computer or computer system if—

"(i) the person causing the transmission intends that such transmission will—

"(I) damage, or cause damage to, a computer, computer system, network, information, data, or program; or

"(II) withhold or deny, or cause the withholding or denial, of the use of a computer, computer services, system or network, information, data or program; and

"(ii) the transmission of the harmful component of the program, information, code, or command—

"(I) occurred without the knowledge and authorization of the persons or entities who own or are responsible for the computer system receiving the program, information, code, or command; and

"(II)(aa) causes loss or damage to one or more other persons of value aggregating $1,000 or more during any 1-year period; or

"(bb) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or

"(B) through means of a computer used in interstate commerce or communication, knowingly causes the transmission of a program, information, code, or command to a computer or computer system—

"(i) with reckless disregard of a substantial and unjustifiable risk that the transmission will—

"(I) damage, or cause damage to, a computer, computer system, network, information, data or program; or

"(II) withhold or deny or cause the withholding or denial of the use of a computer, computer services, system, network, information, data or program; and

"(ii) if the transmission of the harmful component of the program, information, code, or command—

"(I) occurred without the knowledge and authorization of the persons or entities who own or are responsible for the computer system receiving the program, information, code, or command; and

"(II)(aa) causes loss or damage to one or more other persons of a value aggregating $1,000 or more during any 1-year period; or

"(bb) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals;".

(2) PENALTY.—Section 1030(c) of title 18, United States Code, is amended—

(A) in paragraph (2)(B) by striking "and" after the semicolon;

(B) in paragraph (3)(A) by inserting "(A)" after "(a)(5)";

(C) in paragraph (3)(B) by striking the period at the end thereof and inserting ", and"; and

(D) by adding at the end thereof the following:

"(4) a fine under this title or imprisonment for not more than 1 year, or both, in the case of an offense under subsection (a)(5)(B).".

(3) CIVIL ACTION.—Section 1030 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) Any person who suffers damage or loss by reason of a violation of the section, other than a violation of subsection (a)(5)(B), may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief. Damages for violations of any subsection other than subsection (a)(5)(A)(ii)(II)(bb) or (a)(5)(B)(ii)(II)(bb) are limited to economic damages. No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of or the date of the discovery of the damage.".

(4) REPORTING REQUIREMENTS.—Section 1030 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) The Attorney General and the Secretary of the Treasury shall report to the Congress annually, during the first 3 years

following the date of the enactment of this subsection, concerning investigations and prosecutions under section 1030(a)(5) of title 18, United States Code.".

(5) PROHIBITION.—Section 1030(a)(3) of title 18, United States Code, is amended by inserting "adversely" before "affects the use of the Government's operation of such computer".

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## GORTON AMENDMENT NO. 3415

Mr. FORD (for Mr. GORTON) proposed an amendment to amendment No. 3411 proposed by Mr. INOUYE (and others) to the amendment of the House to the bill S. 1579, supra, as follows:

**SEC. . PROPOSAL FOR DEMONSTRATING THE POTENTIAL OF INNOVATIVE COMMUNICATIONS EQUIPMENT AND SERVICES.**

(a) DEMONSTRATION PROPOSAL.—Within 180 days after the date of enactment of this Act, the Assistant Secretary of Energy for Conservation and Renewable Energy, in consultation with the Assistant Secretary of Commerce for Communications and Information, shall submit to Congress a proposal for demonstrating the ability of new and innovative communications equipment and services to further the national goals of conserving energy and protecting public health and safety.

(b) FACTORS TO BE ADDRESSED.—The demonstration proposal required by subsection (a) shall address—

(1) the feasibility of using communications technologies to read meters from remote locations;

(2) the feasibility of managing the consumption of electrical power and natural gas by residences and businesses, thereby reducing the demand for new and additional sources of energy, and controlling the cost of providing improved utility services; and

(3) the public safety implications of monitoring utility services outages during earthquakes, hurricanes, typhoons, tornados, volcanos, and other natural disasters.

(c) PROJECT TO DEMONSTRATE ENERGY CONSERVATION POTENTIAL.—Upon submission of the demonstration proposal to the Congress, the Secretary of Energy shall consider requesting from the Assistant Secretary of Commerce for Communications and Information the authority to use radio frequencies, pursuant to section 305 of the Communications Act of 1934 (47 U.S.C. 305), to carry out demonstration projects consistent with the proposal that are designed to demonstrate the energy conservation potential of communications technologies and which are administered by the Secretary of Energy.

**SEC. . TECHNICAL AMENDMENTS.**

Section 227(b)(2) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect.".

## NATIONAL LAND REMOTE SENSING POLICY

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## PRESSLER AMENDMENT NO. 3416

Mr. SIMPSON (for Mr. PRESSLER) proposed an amendment to the bill (S. 2297) to enable the United States to maintain its leadership in land remote sensing by providing data continuity for the Landsat program by establishing a new national land remote sensing policy, and for other purposes; as follows:

In lieu of the matter proposed to be inserted by the Committee amendment in the nature of a substitute, insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Land Remote Sensing Act of 1992".

**SEC. 2. FINDINGS.**

The Congress finds and declares the following:

(1) The continuous collection and utilization of land remote sensing data from space are of major benefit in studying and understanding human impacts on the global environment, in managing the Earth's natural resources, in carrying out national security functions, and in planning and conducting many other activities of scientific, economic, and social importance.

(2) The Federal Government's Landsat system established the United States as the world leader in land remote sensing technology.

(3) The national interest of the United States lies in maintaining international leadership in satellite land remote sensing and in broadly promoting the beneficial use of remote sensing data.

(4) The cost of Landsat data has impeded the use of such data for scientific purposes, such as for global environmental change research, as well as for other public sector applications.

(5) Given the importance of the Landsat program to the United States, urgent actions, including expedited procurement procedures, are required to ensure data continuity.

(6) Full commercialization of the Landsat program cannot be achieved within the foreseeable future, and thus should not serve as the near-term goal of national policy on land remote sensing; however, commercialization of land remote sensing should remain a long-term goal of United States policy.

(7) Despite the success and importance of the Landsat system, funding and organizational uncertainties over the past several years have placed its future in doubt and have jeopardized United States leadership in land remote sensing.

(8) Recognizing the importance of the Landsat program in helping to meet national and commercial objectives, the President approved, on February 11, 1992, a National Space Policy Directive which was developed by the National Space Council and commits the United States to ensuring the continuity of Landsat coverage into the 21st century.

(9) Because Landsat data are particularly important for national security purposes and global environmental change research, management responsibilities for the program should be transferred from the Department of Commerce to an integrated program management involving the Department of Defense and the National Aeronautics and Space Administration.

(10) Regardless of management responsibilities for the Landsat program, the Nation broad civilian, national security, commercial, and foreign policy interests in remote sensing will best be served by ensuring that Landsat remains an unclassified program that operates according to the principles of open skies and nondiscriminatory access.

(11) Technological advances aimed at reducing the size and weight of satellite systems hold the potential for dramatic reductions in the cost, and substantial improvements in the capabilities, of future land remote sensing systems, but such technological advances have not been demonstrated for land remote sensing and therefore cannot be relied upon as the sole means of achieving data continuity for the Landsat program.

(12) A technology demonstration program involving advanced remote sensing technologies could serve a vital role in determining the design of a follow-on spacecraft to Landsat 7, while also helping to determine whether such a spacecraft should be funded by the United States Government, by the private sector, or by an international consortium.

(13) To maximize the value of the Landsat program to the American public, unenhanced Landsat 4 through 6 data should be made available, at a minimum, to United States Government agencies, to global environmental change researchers, and to other researchers who are financially supported by the United States Government, at the cost of fulfilling user requests, and unenhanced Landsat 7 data should be made available to all users at the cost of fulfilling user requests.

(14) To stimulate development of the commercial market for unenhanced data and value-added services, the United States Government should adopt a data policy for Landsat 7 which allows "competition within the private sector for distribution of unenhanced data and value-added services.

(15) Development of the remote sensing market and the provision of commercial value-added services based on remote sensing data should remain exclusively the function of the private sector.

(16) It is the best interest of the United States to maintain a permanent, comprehensive Government archive of global Landsat and other land remote sensing data for long-term monitoring and study of the changing global environment.

**SEC. 3. DEFINITIONS.**

In this Act, the following definitions apply:

(1) The Term "Administrator" means the Administrator of the National Aeronautics and Space Administration.

(2) The term "cost of fulfilling user requests" means the incremental costs associated with providing product generation, reproduction, and distribution of unenhanced data in response to user requests and shall not include any acquisition, amortization, or depreciation of capital assets originally paid for by the United States Government or other costs not specifically attributable to fulfilling user requests.

(3) The term "data continuity" means the continued acquisition and availability of unenhanced data which are, from the point of view of the user—

(A) sufficiently consistent (in terms of acquisition geometry, coverage characteristics, and spectral characteristics) with previous Landsat data to allow comparisons for global and regional change detection and characterization; and

(B) compatible with such data and with methods used to receive and process such data.

(4) The term "data preprocessing" may include—

(A) rectification of system and sensor distortions in land remote sensing data as it is received directly from the satellite in preparation for delivery to a user;

(B) registration of such data with respect to features of the Earth; and

(C) calibration of spectral response with respect to such data, but does not include conclusions, manipulations, or calculations derived from such data, or a combination of such data with other data.

(5) The term "land remote sensing" means the collection of data which can be processed into imagery of surface features of the Earth from an unclassified satellite or satellites, other than an operational United States Government weather satellite.

(6) The term "Landsat Program Management" means the integrated program management structure—

(A) established by, and responsible to, the Administrator and the Secretary of Defense pursuant to section 101(a); and

(B) consisting of appropriate officers and employees of the National Aeronautics and Space Administration, the Department of Defense, and any other United States Government agencies the President designates as responsible for the Landsat program.

(7) The term "Landsat system" means Landsats 1, 2, 3, 4, 5, and 6, and any follow-on land remote sensing system operated and owned by the United States Government, along with any related ground equipment, systems, and facilities owned by the United States Government.

(8) The term "Landsat 6 contractor" means the private sector entity which was awarded the contract for spacecraft construction, operations, and data marketing rights for the Landsat 6 spacecraft.

(9) The term "Landsat 7" means the follow-on satellite to Landsat 6.

(10) The term "National Satellite Land Remote Sensing Data Archive" means the archive established by the Secretary of the Interior pursuant to the archival responsibilities defined in section 502.

(11) The term "noncommercial purposes" refers to those activities undertaken by individuals or entities on the condition, upon receipt of unenhanced data, that—

(A) such data shall not be used in connection with any bid for a commercial contract, development of a commercial product, or any other non-United States Government activity that is expected, or has the potential, to be profitmaking;

(B) the results of such activities are disclosed in a timely and complete fashion in the open technical literature or other method of public release, except when such disclosure by the United States Government or its contractors would adversely affect the national security or foreign policy of the United States or violate a provision of law or regulation; and

(C) such data shall not be distributed in competition with unenhanced data provided by the Landsat 6 contractor.

(12) The term "Secretary" means the Secretary of Commerce.

(13) The term "unenhanced data" means land remote sensing signals or imagery products that are unprocessed or subject only to data preprocessing.

(14) The term "United States Government and its affiliated users" means—

(A) United States Government agencies;

(B) researchers involved with the United States Global Change Research Program and its international counterpart programs; and

(C) other researchers and international entities that have signed with the United States Government a cooperative agreement involving the use of Landsat data for noncommercial purposes.

**SEC. 4. REPEAL OF LAND REMOTE-SENSING COMMERCIALIZATION ACT OF 1984.**

The Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.) is repealed.

TITLE I—LANDSAT

**SEC. 101. LANDSAT PROGRAM MANAGEMENT.**

(a) ESTABLISHMENT.—The Administrator and the Secretary of Defense shall be responsible for management of the Landsat program. Such responsibility shall be carried out by establishing an integrated program management structure for the Landsat system.

(b) MANAGEMENT PLAN.—The Administrator, the Secretary of Defense, and any other United States Government official the President designates as responsible for part of the Landsat program, shall establish, through a management plan, the roles, responsibilities, and funding expectations for the Landsat Program of the appropriate United States Government agencies. The management plan shall—

(1) specify that the fundamental goal of the Landsat Program Management is the continuity of unenhanced Landsat data through the acquisition and operation of a Landsat 7 satellite as quickly as practicable which is, at a minimum, functionally equivalent to the Landsat 6 satellite, with the addition of a tracking and data relay satellite communications capability;

(2) include a baseline funding profile that—

(A) is mutually acceptable to the National Aeronautics and Space Administration and the Department of Defense for the period covering the development and operation of Landsat 7; and

(B) provides for total funding responsibility of the National Aeronautics and Space Administration and the Department of Defense, respectively, to be approximately equal to the funding responsibility of the other as spread across the development and operational life of Landsat 7;

(3) specify that any improvements over the Landsat 6 functional equivalent capability for Landsat 7 will be funded by a specific sponsoring agency or agencies, in a manner agreed to by the Landsat Program Management, if the required funding exceeds the baseline funding profile required by paragraph (2), and that additional improvements will be sought only if the improvements will not jeopardize data continuity; and

(4) provide for a technology demonstration program whose objective shall be the demonstration of advanced land remote sensing technologies that may potentially yield a system which is less expensive to build and operate, and more responsive to data users, than is the current Landsat system.

(c) RESPONSIBILITIES.—The Landsat Program Management shall be responsible for—

(1) Landsat 7 procurement, launch, and operations;

(2) ensuring that the operation of the Landsat system is responsive to the broad interests of the civilian, national security, commercial, and foreign users of the Landsat system;

(3) ensuring that all unenhanced Landsat data remain unclassified and that, except as provided in section 506 (a) and (b), no restrictions are placed on the availability of unenhanced data;

(4) ensuring that land remote sensing data of high priority locations will be acquired by the Landsat 7 system as required to meet the needs of the United States Global Change Research Program, as established in the Global Change Research Act of 1990, and to meet the needs of national security users;

(5) Landsat data responsibilities pursuant to this Act;

(6) oversight of Landsat contracts entered into under section 102 and 103;

(7) coordination of a technology demonstration program, pursuant to section 303; and

(8) ensuring that copies of data acquired by the Landsat system are provided to the National Satellite Land Remote Sensing Data Archive.

(d) AUTHORITY TO CONTRACT.—The Landsat Program management may, subject to appropriations and only under the existing contract authority of the United States Government agencies that compose the Landsat Program Management, enter into contracts with the private sector for services such as, but not limited to, satellite operations and data preprocessing.

(e) LANDSAT ADVISORY PROCESS.—

(1) ESTABLISHMENT.—The Landsat Program Management shall seek impartial advice and comments regarding the status, effectiveness, and operation of the Landsat system, using existing advisory committees and other appropriate mechanisms. Such advice shall be sought from individuals who represent—

(A) a broad range of perspectives on basic and applied science and operational needs with respect to land remote sensing data;

(B) the full spectrum of users of Landsat data, including representatives from United States Government agencies, State and local government agencies, academic institutions, nonprofit organizations, value-added companies, the agricultural, mineral extraction, and other user industries, and the public; and

(C) a broad diversity of age groups, sexes, and races.

(2) REPORTS.—Within 1 year after the date of the enactment of this Act and biennially thereafter, the Landsat Program Management shall prepare and submit a report to the Congress which—

(A) reports the public comments received pursuant to paragraph (1); and

(B) includes—

(i) a response to the public comments received pursuant to paragraph (1);

(ii) information on the volume of use, by category, of data from the Landsat system; and

(iii) any recommendations for policy or programmatic changes to improve the utility and operation of the Landsat system.

**SEC. 102. PROCUREMENT OF LANDSAT 7.**

(a) CONTRACT NEGOTIATIONS.—The Landsat Program Management shall, subject to appropriations and only under the existing contract authority of the United States Government agencies that compose the Landsat Program Management, expeditiously contract with a United States private sector entity for the development and delivery of Landsat 7.

(b) DEVELOPMENT AND DELIVERY CONSIDERATIONS.—In negotiating a contract under this section for the development and delivery of Landsat 7, the Landsat Program Management shall—

(1) seek, as a fundamental objective, to have Landsat 7 operational by the expected end of the design life of Landsat 63

(2) seek to ensure data continuity by the development and delivery of a satellite which is, at a minimum, functionally equivalent to the Landsat 6 satellite; and

(3) seek to incorporate in Landsat 7 any performance improvements required to meet

United States Government needs that would not jeopardize data continuity.

(c) NOTIFICATION OF COST AND SCHEDULE CHANGES.—The Landsat Program Management shall promptly notify the Congress of any significant deviations from the expected cost, delivery date, and launch date of Landsat 7, that are specified by the Landsat Program Management upon award of the contract under this section.

(d) UNITED STATES PRIVATE SECTOR ENTITIES.—The Landsat Program Management shall, for purposes of this Act, define the term "United States private sector entities", taking into account the location of operations, assets, personnel, and other such factors.

**SEC. 103. DATA POLICY FOR LANDSAT 4 THROUGH 6.**

(A) CONTRACT NEGOTIATIONS.—Within 30 days after the date of enactment of this Act, the Landsat Program Management shall enter into negotiations with the Landsat 6 contractor to formalize an arrangement with respect to pricing, distribution, acquisition, archiving, and availability of unenhanced data for which the Landsat 6 contractor has responsibility under its contract. Such arrangement shall provide for a phased transition to a data policy consistent with the Landsat 7 data policy (developed pursuant to section 105) by the date of initial operation of Landsat 7. Conditions of the phased arrangement should require that the Landsat 6 contractor adopt provisions so that by the final phase of the transition period—

(1) such unenhanced data shall be provided, at a minimum, to the United States Government and its affiliated users at the cost of fulfilling user requests, on the condition that such unenhanced data are used solely for noncommercial purposes;

(2) instructional data sets, selected from the Landsat data archives, will be made available to educational institutions exclusively for noncommercial, educational purposes at the cost of fulfilling user requests;

(3) Landsat data users are able to acquire unenhanced data contained in the collective archives of foreign ground stations as easily and affordable as practicable;

(4) adequate data necessary to meet the needs of global environmental change researchers and national security users are acquired;

(5) the United States Government and its affiliated users shall not be prohibited from reproduction, or dissemination of unenhanced data to other agencies of the United States Government and other affiliated users, on the condition that such unenhanced data are used solely for noncommercial purposes;

(6) non-profit, public interest entities receive vouchers, data grants, or other such means of providing them with unenhanced data at the cost of fulfilling user requests, on the condition that such unenhanced data are used solely for noncommercial purposes.

(7) a viable role for the private sector in the promotion and development of the commercial market for value added and other services using unenhanced data from the Landsat system is preserved; and

(8) unenhanced data from the Landsat system are provided to the National Satellite Land Remote Sensing Data Archive at no more than the cost of fulfilling user requests.

(b) FAILURE TO REACH AGREEMENT.—If negotiations under subsection (a) have not, by September 30, 1993, resulted in an agreement that the Landsat Program Management determines generally achieves the goals stated in subsection (b)(1) through (8), the Administrator and the Secretary of Defense shall, within 30 days after the date of such determination, jointly certify and report such determination to the Congress. The report shall include a review of options and projected costs for achieving such goals, and shall include recommendations for achieving such goals. The options reviewed shall include—

(1) retaining the existing or modified contract with the Landsat 6 contractor;

(2) the termination of existing contracts for the exclusive right to market unenhanced Landsat data; and

(3) the establishment of an alternative private sector mechanism for the marketing and commercial distribution of such data.

**SEC. 104. TRANSFER OF LANDSAT 6 PROGRAM RESPONSIBILITIES.**

The responsibility of the Secretary with respect to Landsat 6 shall be transferred to the Landsat Program Management, as agreed to between the Secretary and the Landsat Program Management, pursuant to section 101.

**SEC. 105. DATA POLICY FOR LANDSAT 7.**

(a) LANDSAT 7 DATA POLICY.—The Landsat Program Management, in consultation with other appropriate United States Government agencies, shall develop a data policy for Landsat 7 which should—

(1) ensure that unenhanced data are available to all users at the cost of fulfilling user requests;

(2) ensure timely and dependable delivery of unenhanced data to the full spectrum of civilian, national security, commercial, and foreign users and the National Satellite Land Remote Sensing Data Archive;

(3) ensure that the United States retains ownership of all unenhanced data generated by Landsat 7;

(4) support the development of the commercial market for remote sensing data;

(5) ensure that the provision of commercial value-added services based on remote sensing data remains exclusively the function of the private sector; and

(6) to the extent possible, ensure that the data distribution system for Landsat 7 is compatible with the Earth Observing System Data and Information System.

(b) In addition, the data policy for Landsat 7 may provide for—

(1) United States private sector entities to operate ground receiving stations in the United States for Landsat 7 data;

(2) other means for direct access by private sector entities to unenhanced data from Landsat 7; and

(3) the United States Government to charge a per image fee, license fee, or other such fee to entities operating ground receiving stations or distributing Landsat 7 data.

(c) LANDSAT 7 DATA POLICY PLAN.—Not later than July 15, 1994, the Landsat Program Management shall develop and submit to Congress a report that contains a Landsat 7 Data Policy Plan. This plan shall define the roles and responsibilities of the various public and private sector entities that would be involved in the acquisition, processing, distribution, and archiving of Landsat 7 data and in operations of the Landsat 7 spacecraft.

(d) REPORTS.—Not later than 12 months after submission of the Landsat 7 Data Policy Plan, required by subsection (c), and annually thereafter until the launch of Landsat 7, the Landsat Program Management, in consultation with representatives of appropriate United States Government agencies, shall prepare and submit a report to the Congress which—

(1) provides justification for the Landsat 7 data policy in terms of the civilian, national security, commercial, and foreign policy needs of the United States; and

(2) provides justification for any elements of the Landsat 7 data policy which are not consistent with the provisions of subsection (a).

## TITLE II—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS

**SEC. 201. GENERAL LICENSING AUTHORITY.**

(a) LICENSING AUTHORITY OF SECRETARY.—(1) In consultation with other appropriate United States Government agencies, the Secretary is authorized to license private sector parties to operate private remote sensing space systems for such period as the Secretary may specify and in accordance with the provisions of this title.

(2) In the case of a private space system that is used for remote sensing and other purposes, the authority of the Secretary under this title shall be limited only to the remote sensing operations of such space system.

(b) COMPLIANCE WITH THE LAW, REGULATIONS, INTERNATIONAL OBLIGATIONS, AND NATIONAL SECURITY.—No license shall be granted by the Secretary unless the Secretary determines in writing that the applicant will comply with the requirements of this Act, any regulations issued pursuant to this Act, and any applicable international obligations and national security concerns of the United States.

(c) DEADLINE FOR ACTION ON APPLICATION.—The Secretary shall review any application and make a determination thereon within 120 days of the receipt of such application. If final action has not occurred within such time, the Secretary shall inform the applicant of any pending issues and of actions required to resolve them.

(d) IMPROPER BASIS FOR DENIAL.—The Secretary shall not deny such license in order to protect any existing licensee from competition.

(e) REQUIREMENT TO PROVIDE UNENHANCED DATA.—(1) The Secretary, in consultation with other appropriate United States Government agencies and pursuant to paragraph (2), shall designate in a licensee issued pursuant to this title any unenhanced data required to be provided by the license under section 202(b)(3).

(2) The Secretary shall make a designation under paragraph (1) after determining that—

(A) such data are generated by a system for which all or a substantial part of the development, fabrication, launch, or operations costs have been or will be directly funded by the United States Government; or

(B) it is in the interest of the United States to require such data to be provided by the licensee consistent with section 202(b)(3), after considering the impact on the licensee and the importance of promoting widespread access to remote sensing data from United States and foreign systems.

(3) A designation made by the Secretary under paragraph (1) shall not be inconsistent with any contract or other arrangement entered into between a United States Government agency and the licensee.

**SEC. 202. CONDITIONS FOR OPERATION.**

(a) LICENSE REQUIRED FOR OPERATION.—No person who is subject to the jurisdiction or control of the United States may, directly or through any subsidiary or affiliate, operate any private remote sensing space system without a license pursuant to section 201.

(b) LICENSING REQUIREMENTS.—Any license issued pursuant to this title shall specify that the licensee shall comply with all of the requirements of this Act and shall—

(1) operate the system in such manner as to preserve the national security of the United States and to observe the international obligations of the United States in accordance with section 506;

(2) make available to the government of any country (including the United States) unenhanced data collected by the system concerning the territory under the jurisdiction of such government as soon as such data are available and on reasonable terms and conditions;

(3) make unenhanced data designated by the Secretary in the license pursuant to section 201(e) available in accordance with section 501;

(4) upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President;

(5) furnish the Secretary with complete orbit and data collection characteristics of the system, and inform the Secretary immediately of any deviation; and

(6) notify the Secretary of any agreement the licensee intends to enter with a foreign nation, entity, or consortium involving foreign nations or entities.

(c) ADDITIONAL LICENSING REQUIREMENTS FOR LANDSAT 6 CONTRACTOR.—In addition to the requirements of paragraph (b), any license issued pursuant to this title to the Landsat 6 contractor shall specify that the Landsat 6 contractor shall—

(1) notify the Secretary of any value added activities (as defined by the Secretary by regulation) that will be conducted by the Landsat 6 contractor or by a subsidiary or affiliate; and

(2) if such activities are to be conducted, provide the Secretary with a plan for compliance with section 501 of this Act.

**SEC. 203. ADMINISTRATIVE AUTHORITY OF THE SECRETARY.**

(a) FUNCTIONS.—In order to carry out the responsibilities specified in this title, the Secretary may—

(1) grant, condition, or transfer licenses under this Act;

(2) seek an order of injunction or similar judicial determination from a United States District Court with personal jurisdiction over the licensee to terminate, modify, or suspend licenses under this title and to terminate licensed operations on an immediate basis, if the Secretary determines that the licensee has substantially failed to comply with any provisions of this Act, with any terms, conditions, or restrictions of such license, or with any international obligations or national security concerns of the United States;

(3) provide penalties for noncompliance with the requirements of licenses or regulations issued under this title, including civil penalties not to exceed $10,000 (each day of operation in violation of such licenses or regulations constituting a separate violation);

(4) compromise, modify, or remit any such civil penalty;

(5) issue subpoenas for any materials, documents, or records, or for the attendance and testimony of witnesses for the purpose of conducting a hearing under this section;

(6) seize any object, record, or report pursuant to a warrant from a magistrate based on a showing of probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this Act or the requirements of a license or regulation issued thereunder; and

(7) make investigations and inquiries and administer to or take from any person an oath, affirmation, or affidavit concerning any matter relating to the enforcement of this Act.

(b) REVIEW OF AGENCY ACTION.—Any applicant or licensee who makes a timely request for review of an adverse action pursuant to subsection (a)(1), (a)(3), (a)(5), or (a)(6) shall be entitled to adjudication by the Secretary on the record after an opportunity for an agency hearing with respect to such adverse action. Any final action by the Secretary under this subsection shall be subject to judicial review under chapter 7 of title 5, United States Code.

**SEC. 204. REGULATORY AUTHORITY OF THE SECRETARY.**

The Secretary may issue regulations to carry out this title. Such regulations shall be promulgated only after public notice and comment in accordance with the provisions of section 553 of title 5, United States Code.

**SEC. 205. AGENCY ACTIVITIES.**

(a) LICENSE APPLICATION AND ISSUANCE.—A private sector party may apply for a license to operate a private remote sensing space system which utilizes, on a space-available basis, a civilian United States Government satellite or vehicle as a platform for such system. The Secretary, pursuant to this title, may license such system if it meets all conditions of this title and—

(1) the system operator agrees to reimburse the Government in a timely manner for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and

(2) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for such civilian platform.

(b) ASSISTANCE.—The Secretary may offer assistance to private sector parties in finding appropriate opportunities for such utilization.

(c) AGREEMENTS.—To the extent provided in advance by appropriation Acts, any United States Government agency may enter into agreements for such utilization if such agreements are consistent with such agency's mission and statutory authority, and if such remote sensing space system is licensed by the Secretary before commencing operation.

(d) APPLICABILITY.—This section does not apply to activities carried out under title III.

(e) EFFECT ON FCC AUTHORITY.—Nothing in this title shall affect the authority of the Federal Communications Commission pursuant to the Communications Act of 1934 (47 U.S.C. 151 et seq.).

## TITLE III—RESEARCH, DEVELOPMENT, AND DEMONSTRATION

**SEC. 301. CONTINUED FEDERAL RESEARCH AND DEVELOPMENT.**

(a) ROLES OF NASA AND DEPARTMENT OF DEFENSE.—(1) The Administrator and the Secretary of Defense are directed to continue and to enhance programs of remote sensing research and development.

(2) The Administrator is authorized and encouraged to—

(A) conduct experimental space remote sensing programs (including applications demonstration programs and basic research at universities);

(B) develop remote sensing technologies and techniques, including those needed for monitoring the Earth and its environment; and

(C) conduct such research and development in cooperation with other Untied States Government agencies and with public and private research entities (including private industry, universities, non-profit organizations, State and local governments, foreign governments, and international organizations) and to enter into arrangements (including joint ventures) which will foster such cooperation.

"(b) ROLES OF DEPARTMENT OF AGRICULTURE AND DEPARTMENT OF INTERIOR.—

(1) In order to enhance the ability of the United States to manage and utilize its renewable and nonrenewable resources, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to conduct programs of research and development in the applications of remote sensing using funds appropriated for such purposes.

(2) Such programs may include basic research at universities, demonstrations of applications, and cooperative activities involving other Government agencies, private sector parties, and foreign and international organizations.

(c) ROLE OF OTHER FEDERAL AGENCIES.—Other United States Government agencies are authorized and encouraged to conduct research and development on the use of remote sensing in the fulfillment of their authorized missions, using funds appropriated for such purposes.

**SEC. 302. AVAILABILITY OF FEDERALLY GATHERED UNENHANCED DATA.**

(a) GENERAL RULE.—All unenhanced land remote sensing data gathered and owned by the United States Government, including unenhanced data gathered under the technology demonstration program carried out pursuant to section 303, shall be made available to users in a timely fashion.

(b) PROTECTION FOR COMMERCIAL DATA DISTRIBUTOR.—The President shall seek to ensure that unenhanced data gathered under the technology demonstration program carried out pursuant to section 303 shall, to the extent practicable, be made available on terms that would not adversely affect the commercial market for unenhanced data gathered by the Landsat 6 spacecraft.

**SEC. 303. TECHNOLOGY DEMONSTRATION PROGRAM.**

(a) ESTABLISHMENT.—As a fundamental component of a national land remote sensing strategy, the President shall establish, through appropriate United States Government agencies, a technology demonstration program. The goals of such program shall be to—

(1) seek to launch advanced land remote sensing system components within 5 years after the date of the enactment of this Act.

(2) demonstrate within such 5-year period advanced sensor capabilities suitable for use in the "anticipated land remote sensing program; and

(3) demonstrate within such 5-year period an advanced land remote sensing system design that could be less expensive to procure and operate than the Landsat system projected to be in operation through the year 2000, and that therefore holds greater potential for private sector investment and control.

(b) EXECUTION OF PROGRAM.—In executing the technology demonstration program, the President shall seek to apply technologies associated with United States National Technical Means of intelligence gathering, to the extent that such technologies are appropriate for the technology demonstration and can be declassified for such purposes without causing adverse harm to United States national security interests.

(c) BROAD APPLICATION.—To the greatest extent practicable, the technology dem-

onstration program established under subsection (a) shall be designed to be responsive to the broad civilian, national security, commercial, and foreign policy needs of the United States.

(d) PRIVATE SECTOR FUNDING.—The technology demonstration program under this section may be carried out in part with private sector funding.

(e) LANDSAT PROGRAM MANAGEMENT COORDINATION.—The Landsat Program Management shall have a coordinating role in the technology demonstration program carried out under this section.

(f) REPORT TO CONGRESS.—The President shall assess the progress of the technology demonstration program under this section and, within 2 years after the date of enactment of this Act, submit a report to the Congress on such progress.

TITLE IV—ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM

**SEC. 401. ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM.**

(a) ASSESSMENT.—Within 5 years after the date of the enactment of this Act, the Landsat Program Management, in consultation with representatives of appropriate United States Government agencies, shall assess and report to the Congress on the options for a successor land remote sensing system to Landsat 7. The report shall include a full assessment of the advantages and disadvantages of—

(1) private sector funding and management of a successor land remote sensing system;

(2) establishing an international consortium for the funding and management of a successor land remote sensing system;

(3) funding and management of a successor land remote sensing system by the United States Government; and

(4) a cooperative effort between the United States Government and the private sector for the funding and management of a successor land remote sensing system.

(b) GOALS.—In carrying out subsection (a), the Landsat Program Management shall consider the ability of each of the options to—

(1) encourage the development, launch, and operation of a land remote sensing system that adequately serves the civilian, national security, commercial, and foreign policy interests of the United States;

(2) encourage the development, launch, and operation of a land remote sensing system that maintains data continuity with the Landsat system; and

(3) incorporate system enhancements, including any such enhancements developed under the technology demonstration program under section 303, which may potentially yield a system that is less expensive to build and operate, and more responsive to data users, than is the Landsat system projected to be in operation through the year 2000.

(c) PREFERENCE FOR PRIVATE SECTOR SYSTEM.—If a successor land remote sensing system to Landsat 7 can be funded and managed by the private sector while still achieving the goals stated in subsection (b) without jeopardizing the domestic, national security, and foreign policy interests of the United States, preference should be given to the development of such a system by the private sector without competition from the United States Government.

TITLE V—GENERAL PROVISIONS

**SEC. 501. NONDISCRIMINATORY DATA AVAILABILITY.**

(a) GENERAL RULE.—Except as provided in subsection (b) of this section, any unenhanced data generated by the Landsat system or any other land remote sensing system funded and owned by the United States Government shall be made available to all users without preference, bias, or any other special arrangement (except on the basis of national security concerns pursuant to section 506) regarding delivery, format, pricing, or technical considerations which would favor one customer or class of customers over another.

(b) EXCEPTIONS.—Unenhanced data generated by the Landsat system or any other land remote sensing system funded and owned by the United States Government may be made available to the United States Government and its affiliated users at reduced prices, in accordance with this Act, on the condition that such unenhanced data are used solely for noncommercial purposes.

**SEC. 502. ARCHIVING OF DATA.**

(a) PUBLIC INTEREST.—It is in the public interest for the United States Government to—

(1) maintain an archive of land remote sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) control the content and scope of the archive; and

(3) assure the quality, integrity, and continuity of the archive.

(b) ARCHIVING PRACTICES.—The Secretary of Interior, in consultation with the Landsat Program Management, shall provide for long-term storage, maintenance, and upgrading of a basic, global, land remote sensing data set (hereinafter referred to as the "basic data set") and shall follow reasonable archival practices to assure proper storage and preservation of the basic data set and timely access for parties requesting data.

(c) DETERMINATION OF CONTENT OF BASIC DATA SET.—In determining the initial content of, or in upgrading, the basic data set, the Secretary of Interior shall—

(1) use as a baseline the data archived on the date of enactment of this Act;

(2) take into account future technical and scientific developments and needs, paying particular attention to the anticipated data requirements of global environmental change research;

(3) consult with and seek the advice of users and producers of remote sensing data and data products;

(4) consider the need for data which may be duplicative in terms of geographical coverage but which differ in terms of season, spectral bands, resolution, or other relevant factors;

(5) include, as the Secretary of Interior considers appropriate, unenhanced data generated either by the Landsat system, pursuant to title I, or by licensees under title II;

(6) include, as the Secretary of Interior considers appropriate, data collected by foreign ground stations or by foreign remote sensing space systems; and

(7) ensure that the content of the archive is developed in accordance with section 506.

(d) PUBLIC DOMAIN.—After the expiration of any exclusive right to sell, or after relinquishment of such right, the data provided to the National Satellite Land Remote Sensing Data Archive shall be in the public domain and shall be made available to requesting parties by the Secretary of the Interior at the cost of fulfilling user requests.

**SEC. 502. NONREPRODUCTION.**

Unenhanced data distributed by any licensee under Title II of this Act may be sold on the condition that such data will not be reproduced or disseminated by the purchaser for commercial purposes.

**SEC. 503. REIMBURSEMENT FOR ASSISTANCE.**

The Administrator, the Secretary of Defense, and the heads of other United States Government agencies may provide assistance to land remote sensing system operators under the provisions of this Act. Substantial assistance shall be reimbursed by the operator, except as otherwise provided by law.

**SEC. 504. ACQUISITION OF EQUIPMENT.**

The Landsat Program Management may, by means of a competitive process, allow a licensee under title II or any other private party to buy, lease, or otherwise acquire the use of equipment from the Landsat system, when such equipment is no longer needed for the operation of such system or for the sale of data from such system. Officials of other United States Government civilian agencies are authorized and encouraged to cooperate with the Secretary in carrying out this section.

**SEC. 505. RADIO FREQUENCY ALLOCATION.**

(a) APPLICATION TO FEDERAL COMMUNICATIONS COMMISSION.—To the extent required by the Communications Act of 1934 (47 U.S.C. 151 et seq.), an application shall be filed with the Federal Communications Commission for any radio facilities involved with commercial remote sensing space systems licensed under title II.

(b) DEADLINE FOR FCC ACTION.—It is the intent of Congress that the Federal Communications Commission complete the radio licensing process under the Communications Act of 1934 (47 U.S.C. 151 et seq.), upon the application of any private sector party or consortium operator of any commercial land remote sensing space system subject to this Act, within 120 days of the receipt of an application for such licensing. If final action has not occurred within 120 days of the receipt of such an application, the Federal Communications Commission shall inform the applicant of any pending issues and of actions required to resolve them.

(c) DEVELOPMENT AND CONSTRUCTION OF UNITED STATES SYSTEMS.—Authority shall not be required from the Federal Communications Commission for the development and construction of any United States land remote sensing space system (or component thereof), other than radio transmitting facilities or components, while any licensing determination is being made.

(d) CONSISTENCY WITH INTERNATIONAL OBLIGATIONS AND PUBLIC INTEREST.—Frequency allocations made pursuant to this section by the Federal Communications Commission shall be consistent with international obligations and with the public interest.

**SEC. 506. CONSULTATION.**

(a) CONSULTATION WITH SECRETARY OF DEFENSE.—The Secretary and the Landsat Program Management shall consult with the Secretary of Defense on all matters under this Act affecting national security. The Secretary of Defense shall be responsible for determining those conditions, consistent with this Act, necessary to meet national security concerns of the United States and for notifying the Secretary and the Landsat Program Management promptly of such conditions.

(b) CONSULTATION WITH SECRETARY OF STATE.—(1) The Secretary and the Landsat Program Management shall consult with the Secretary of State on all matters under this Act affecting international obligations. The Secretary of State shall be responsible for determining those conditions, consistent with this Act, necessary to meet international obligations and policies of the United States and for notifying promptly the Secretary and the Landsat Program Management of such conditions.

(2) Appropriate United States Government agencies are authorized and encouraged to provide remote sensing data, technology, and training to developing nations as a component of programs of international aid.

(3) The Secretary of State shall promptly report to the Secretary and Landsat Program Management any instances outside the United States of discriminatory distribution of Landsat data.

(c) STATUS REPORT.—The Landsat Program Management shall, as often as necessary, provide to the Congress complete and updated information about the status of ongoing operations of the Landsat system, including timely notification of decisions made with respect to the Landsat system in order to meet national security concerns and international obligations and policies of the United States Government.

(d) REIMBURSEMENTS.—If, as a result of technical modifications imposed on a licensee under title II on the basis of national security concerns, the Secretary, in consultation with the Secretary of Defense or with other Federal agencies, determines that additional costs will be incurred by the licensee, or that past development costs (including the cost of capital) will not be recovered by the licensee, the Secretary may require the agency or agencies requesting such technical modifications to reimburse the licensee for such additional or development costs, but not for anticipated profits. Reimbursements may cover costs associated with required changes in system performance, but not costs ordinarily associated with doing business abroad.

**SEC. 507. ENFORCEMENT.**

(a) IN GENERAL.—In order to ensure that unenhanced data from the Landsat system received solely for noncommercial purposes are not used for any commercial purpose, the Secretary (in collaboration with private sector entities responsible for the marketing and distribution of unenhanced data generated by the Landsat system) shall develop and implement a system for enforcing this prohibition, in the event that unenhanced data from the Landsat system are made available for noncommercial purposes at a different price than such data are made available for other purposes.

(b) AUTHORITY OF SECRETARY.—Subject to subsection (d), the Secretary may impose any of the enforcement mechanisms described in subsection (c) against a person who—

(1) receives unenhanced data from the Landsat system under this Act solely for noncommercial purposes (and at a different price than the price at which such data are made available for other purposes); and

(2) uses such data for other than noncommercial purposes.

(c) ENFORCEMENT MECHANISMS.—Enforcement mechanisms referred to in subsection (b) may include civil penalties of not more than $10,000 (per day per violation), denial of further unenhanced data purchasing privileges, and any other penalties or restrictions the Secretary considers necessary to ensure, to the greatest extent practicable, that unenhanced data provided for noncommercial purposes are not used to unfairly compete in the commercial market against private sector entities not eligible for data at the cost of fulfilling user requests.

(d) PROCEDURES AND REGULATIONS.—The Secretary shall issue any regulations necessary to carry out this section and shall establish standards and procedures governing the imposition of enforcement mechanisms under subsection (b). The standards and procedures shall include a procedure for potentially aggrieved parties to file formal protests with the Secretary alleging instances where such unenhanced data has been, or is being, used for commercial purposes in violation of the terms of receipt of such data. The Secretary shall promptly act to investigate any such protest, and shall report annually to the Congress on instances of such violations.

TITLE VI—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

**SEC. 601. PROHIBITION.**

Neither the President nor any other official of the Government shall make any effort to lease, sell, or transfer to the private sector, or commercialize, any portion of the weather satellite systems operated by the Department of Commerce or any successor agency.

**SEC. 602. FUTURE CONSIDERATIONS.**

Regardless of any change in circumstances subsequent to the enactment of this Act, even if such change makes it appear to be in the national interest to commercialize weather satellites, neither the President nor any official shall take any action prohibited by section 601 unless this title has first been repealed.

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## AGRICULTURAL CREDIT RURAL DEVELOPMENT AND COMMODITY MARKETING IMPROVEMENTS ACT

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### LEAHY (AND LUGAR) AMENDMENT NO. 3417

Mr. FORD (for Mr. LEAHY, for himself and Mr. LUGAR) proposed an amendment to the amendments of the House to the bill (S. 1709) to amend the Farm Credit Act of 1971 to enhance the financial safety and soundness of the Farm Credit System, and for other purposes, as follows:

In lieu of the matter proposed to be inserted, insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "Farm Credit Banks and Associations Safety and Soundness Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to the Farm Credit Act of 1971.

TITLE I—IMPROVEMENTS TO FARM CREDIT SYSTEM SAFETY AND SOUNDNESS

Sec. 101. Definition of permanent capital.
Sec. 102. Qualifications of Farm Credit Administration Board members.

TITLE II—FARM CREDIT SYSTEM INSURANCE CORPORATION

Sec. 201. Farm Credit System Insurance Corporation.
Sec. 202. Statutory successor to Assistance Board agreements.
Sec. 203. Use of Farm Credit Administration personnel.
Sec. 204. GAO reports on risk-based insurance premiums, access to association capital, supplemental premiums, and consolidation.

TITLE III—REPAYMENT OF FARM CREDIT SYSTEM DEBT OBLIGATIONS

Sec. 301. Capital preservation.
Sec. 302. Preferred stock.
Sec. 303. Systemwide repayment obligation.
Sec. 304. Repayment of Treasury-paid interest
Sec. 305. Transfer of obligations from associations to banks; other matters.
Sec. 306. Defaults.
Sec. 307. Authority of Financial Assistance Corporation.
Sec. 308. Technical amendments.

TITLE IV—CLARIFICATION OF CERTAIN AUTHORITIES

Sec. 401. Clarification of the status and powers of certain institutions of the Farm Credit System.

TITLE V—MISCELLANEOUS

Sec. 501. Valuation reserves of production credit associations.
Sec. 502. Risk management participation authority.
Sec. 503. Equity voting for one director of each bank for cooperatives.
Sec. 504. Technical amendment.
Sec. 505. Expansion of water and sewer lending authority of banks for cooperatives.
Sec. 506. Eligibility to borrow from a bank for cooperatives.
Sec. 507. Non-voting representative on board of Funding Corporation.
Sec. 508. Repeal of prohibition against guarantee of certain instruments of indebtedness.
Sec. 509. Compensation of bank directors.
Sec. 510. Clarification of treatment of Farm Credit Administration operating expenses.
Sec. 511. Approval of competitive charters.
Sec. 512. Examinations.
Sec. 513. Authority to examine System institutions.
Sec. 514. Financial disclosure and conflict of interest reporting by directors, officers, and employees of Farm Credit System institutions.
Sec. 515. One-time EFAP assistance.
Sec. 516. Technical corrections.

**SEC. 2. REFERENCES TO THE FARM CREDIT ACT OF 1971.**

Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), except to the extent otherwise provided.

**TITLE I—IMPROVEMENTS TO FARM CREDIT SYSTEM SAFETY AND SOUNDNESS**

**SEC. 101. DEFINITION OF PERMANENT CAPITAL.**

Paragraph (1) of section 4.3A(a) (12 U.S.C. 2154a(a)(1)) is amended to read as follows:

"(1) PERMANENT CAPITAL.—The term 'permanent capital' means—

"(A) current year retained earnings;

"(B) allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

"(C) all surplus (less allowances for losses);

"(D) stock issued by a System institution, except—

"(i) stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder; or

"(ii) stock that is protected under section 4.9A or is otherwise not at risk; and

"(E) any other debt or equity instruments or other accounts that the Farm Credit Administration determines appropriate to be considered permanent capital.".

**SEC. 102. QUALIFICATIONS OF FARM CREDIT ADMINISTRATION BOARD MEMBERS.**

Section 5.8 (12 U.S.C. 2242) is amended by adding at the end the following new subsection:

"(e) The President shall appoint members of the Board who—

"(1) are experienced or knowledgeable in agricultural economics and financial reporting and disclosure;

"(2) are experienced or knowledgeable in the regulation of financial entities; or

"(3) have a strong financial, legal, or regulatory background.".

## TITLE II—FARM CREDIT SYSTEM INSURANCE CORPORATION

**SEC. 201. FARM CREDIT SYSTEM INSURANCE CORPORATION.**

(a) IN GENERAL.—Section 5.53 (12 U.S.C. 2277a–2) is amended to read as follows:

**"SEC. 5.53. BOARD OF DIRECTORS.**

"(a) IN GENERAL.—

"(1) ESTABLISHMENT.—The management of the Corporation shall be vested in a Board of Directors (referred to in this section as the 'Board'). The Board shall establish policies for the Corporation. The Board shall provide for the performance of all the powers and duties vested in the Corporation.

"(2) APPOINTMENT.—The Board shall consist of three members, who shall be citizens of the United States and broadly representative of the public interest. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. Not more than two members of the Board shall be members of the same political party.

"(3) CHAIRPERSON.—Of the persons appointed to the Board, one shall be designated by the President to serve as Chairperson of the Board for the duration of the term of the member.

"(4) POSTEMPLOYMENT PROHIBITION.—A member of the Board shall be ineligible during the time the member is in office and for 2 years thereafter to hold any office, position, or employment in any institution of the Farm Credit System.

"(b) TERM OF OFFICE.—

"(1) IN GENERAL.—The term of office of each member of the Board shall be 6 years, except that the terms of the two members, other than the Chairperson, first appointed under subsection (a) shall expire, one on the expiration of 2 years after the date of appointment, and one on the expiration of 4 years after the date of appointment.

"(2) SUCCESSION.—Members of the Board shall not be appointed to succeed themselves, except that the members first appointed under subsection (a) for a term of less than 6 years may be reappointed for a full 6-year term and members appointed to fill unexpired terms of 3 years or less may be reappointed for a full 6-year term.

"(3) VACANCIES.—Any vacancy shall be filled for the unexpired term on like appointment. Any member of the Board shall continue to serve as a member after the expiration of the term of the member until a successor has been appointed and qualified.

"(c) ORGANIZATION.—

"(1) OATH.—Each member of the Board, within 15 days after notice of appointment, shall subscribe to the oath of office.

"(2) QUORUM.—The Board may transact business if a vacancy exists, if a quorum is present. A quorum shall consist of two members of the Board.

"(3) MEETING.—The Board shall hold meetings at such times and places as the Board may fix and determine. The meetings shall be held on the call of the Chairperson or any two Board members.

"(4) RULES; RECORDS.—The Board shall adopt such rules as the Board considers appropriate for the transaction of business by the Board, and shall keep permanent and accurate records and minutes of the actions and proceedings of the Board.

"(d) COMPENSATION.—

"(1) IN GENERAL.—The members of the Board shall devote their full time and attention to the business of the Board.

"(2) CHAIRPERSON.—The Chairperson of the Board shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code.

"(3) OTHER MEMBERS.—Each of the other members of the Board shall receive compensation at the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(4) EXPENSES.—Each member of the Board shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of the official duties of the member without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States.".

(b) CONFORMING AMENDMENTS.—

(1) CHAIRPERSON.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:

"Chairperson, Board of Directors of the Farm Credit System Insurance Corporation.".

(2) MEMBERS.—Section 5315 of such title is amended by adding at the end the following new item:

"Members, Board of Directors of the Farm Credit System Insurance Corporation.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall become effective on January 1, 1996.

(2) TRANSITIONAL PROVISION.—The Board of Directors of the Farm Credit System Insurance Corporation as established by section 5.53 of the Farm Credit Act of 1971 (12 U.S.C. 2277a–2) (as it existed before the amendments made by subsection (a) of this section) shall continue in existence and continue to manage the Farm Credit System Insurance Corporation until at least two members are appointed by the President, by and with the advice and consent of the Senate, to the new Board established by section 5.53 of such Act (as amended by subsection (a) of this section).

**SEC. 202. STATUTORY SUCCESSOR TO ASSISTANCE BOARD AGREEMENTS.**

(a) IN GENERAL.—Section 5.58(2) (12 U.S.C. 2277a–7(2)) is amended by adding at the end the following new sentence: "The Corporation shall succeed to the rights of the Farm Credit System Assistance Board under agreements between the Farm Credit System Assistance Board and System institutions certifying the institutions as eligible to issue preferred stock pursuant to title VI on the termination of the Assistance Board on the date provided in section 6.12.".

(b) CONFORMING AMENDMENTS.—Section 5.35(4) (12 U.S.C. 2271(4)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) after December 31, 1992, mean any significant noncompliance by a System institution (as determined by the Farm Credit Administration, in consultation with the Farm Credit System Insurance Corporation) with any term or condition imposed on the institution by the Farm Credit System Assistance Board under section 6.6 or by the Farm Credit System Insurance Corporation under section 5.61.".

**SEC. 203. USE OF FARM CREDIT ADMINISTRATION PERSONNEL.**

Section 5.59(a) (12 U.S.C. 2277a–8(a)) is amended by adding at the end the following new paragraph:

"(5) USE OF FARM CREDIT ADMINISTRATION PERSONNEL.—To the extent practicable, the Corporation shall use the personnel and resources of the Farm Credit Administration to minimize duplication of effort and to reduce costs.".

**SEC. 204. GAO REPORTS ON RISK-BASED INSURANCE PREMIUMS, ACCESS TO ASSOCIATION CAPITAL, SUPPLEMENTAL PREMIUMS, AND CONSOLIDATION.**

(a) IN GENERAL.—The Comptroller General of the United States shall investigate, review, and evaluate the feasibility and appropriateness, and report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, on the advantages and disadvantages of providing the Farm Credit System Insurance Corporation with—

(1) the authority to directly or indirectly assess associations to ensure that all System capital is available to prevent losses to investors, including a study of—

(A) the effects of direct assessments by the Insurance Corporation on associations, including interest rate charges to borrowers;

(B) the effects of requiring that banks pass along the cost of insurance premiums to owner associations and other financing institutions having a discount relationship with the bank;

(C) the effects of requiring owner associations to purchase stock in the district bank, if needed, to prevent a bank from having to return to the Insurance Corporation for financial assistance once the assistance has been given;

(D) the effects of the purchase of stock from funds of the association (through funds obtained from other than the district bank) or allowing the bank to increase the direct line of credit to the association in order to fund the purchase; and

(E) the effect that authorizing the Insurance Corporation to assess the association could have on the association's incentives for building capital;

(2) the authority to collect supplemental insurance premiums under certain circumstances, including a study of—

(A) the possibility of the Insurance Fund being depleted more rapidly than it could be replenished under the current premium structure;

(B) the effects of the depletion under alternate economic scenarios and the probability of the occurrence of each of those scenarios;

(C) the effects on capital accumulation and interest rates of levying a supplemental premium; and

(D) limitations on any authority to levy supplemental premiums and the underlying basis for the limitations; and

(3) the authority to establish an insurance premium rate structure that would take into account, on an institution-by-institution basis, asset quality risk, interest rate risk, earnings, and capital.

(b) REPORT ON CONSOLIDATION.—

(1) IN GENERAL.—The Comptroller General of the United States shall evaluate and re-

port to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on whether there are likely to be benefits to farmer and rancher borrowers of the Farm Credit System institutions of merging the 10 district Farm Credit Banks (and the Federal Intermediate Credit Bank of Jackson) into fewer regional Farm Credit Banks.

(2) FACTORS.—In preparing the report, the Comptroller General shall consider—

(A) the potential reduction in services to farmers and ranchers;

(B) the potential benefits of jointly providing services to farmers and ranchers among these proposed regional districts;

(C) any economy of scale effects on a district-by-district basis;

(D) the potential impact on the cooperative nature of the Farm Credit System;

(E) the potential impact on bank and association relationships; and

(F) the potential impact on System-wide bond issuances.

(c) POTENTIAL SAVINGS.—The Comptroller General of the United States shall evaluate and report to the appropriate committees of Congress on the potential savings to the Farm Credit System and its shareholders that might occur if System institutions and the Farm Credit Administration were required to comply with General Services Administration standards for office space, furniture, and equipment.

(d) DEADLINE.—The reports required under this section shall be provided to Congress not later than 12 months after the date of enactment of this Act.

## TITLE III—REPAYMENT OF FARM CREDIT SYSTEM DEBT OBLIGATIONS

**SEC. 301. CAPITAL PRESERVATION.**

Section 6.9(e)(3) (12 U.S.C. 2278a-9(e)(3)) is amended—

(1) by striking subparagraph (C) and inserting the following new subparagraph:

"(C) PAYMENT OF PRINCIPAL.—

"(i) IN GENERAL.—After the end of the 15-year period beginning on the date of the issuance of any obligation issued to carry out this subsection, the banks operating under this Act shall pay to the Financial Assistance Corporation, on demand, an amount equal to the outstanding principal of the obligation. Each bank shall pay a proportion of the principal equal to—

"(I) the average accruing loan volume of the bank for the preceding 15 years; divided by

"(II) the average accruing loan volume of all banks of the System for the same period.

"(ii) BANKS LEAVING SYSTEM.—Any bank leaving the Farm Credit System pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of the payment required under this subparagraph had the bank remained in the System.

"(iii) BANKS UNDERGOING LIQUIDATION.—With respect to any bank undergoing liquidation under this Act, a liability to the Financial Assistance Corporation in the amount of the payment required under this subparagraph (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of the bank.

"(iv) OBLIGATIONS OF OTHER BANKS.—The obligations of other banks shall not be reduced in anticipation of any recoveries under this subparagraph from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.";

(2) by redesignating subparagraph (D) as subparagraph (E);

(3) by inserting after subparagraph (C) the following new subparagraph:

"(D) ANNUAL PAYMENTS.—

"(i) IN GENERAL.—In order to provide for the orderly funding and discharge over time of the obligation of each System bank to the Financial Assistance Corporation under subparagraph (C), each System bank shall enter into or continue in effect an agreement with the Financial Assistance Corporation under which the bank will make annual annuity-type payments to the Financial Assistance Corporation, beginning no later than December 31, 1992 (except for any bank that did not meet its interim capital requirement on December 31, 1990, in which case the bank shall begin making the payments no later than December 31, 1993) in amounts designed to accumulate, in total, including earnings on the amounts, to 90 percent of the bank's ultimate obligation. The Financial Assistance Corporation shall partially discharge the bank from its obligation under subparagraph (C) to the extent of each such payment and the earnings on the payment as earned.

"(ii) CAPITAL REQUIREMENTS.—The agreement shall not require payments to be made to the extent that making a particular payment or part of a payment would cause the bank to fail to satisfy applicable regulatory permanent capital requirements, but shall provide for recalculation of subsequent payments accordingly.

"(iii) INVESTMENT; AVAILABILITY.—The funds received by the Financial Assistance Corporation pursuant to the agreements shall be invested in eligible investments as defined in section 6.25(a)(1). The funds and the earnings on the funds shall be available only for the payment of the principal of the bonds issued by the Financial Assistance Corporation under this subsection."; and

(4) in subparagraph (E) (as redesignated by paragraph (2)), by inserting before the period at the end the following: ", nor shall the obligation to make future annuity payments to the Financial Assistance Corporation under subparagraph (D) be considered a liability of any System bank".

**SEC. 302. PREFERRED STOCK.**

Subparagraph (B) of section 6.26(d)(1) (12 U.S.C. 2278b-6(d)(1)(B)) is amended to read as follows:

"(B) PAYMENTS BY INSTITUTIONS.—

"(i) IN GENERAL.—Except as provided in subparagraph (C), in order to enable the Financial Assistance Corporation to repay the obligation referred to in subparagraph (A), each institution that issued preferred stock under section 6.27(a) with respect to the obligation (or the successor to the institution) shall pay to the Financial Assistance Corporation, before the maturity date of the obligation, an amount equal to the par value of the stock outstanding for the institution.

"(ii) ANNUAL APPROPRIATION.—Except as provided in clause (iii), each year beginning in 1992, as soon as practicable following the end of the prior year, each such institution (except institutions in receivership and institutions that have previously redeemed their preferred stock) shall appropriate from its earnings in the prior year to an appropriated unallocated surplus account with respect to preferred stock, the sum of—

"(I) the greater of—

"(aa) such amount as the institution may be required to appropriate under any assistance agreement the institution has with the Farm Credit System Assistance Board or the Farm Credit System Insurance Corporation; or

"(bb) the amount that, if appropriated to the account in equal amounts in each year thereafter until the maturity of the obligation referred to in subparagraph (A), would cause the amount in the account to equal the par value of the preferred stock issued by the institution with respect to the obligation; plus

"(II) any amount that had been appropriated to the account in a previous year but had thereafter been offset by losses.

"(iii) LIMITATION.—An annual appropriation shall not be made to the extent that the appropriation would exceed the institution's net income (as determined pursuant to generally accepted accounting principles) in that year or to the extent that the appropriation would cause the institution's preferred stock to be impaired.

"(iv) USE.—The amount in the appropriated unallocated surplus account shall be unavailable to pay dividends or other allocations or distributions to shareholders or holders of participation certificates. The account shall be senior to all other unallocated surplus accounts but junior to all preferred and common stock for purposes of the application of operating losses.

"(v) PREFERRED STOCK.—The appropriations of surplus by an institution shall not affect the treatment of its preferred stock (and of the appropriated unallocated surplus) as equity for purposes of regulatory permanent capital requirements.".

**SEC. 303. SYSTEMWIDE REPAYMENT OBLIGATION.**

Subparagraph (C) of section 6.26(d)(1) (12 U.S.C. 2278b-6(d)(1)(C)) is amended to read as follows:

"(C) SYSTEMWIDE REPAYMENT.—

"(i) IN GENERAL.—In order to enable the Financial Assistance Corporation to repay the obligations issued to provide assistance under subsections (c) and (e) of section 410 of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note) and section 4.9A(c) of this Act, or issued to provide funds to cover the expenses of the Assistance Board or the Financial Assistance Corporation under sections 6.7(a) and 6.24, respectively, of this Act, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the obligation equal to—

"(I) the average accruing retail loan volume of the bank and its affiliated associations for the preceding 15 years; divided by

"(II) the average accruing retail loan volume of all such banks and their affiliated associations for the same period.

"(ii) EXPENSE ITEM.—The annual increase in the present value of the estimated obligation of each bank to the Financial Assistance Corporation under this subparagraph shall be recorded each year as an expense item, in accordance with generally accepted accounting principles, on the books of the bank.

"(iii) PASS THROUGH.—A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of the amount necessary to satisfy the payment requirement to its affiliated direct lender associations based on proportionate average accruing retail loan volumes

for the preceding 15 years, except that the bank shall remain primarily liable for the amount.

"(iv) BANKS LEAVING SYSTEM.—Any bank leaving the Farm Credit System pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of the payment required under this subparagraph had the bank remained in the System. A liability to the Financial Assistance Corporation in this amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation. The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.

"(v) ASSOCIATIONS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any association leaving the Farm Credit System pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the present value of the future payment obligation of its supervising bank. A liability to the bank in this amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation.".

**SEC. 304. REPAYMENT OF TREASURY-PAID INTEREST**

(a) IN GENERAL.—Paragraph (5) of section 6.26(c) (12 U.S.C. 2278b-6(c)(5)) is amended to read as follows:

"(5) REPAYMENT OF TREASURY-PAID INTEREST.—

"(A) IN GENERAL.—On the maturity date of the last-maturing debt obligation issued under subsection (a), the Financial Assistance Corporation shall repay to the Secretary of the Treasury the total amount of any annual interest charges on the debt obligations that Farm Credit System institutions (other than the Financial Assistance Corporation) have not previously paid, and the Financial Assistance Corporation shall not be required to pay any additional interest charges on the payments.

"(B) ASSESSMENT.—In order to provide for the orderly funding by the banks of the System of the repayment by the Financial Assistance Corporation to the Secretary of the Treasury, the Financial Assistance Corporation shall assess each System bank, on or about December 31 of each year beginning in 1992, and each System bank shall promptly pay to the Financial Assistance Corporation, an annual annuity type payment in an amount designed to accumulate, in total, including earnings thereon, the amount of the bank's ultimate obligation (as determined by the Corporation on a fair and equitable basis), and no greater than .0006 nor less than .0004 times the bank's and its affiliated associations' average accruing retail loan volume for the preceding year, subject to—

"(i) upward or downward adjustment, as appropriate, by the Financial Assistance Corporation during each of the last 5 years prior to the date the Financial Assistance Corporation is obligated to make the repayment, in order to ensure that the Financial Assistance Corporation will have the amount of funds needed to make the repayment on the due date; and

"(ii) reduction or termination in any year when the funds paid to the Financial Assistance Corporation, including any anticipated future earnings on the funds, are sufficient to make the repayment on the due date.

"(C) INVESTMENT OF FUNDS.—The Financial Assistance Corporation shall invest funds derived from the investment in eligible investments as defined in section 6.25(a)(1). The funds and the earnings on the funds shall be available only for the repayment to the Secretary of the Treasury provided for in subparagraph (A).

"(D) PASS THROUGH.—A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of the assessments to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding year, but the bank shall remain primarily liable for the amounts.

"(E) LIABILITY.—

"(i) BANKS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any bank terminating System status pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of all future such assessments against the bank had the bank remained in the System. A liability to the Financial Assistance Corporation in this amount (calculated as if the bank had left the System on the date the bank was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation.

"(ii) NO ANTICIPATORY REDUCTIONS IN OTHER OBLIGATIONS.—The obligations of other banks shall not be reduced in anticipation of any recoveries under this subparagraph from banks leaving the System or in liquidation.

"(iii) REFUND OF RECOVERIES.—The Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.

"(F) ASSOCIATIONS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any association terminating System status pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the estimated present value of all future such assessments against the bank. A liability to the bank in this amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation.

"(G) CAPITAL REQUIREMENTS.—

"(i) IN GENERAL.—Until the date that is 5 years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.

"(ii) DURING THE FINAL 5 YEARS PRIOR TO REPAYMENT.—During the—

"(I) period beginning 5 years, and ending 4 years, prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 60 percent;

"(II) period beginning 4 years, and ending 3 years, prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 30 percent; and

"(III) period beginning 3 years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 0 percent,

of all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and of any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.".

(b) CONFORMING AMENDMENT.—Section 6.28 (12 U.S.C. 2278b-8) is amended by striking subsection (b) and redesignating subsection (c) as subsection (b).

**SEC. 305. TRANSFER OF OBLIGATIONS FROM ASSOCIATIONS TO BANKS; OTHER MATTERS.**

Section 6.26 (12 U.S.C. 2278b-6) is amended—

(1) in subsection (c)—

(A) in the subparagraph heading of paragraph (2)(B), by striking "INSTITUTIONS" and inserting "BANKS";

(B) by striking "institutions" each place it appears in paragraphs (2)(B), (3), and (4) and inserting "banks"; and

(C) in paragraph (2), by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

"(C) ALLOCATION.—During each year of the second 5-year period, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the interest due from System banks under this paragraph equal to—

"(i) the amount of the average accruing retail loan volume of the bank and its affiliated associations for the preceding year; divided by

"(ii) the total average accruing retail loan volume of all such banks and their affiliated associations for the preceding year.";

(2) in subsection (d)(1)—

(A) by striking subparagraph (D); and

(B) by redesignating subparagraph (E) as subparagraph (D); and

(3) by adding at the end the following new subsection:

"(e) ADMINISTRATION.—

"(1) DEFINITION OF RETAIL LOAN VOLUME.—As used in this section, the term 'retail loan volume' means all loans (as defined in ac-

cordance with generally accepted accounting principles) by a System bank or association, excluding loans by such a bank or association to another System institution.

"(2) CALCULATION OF AVERAGE ANNUAL LOAN VOLUMES.—For purposes of this section and section 6.9, average annual loan volumes shall be calculated using month-end balances.

"(3) EXCLUSION OF BANKS UNDERGOING LIQUIDATION.—For purposes of this section and section 6.9, the term 'bank' shall not include a bank that had entered liquidation prior to the date of enactment of this subsection.".

**SEC. 306. DEFAULTS.**

Section 6.26(d) (12 U.S.C. 2278b-6(d)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking the heading and inserting the following: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(ii) in clause (i)—

(I) by inserting after "subsection (a)," the following: "on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B),";

(II) by striking "of the interest" both places it appears; and

(III) by striking "institution" each place it appears and inserting "bank";

(iii) in clause (ii)—

(I) by striking "of interest";

(II) by striking "institution" and inserting "bank"; and

(III) by striking "such uncollected interest" and inserting "any uncollected amount";

(iv) in clause (iii), by striking "added" and all that follows through the period at the end and inserting "allocated to other System banks in accordance with the allocation mechanism applicable under this Act to the particular defaulted obligation.";

(B) in subparagraph (B), by striking the subparagraph heading and inserting the following new heading: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.—"; and

(C) in subparagraph (C)—

(i) in the heading, by striking "INSTITUTIONS" and inserting "BANKS";

(ii) by striking "institution" and inserting "bank";

(iii) by striking "institutions" both places it appears and inserting "banks"; and

(iv) by striking "the amount of any interest" and inserting "any amounts"; and

(2) in paragraph (4)—

(A) in subparagraph (A), by inserting "or section 6.9(e)(3)(A)" after "subsection (a)";

(B) in subparagraph (B)—

(i) in clause (i)—

(I) by striking the clause heading and inserting the following new heading: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(II) by inserting after "subsection (c)," the following: "on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B),"; and

(III) by striking "institution" each place it appears and inserting "bank"; and

(ii) in clause (ii), by striking the clause heading and inserting the following new heading: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.—".

**SEC. 307. AUTHORITY OF FINANCIAL ASSISTANCE CORPORATION.**

(a) PURPOSE.—Section 6.21 (12 U.S.C. 2278b-1) is amended by inserting before the period at the end the following: "and to assist, pursuant to section 6.9(e) and subsections (c) through (g) of section 6.26, in the repayment by System institutions to those persons who provided funds in connection with the program".

(b) TERMINATION.—Section 6.31(a) (12 U.S.C. 2278b-11(a)) is amended by striking "terminate on" and inserting the following: "terminate on the complete discharge by the Financial Assistance Corporation of its responsibilities under section 6.9(e) and subsections (c) through (g) of section 6.26 with regard to repayments by System institutions, but in no event later than 2 years following".

**SEC. 308. TECHNICAL AMENDMENTS.**

(a) TECHNICAL AMENDMENT TO THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Section 204(3) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237; 105 Stat. 1991) is amended by striking "in section 1221(1)(D) (16 U.S.C. 3821(1)(D))" and inserting "in section 1221(a)(1)(D) (16 U.S.C. 3821(a)(1)(D))".

(b) TECHNICAL AMENDMENTS TO THE FARM CREDIT ACT OF 1971.—

(1) Section 8.3(c)(13) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-3(c)(13)) is amended by striking "8.11(g)" and inserting "8.11(e)".

(2) Section 8.11(a)(1)(B)(ii) of such Act (12 U.S.C. 2279aa-11(a)(1)(B)(ii)) is amended by striking "the date of enactment of this section" and inserting "December 13, 1991".

(3) Section 8.32 of such Act (12 U.S.C. 2279bb-1) is amended—

(A) in each of subsections (a), (b)(1)(D), and (b)(2), by striking "the date of the enactment of this section" each place the term appears and inserting "December 13, 1991"; and

(B) in subsection (b)(1)(E), by striking "the date of the enactment of such Act" and inserting "December 13, 1991".

## TITLE IV—CLARIFICATION OF CERTAIN AUTHORITIES

**SEC. 401. CLARIFICATION OF THE STATUS AND POWERS OF CERTAIN INSTITUTIONS OF THE FARM CREDIT SYSTEM.**

(a) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—Section 410 of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note) is amended by adding at the end the following new subsection:

"(e) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—

"(1) NEGOTIATED MERGER.—

"(A) REQUIREMENT.—

"(i) IN GENERAL.—Not later than June 30, 1993, except as provided in subparagraph (C), the Federal Intermediate Credit Bank of Jackson (as chartered on the date of enactment of this subsection) shall merge with a Farm Credit Bank pursuant to the procedures prescribed by section 7.12 of the Farm Credit Act of 1971 (12 U.S.C. 2279f).

"(ii) MERGER OF ENTIRE BANK.—Notwithstanding subparagraph (B), or any other provision of law, the Farm Credit Administration shall approve a merger of the Federal Intermediate Credit Bank of Jackson only if the Bank (as chartered on the date of enactment of this subsection, except as provided in subparagraph (B)(ii)(II)(bb)) merges in its entirety with a Farm Credit Bank.

"(iii) LIMITED LENDING AUTHORITY.—Notwithstanding any provision of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), the Farm Credit Bank resulting from a merger under this subsection shall have only the lending authorities in the States of Alabama, Louisiana, and Mississippi that the constituent banks exercised in such States immediately prior to the merger, except as may be provided in section 5.17(a)(2) of such Act (12 U.S.C. 2252(a)(2)).

"(B) OPERATING AND MERGER AUTHORITY.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Federal Intermediate Credit Bank of Jackson may operate subject to such provisions of part A of title II of the Farm Credit Act of 1971 (as in effect immediately before the amendment made by section 401 took effect) and such provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) (as in effect after the amendment), as the Farm Credit Administration deems appropriate to carry out the purposes of this subsection and such Act. This subparagraph shall take effect as if it had become law at the same time as the amendment made by section 401 and shall remain in effect until the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(ii) LIMITATION ON OPERATING AUTHORITY.—

"(I) IN GENERAL.—Notwithstanding clause (i) and subparagraph (A)(ii), the authority of the Federal Intermediate Credit Bank of Jackson to operate as provided under clause (i) shall expire, and the Farm Credit Administration shall revoke the Bank's charter, immediately on the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(II) DISTRICT BOUNDARY MODIFICATION.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson shall not include the authority for the Bank to modify, nor shall the Farm Credit Administration approve such a modification to, the boundaries of the Fifth Farm Credit District to reaffiliate any portion of the District with another Farm Credit Bank, except—

"(aa) in the case of the merger of the entire Bank as an entity with a Farm Credit Bank such that the entire chartered territory of the Federal Intermediate Credit Bank of Jackson (except as provided in item (bb)) is merged with the Farm Credit Bank; and

"(bb) in the case of the reaffiliation of the Northwest Louisiana Production Credit Association with another farm credit district pursuant to the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations under such Act.

"(iii) LIMITATION ON AUTHORITY TO MERGE.—

"(I) IN GENERAL.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank as provided under clause (i) shall expire, and the Farm Credit Administration shall revoke the Bank's charter, immediately on the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(II) BANK INTEGRITY.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank shall be limited to a merger of the Federal Intermediate Credit Bank of Jackson (as chartered on the date of enactment of this subsection to include the territory in the States of Alabama, Louisiana, and Mississippi, except as provided in clause (ii)(II)(bb)) as a whole entity such that the entire chartered territory of the Federal Intermediate Credit Bank of Jackson is merged with the Farm Credit Bank.

"(III) LIMITATION.—Beginning on the date of an order issued by the Farm Credit Ad-

ministration under subparagraph (D), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank shall be limited to the arbitrated merger provided for in paragraph (2).

"(C) EXTENSION.—

"(i) LETTER OF INTENT.—If no later than June 30, 1993, the Federal Intermediate Credit Bank of Jackson delivers to the Farm Credit Administration a letter of intent to merge with a Farm Credit Bank, summarizing the terms and conditions of the merger (including, but not limited to, board composition, capital structure, exchange, or transfer of equities, and termination) signed by the chief executive officer and the members of the boards of directors of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank, the Farm Credit Administration shall, on its determination that the letter of intent represents a bona fide good faith agreement in principle between the two banks to merge, and that there is at least a reasonable prospect that the merger will be completed in an expeditious manner, grant a one-time extension, until a date certain not later than October 31, 1993, of the requirement under subparagraph (A). Any extension provided under this subparagraph may be conditioned on such terms and conditions as the Farm Credit Administration determines necessary to ensure that the merger described in the letter of intent is completed by the closing date of the extension.

"(ii) COMPLIANCE.—If the Farm Credit Administration grants an extension under clause (i), it shall issue an order under subparagraph (D) immediately if—

"(I) the Federal Intermediate Credit Bank of Jackson, or the Farm Credit Bank that is a signatory to the letter of intent under clause (i), provides written notification to the Farm Credit Administration that the bank does not intend to complete the merger described in the letter of intent;

"(II) the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is not complying with any term or condition on which an extension under clause (i) was conditioned; or

"(III) the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is not pursuing in good faith the merger provided for in the letter of intent.

If the Farm Credit Administration issues an order under subparagraph (D) pursuant to this clause, the Federal Intermediate Credit Bank of Jackson shall be deemed to have failed to comply with the requirements of subparagraph (A).

"(D) FAILURE TO MERGE; ISSUANCE OF ORDER.—If the Federal Intermediate Credit Bank of Jackson fails to comply, or notifies the Farm Credit Administration in writing that it does not intend to comply, with the requirements of subparagraph (A), the Farm Credit Administration shall, within 5 days after the date specified in subparagraph (A), or such other date specified by the Farm Credit Administration under subparagraph (C), issue, notwithstanding any other provision of law, an order requiring the Federal Intermediate Credit Bank of Jackson to merge with the Farm Credit Bank of Texas in accordance with paragraph (2).

"(2) ARBITRATED MERGER.—

"(A) IN GENERAL.—Not later than 30 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), an arbitrator (or panel of arbitrators) shall be named by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association to serve as the arbitrator referred to in this paragraph.

"(B) DUTIES.—The arbitrator shall determine the terms and conditions of the merger required under an order issued under paragraph (1)(D), such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders and borrowers of the associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. The arbitrator shall have the authority to hire staff and secure the services of consultants as necessary to discharge the duties of the arbitrator under this paragraph.

"(C) EXPENSES.—Notwithstanding any other provision of law, the compensation and expenses of the arbitrator, the fees and expenses of the American Arbitration Association, and any expenses associated with the referendum required under subparagraph (F) shall be paid from the Farm Credit Assistance Fund established under section 6.25 of the Farm Credit Act of 1971 (12 U.S.C. 2278b-5).

"(D) DEVELOPMENT OF MERGER PLANS.—

"(i) IN GENERAL.—Not later than 100 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the arbitrator shall develop and submit for certification to the Farm Credit Administration a plan specifying the terms and conditions of the merger of the two banks required under this paragraph, such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders or farmer-borrowers of the associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. In devising the plan, the arbitrator shall, to the extent practicable, achieve the following objectives:

"(I) Implementation of the preferences expressed by the affected and interested parties in submissions under clause (ii).

"(II) Valuation of assets fairly, equitably, and consistently for all parties involved.

"(III) Establishment of capitalization and funding terms in a manner that treats farmer-borrowers and stockholders in the two involved farm credit districts equitably and takes account of risk.

"(IV) Ensure the viability of the resulting Farm Credit Bank and associations of the bank and the ability of the resulting bank and associations of the bank to lend to eligible borrowers at reasonable and competitive rates of interest.

"(ii) SUBMISSION OF VIEWS AND INFORMATION.—The arbitrator shall receive from affected and interested parties written submissions, in accordance with fair and reasonable procedures established by the arbitrator, regarding the terms and conditions of an appropriate plan for the merger of the two banks required under this paragraph. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations shall make available all books, records, financial information, and other material that the arbitrator determines is necessary to the development of the plan or the fulfillment of any other requirement under this paragraph. A copy of any submission or information provided to the arbitrator by any party under this paragraph shall be furnished to the Federal Intermediate Credit Bank of Jackson or the Farm Credit Bank of Texas on the written request of the bank and at the bank's expense. The arbitrator shall provide both banks with a reasonable opportunity to review and respond to any submission or information provided by any party.

"(iii) CONTENT OF PLAN; FARM CREDIT BANK.—The plan developed and submitted under clause (i) shall include provisions regarding the following matters:

"(I) The initial composition, following the merger, of the board of directors of the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(II) The valuation, for purposes of the merger, of the assets and liabilities of the merging banks.

"(III) The terms and conditions on which the shares of capital stock of the Federal Intermediate Credit Bank of Jackson and, if necessary, the Farm Credit Bank of Texas, will be converted into shares of the resulting Farm Credit Bank.

"(IV) The capital structure and capitalization levels of the resulting Farm Credit Bank and the affiliated associations of the Farm Credit Bank in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(V) The terms of financing agreements between any production credit associations or agricultural credit associations described in clause (iv), and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(VI) Any other terms and conditions or other matters that the arbitrator considers necessary.

"(iv) CONTENT OF PLAN; AGRICULTURAL CREDIT ASSOCIATIONS.—If the arbitrator determines that the chartering of agricultural credit associations in the States of Alabama, Louisiana, and Mississippi will be in the best interests of the farmers, ranchers, and aquatic producers eligible to borrow from Farm Credit System associations, the plan required under this subparagraph shall also include, based on submissions from the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas, provisions for the establishment of agricultural credit associations to operate in the States, subject to approval in the referendum under subparagraph (F). Such provisions shall include provisions regarding the following matters:

"(I) A proposal for the establishment of an agricultural credit association in each of the geographic areas specified in subparagraph (F)(iii) (the charters of which, if validly issued under subparagraph (G)(i) pursuant to approval in the referendum under subparagraph (F), shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(II) The initial composition, if the proposal for the establishment of agricultural credit associations is approved, of the board of directors of each such agricultural credit association (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(III) The valuation, for purposes of the proposed merger of the production credit association and the Federal land bank association in each of the geographic areas specified

in subparagraph (F)(iii), of the assets and liabilities of the associations.

"(IV) The terms and conditions on which the shares of capital stock of any associations that may merge under the plan to form agricultural credit associations will be converted into shares of the resulting agricultural credit associations.

"(V) The capital structure and capitalization levels of the resulting Farm Credit Bank and such affiliated associations of the Farm Credit Bank in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which capital structure and capitalization levels shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(VI) The terms of financing agreements between any agricultural credit associations and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(VII) Any other terms and conditions or other matters that the arbitrator considers necessary.

"(v) CONSULTATION WITH INSURANCE CORPORATION.—The arbitrator shall consult with the Farm Credit System Insurance Corporation regarding the valuation of the assets and liabilities under the plan of merger, the capitalization of the Farm Credit System institutions resulting under the plan, and any other matters relevant to the assistance to be provided by the Insurance Corporation to facilitate the merger under subparagraph (H).

"(E) CERTIFICATION OF PLAN.—Not later than 30 days after the receipt of the plan developed by the arbitrator, the Farm Credit Administration shall—

"(i) certify; or

"(ii) recommend to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify,

that the resulting bank and any resulting associations are proposed to be organized in such a fashion that they will, on implementation of the plan, operate in compliance with applicable laws and regulations. The arbitrator and the Farm Credit Administration shall work cooperatively to ensure the expeditious issuance of the certification. If the Farm Credit Administration recommends to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify the plan, the arbitrator shall, not later than 15 days after receipt of the recommended revisions, incorporate the revisions into the plan as the arbitrator deems appropriate to secure the certification.

"(F) REFERENDUM ON ASSOCIATION STRUCTURE.—

"(i) IN GENERAL.—Not later than 170 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the American Arbitration Association shall conduct, and compile and forward to the Farm Credit Administration the results of, a vote of current farmer-borrowers of the production credit associations and the Federal land bank associations in the States of Alabama, Louisiana, and Mississippi, in accordance with the Election Rules of the American Arbitration Association, to determine whether the farmer-borrowers of each association in the geographic areas described in clause (iii) prefer to have credit delivered—

"(I) in the case of production credit association farmer-borrowers, through a production credit association or through an agricultural credit association as proposed in the plan; and

"(II) in the case of Federal land bank association farmer-borrowers, through a Federal land bank association or through an agricultural credit association as proposed in the plan.

Each farmer-borrower shall be entitled to one vote. The arbitrator shall establish record dates and other procedures for conducting the referendum. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations shall cooperate in the conduct of the referendum, as determined necessary by the Arbitrator.

"(ii) DISCLOSURE.—The arbitrator shall send to farmer-borrowers eligible to vote under this subparagraph, with their ballot, a statement describing the potential consequences to the farmer-borrowers, and to the associations from which they borrow, of voting to charter an agricultural credit association and setting forth factors that farmer-borrowers should consider relevant to the choice between credit delivery through the current association structure and the chartering of an agricultural credit association. The arbitrator shall develop the disclosure materials in cooperation with the Farm Credit Administration and ensure that the materials are not inconsistent with applicable laws and regulations.

"(iii) TABULATION OF RESULTS.—The results of the vote under this subparagraph shall be compiled separately for production credit association farmer-borrowers and Federal land bank association farmer-borrowers in each of the following seven geographic areas:

"(I) The area served by the Federal Land Bank Association of South Mississippi.

"(II) The area served by the Federal Land Bank Association of North Mississippi.

"(III) The area served by the Federal Land Bank Association of South Alabama.

"(IV) The area served by the Federal Land Bank Association of North Alabama.

"(V) The area served by the Federal Land Bank Association of South Louisiana.

"(VI) The area served by both the Federal Land Bank Association of North Louisiana and the First South Production Credit Association.

"(VII) The area served by both the Federal Land Bank Association of North Louisiana and the Northwest Louisiana Production Credit Association.

"(iv) PUBLICATION OF RESULTS.—The results of the vote under this subparagraph, as tabulated by the American Arbitration Association, shall be made promptly available to the public in a manner determined appropriate by the Farm Credit Administration.

"(G) IMPLEMENTATION.—Not later than 10 days after the date of the receipt of the results of the referendum conducted under subparagraph (F), the Farm Credit Administration shall issue such charters or charter amendments and take such other regulatory actions as may be necessary to implement the merger or mergers as provided for under the certified plan. In this regard, the Farm Credit Administration shall—

"(i) issue a charter or charter amendment and take any such other regulatory actions as may be necessary to provide for the establishment of an agricultural credit association in each of the geographic areas described in subparagraph (F)(iii) where a majority of the farmer-borrowers of both the production credit association and the Federal land bank association voted under subparagraph (F)(i) that they preferred to have credit delivered through an agricultural credit association (which charter shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations); and

"(ii) not issue a charter or charter amendment or take any such other regulatory action to provide for the establishment of an agricultural credit association in any of the geographic areas described in subparagraph (F)(iii) where less than a majority of the farmer-borrowers of the production credit association or the Federal land bank association voted in the referendum under subparagraph (F)(i) that they preferred to have credit delivered through an agricultural credit association (provided that the charter of any remaining association in such geographic area shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(H) FACILITATION.—

"(i) IN GENERAL.—Beginning on the date of the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the Farm Credit System Insurance Corporation shall expend amounts from the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed in the plan.

"(ii) MAINTENANCE OF BOOK VALUE.—Assistance provided by the Corporation under this subparagraph shall be in amounts not to exceed that required to maintain book value per share of stockholders' equity at the same value reflected on the most recent audited financial statements of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas prior to or effective with the date of the merger.

"(iii) OTHER ASSISTANCE.—Until the expiration of 5 years from the effective date of a merger authorized by this subsection, or the final resolution of any litigation against the Federal Intermediate Credit Bank of Jackson or any of its stockholders pending on the date of the enactment of this subsection, whichever is later, the Corporation shall guarantee prompt payment of any loss experienced by the merged bank, which loss is caused by the failure of any association-stockholder of the merged bank that was a stockholder of the Federal Intermediate Credit Bank of Jackson immediately prior to the merger, or any successor to the association, to pay when due any obligation of principal or interest owed by the association or its successor to the resulting bank.

"(iv) TERMS AND CONDITIONS.—Assistance provided by the Corporation under this subparagraph shall be on such terms and conditions as the Corporation deems appropriate to facilitate the merger.

"(I) SAFETY AND SOUNDNESS.—

"(i) IN GENERAL.—Except as provided in clause (ii), if at any time prior to the completion of the merger required under this subsection the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is being operated in an unsafe or unsound manner (as determined in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)), the Farm Credit Administration, after consultation with the respective boards of directors of the affected banks and taking into consideration the purposes of this subsection, may require the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank, subject to such terms and conditions as the Farm Credit Administration may prescribe.

The Farm Credit System Insurance Corporation shall expend amounts in the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed under this subparagraph, including the provision of assistance as provided in section 5.61(a)(2)(A)(iii) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-10(a)(2)(A)(iii)), on such terms and conditions as the Corporation deems appropriate.

"(ii) ARBITRATED MERGER.—If at any time after the Farm Credit Administration issues an order under paragraph (1)(D), but prior to the completion of the merger required under this subsection, the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is being operated in an unsafe or unsound manner (as determined in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)), the Farm Credit Administration shall, after consultation with the boards of directors of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas, take such action as it deems necessary pursuant to the authorities provided under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) to return the operation of the Federal Intermediate Credit Bank of Jackson to a safe and sound condition, pending the completion of the merger under paragraph (2).

"(J) MERGER PLAN FOR AGRICULTURAL CREDIT ASSOCIATIONS.—In any of the States of Alabama, Louisiana, or Mississippi where all of the associations are chartered as agricultural credit associations, the boards of directors of each such association in each State are encouraged to submit to the farmer-borrowers of each such association for their approval a plan for merging the associations into one statewide agricultural credit association, in accordance with the applicable provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

"(K) DEFINITIONS.—As used in this paragraph:

"(i) AGRICULTURAL CREDIT ASSOCIATION.—The term 'agricultural credit association' means an association having the same authorities, attributes, and obligations as, and for all purposes an agricultural credit association resulting from the implementation of the plan under this paragraph shall be deemed to be, an association resulting from the merger of a production credit association and a Federal land bank association under section 7.8 of the Farm Credit Act of 1971 (12 U.S.C. 2279c-1).

"(ii) FARMER-BORROWER.—The term 'farmer-borrower' means a borrower from a Farm Credit System association in the State of Alabama, Louisiana, or Mississippi who holds voting stock, or is eligible to hold voting stock, in the association or a stockholder in any such association.

"(3) REVIEW.—

"(A) IN GENERAL.—Actions and determinations of the arbitrator, the Farm Credit Administration, or the Farm Credit System Insurance Corporation pursuant to this subsection shall not be subject to judicial review except as provided in this paragraph, nor shall they be subject to the requirements of subchapter II of chapter 5 or chapter 7 of title 5, United States Code.

"(B) AGENCY DETERMINATIONS.—

"(i) IN GENERAL.—Any petition for review of a determination or other action of the Farm Credit Administration or the Farm Credit System Insurance Corporation under this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit not later than 10 days after the determination, or the petition shall be barred. The court shall have exclusive jurisdiction to determine the proceeding in accordance with standard procedures as supplemented by procedures hereinafter provided and no other district court or court of appeals of the United States shall have jurisdiction over any such challenge in any proceeding instituted prior to, on, or after the date of enactment of this subsection. The review of any determination or action of the Farm Credit Administration or the Farm Credit System Insurance Corporation under this subsection shall be based on the examination of all of the information before the Farm Credit Administration or the Farm Credit System Insurance Corporation, as the case may be, at the time the determination was made. The court reviewing the determination or action shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(ii) PROCEDURES.—Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding that set page limits on briefs and time limits for filing briefs and motions and other actions that are shorter than the limits specified in the Federal Rules of Civil or Appellate Procedure.

"(iii) EXPEDITED REVIEW.—Any such proceeding before the court shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way. The court shall render its final decision relative to any challenge not later than 50 days from the date the challenge is brought unless the court determines that a longer period of time is required to satisfy the requirements of the Constitution.

"(C) ARBITRATOR DETERMINATIONS.—

"(i) IN GENERAL.—Except as otherwise provided in this paragraph, any petition for review of a determination or other action of the arbitrator named under paragraph (2) shall be filed in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.). Such Act shall apply to the arbitration conducted pursuant to paragraph (2) to the same extent as if the arbitration were established in a contract evidencing a transaction in commerce between the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas.

"(ii) PROCEDURES.—Notwithstanding the United States Arbitration Act (9 U.S.C. 1 et seq.), any petition for review of a determination or other action of the arbitrator under this subsection shall be filed not later than 10 days after the determination, or the petition shall be barred. The court specified under such Act shall have exclusive jurisdiction to determine the proceeding in accordance with the applicable procedures under such Act, as supplemented by procedures hereinafter provided, and no other district court shall have jurisdiction over any such challenge in any such proceeding. Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding that set page limits on briefs and time limits for filing briefs and motions and other actions that are shorter than the limits specified in the United States Arbitration Act or the Federal Rules of Civil or Appellate Procedure.

"(iii) EXPEDITED REVIEW.—Any such proceeding before the court shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way. The court shall render its final decision relative to any challenge as soon as possible in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.), or not later than 30 days from the date the challenge is brought, whichever is sooner, unless the court determines that a longer period of time is required to satisfy the requirements of the Constitution.".

(b) LONG-TERM LENDING AUTHORITY OF THE FARM CREDIT BANK OF TEXAS WITH RESPECT TO THE STATES OF ALABAMA, LOUISIANA, AND MISSISSIPPI.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Farm Credit Bank of Texas may act in accordance with the exclusive charter of the bank, as amended by the Farm Credit Administration on February 7, 1989, and effective February 9, 1989 (except to the extent that the charter may be further amended by the Farm Credit Administration in accordance with its general authorities under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), subject to such limitations on the issuance of competitive charters as may be provided in section 5.17 of such Act (12 U.S.C. 2252)).

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect as if such paragraph had become law on February 7, 1989.

(c) DENIAL OF COMPETITIVE CHARTERS.—Section 5.17(a)(2) (12 U.S.C. 2252(a)(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end the following new subparagraphs:

"(B) The Farm Credit Administration shall not issue a charter to, or approve an amendment to the charter of, any institution of the Farm Credit System to operate under title I or II that would authorize the institution to exercise lending authority, whether directly or indirectly as an agent of a Farm Credit Bank, in a territory in which the charter of another such institution authorizes the other institution to exercise like authority, whether directly or indirectly as an agent of a Farm Credit Bank, except with the approval of—

"(i) in a case affecting only the charter of one or more associations—

"(I) a majority of the shareholders (present and voting or voting by proxy) of each of the associations that would have like lending authority (whether directly or indirectly as an agent of a Farm Credit Bank) in any of that territory if the charter action were taken; and

"(II) a majority of the board of directors of the Farm Credit Bank with which the affected associations are affiliated; or

"(ii) in a case affecting the charter of one or more banks—

"(I) a majority of the shareholders (present and voting or voting by proxy) of the affiliated associations of each of the banks that would have like lending authority in any of that territory if the charter action were taken;

"(II) a majority of the shareholders (present and voting or voting by proxy) of each of the banks that would have like lending authority in any of that territory if the charter action were taken; and

"(III) a majority vote of the boards of directors of each of the banks that would have like lending authority in any of that territory if the charter action were taken.

"(C) Subparagraph (B) shall apply only in those geographic areas where, due to the failure of a Federal intermediate credit bank to merge in accordance with section 410(a) of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note), the Federal intermediate credit bank or its successor is chartered to provide

short- and intermediate-term credit, and a neighboring Farm Credit Bank that is not the successor to the Federal intermediate credit bank is chartered to provide long-term credit, in the same geographic territory.".

## TITLE V—MISCELLANEOUS

**SEC. 501. VALUATION RESERVES OF PRODUCTION CREDIT ASSOCIATIONS.**

Subsection (b) of section 2.3 (12 U.S.C. 2074(b)) is amended to read as follows:

"(b) APPLICATION OF EARNINGS.—At the end of each fiscal year, each production credit association shall apply the amount of the earnings of the association for the fiscal year in excess of the operating expenses of the association (including provision for valuation reserves against loan assets in accordance with generally accepted accounting principles)—

"(1) first, to the restoration of the impairment (if any) of capital; and

"(2) second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Farm Credit Bank.".

**SEC. 502. RISK MANAGEMENT PARTICIPATION AUTHORITY.**

Section 3.1(11) (12 U.S.C. 2122(11)) is amended—

(1) by inserting "(A)" after "(11)"; and

(2) by adding at the end the following new subparagraph:

"(B)(i) Participate in any loan of a type otherwise authorized under this title that is made to a similar entity by any institution in the business of extending credit, including purchases of participations in loans to finance international trade transactions involving the sale of agricultural commodities or the products thereof, except that—

"(I) a bank for cooperatives may not participate in a loan—

"(aa) if the participation would cause the total amount of all loan participations by the bank under this subparagraph involving a single credit risk to exceed 10 percent of the bank's total capital; or

"(bb) if the participation by the bank will itself equal or exceed 50 percent of the principal of the loan or, when taken together with participations in the loan by the other banks for cooperatives under this subparagraph, will cause the cumulative amount of the participations by all banks for cooperatives in the loan to equal or exceed 50 percent of the principal of the loan;

"(II) a bank for cooperatives may not participate in a loan to a similar entity under this subparagraph if the similar entity has a loan or loan commitment outstanding with a Farm Credit Bank or an association chartered under this Act, unless agreed to by the Bank or association; and

"(III) the cumulative amount of participations that a bank for cooperatives may have outstanding under this subparagraph at any time may not exceed 15 percent of the bank's total assets.

"(ii) As used in this subparagraph, the term 'similar entity' means an entity that, while not eligible for a loan under section 3.8, is functionally similar to an entity eligible for a loan under section 3.8 in that it derives a majority of its income from, or has a majority of its assets invested in, the conduct of activities functionally similar to those conducted by the entity.

"(iii) With respect to similar entities that are eligible to borrow from a Farm Credit Bank or association under title I or II, the authority of a bank for cooperatives to participate in loans to the entities under this subparagraph shall be subject to the prior approval of the Farm Credit Bank or Banks in whose chartered territory the entity is eligible to borrow. The approval may be granted on an annual basis and under such terms and conditions as may be agreed on between the bank for cooperatives and the Farm Credit Bank or Banks that serve the territory.".

**SEC. 503. EQUITY VOTING FOR ONE DIRECTOR OF EACH BANK FOR COOPERATIVES.**

Section 3.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2123(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2)(A) If approved by the stockholders through a bylaw amendment, the nomination and election of one member from a bank for cooperatives (other than the National Bank for Cooperatives) shall be carried out with each voting stockholder of a bank for cooperatives having one vote, plus a number of votes (or fractional part thereof) equal to—

"(i) the number of stockholders eligible to vote; multiplied by

"(ii) the percentage (or fractional part thereof) of the total equity interest (including allocated, but not unallocated, surplus and reserves) in the bank of all stockholders held by the individual voting stockholder at the close of the immediately preceding fiscal year of the bank.

"(B) The total number of votes under this paragraph shall be the number of voting stockholders of a bank for cooperatives multiplied by two.".

**SEC. 504. TECHNICAL AMENDMENT.**

The first sentence of section 3.7(a) (12 U.S.C. 2128(a)) is amended by inserting "at any time (whether or not they have a loan from the bank outstanding)" after "technical and financial assistance".

**SEC. 505. EXPANSION OF WATER AND SEWER LENDING AUTHORITY OF BANKS FOR COOPERATIVES.**

Section 3.7(f) (12 U.S.C. 2128(f)) is amended—

(1) by striking "the installation, expansion, or improvement of" and inserting "installing, maintaining, expanding, improving, or operating"; and

(2) by striking "to extend" and inserting "extending".

**SEC. 506. ELIGIBILITY TO BORROW FROM A BANK FOR COOPERATIVES.**

Section 3.8(b)(1) (12 U.S.C. 2129(b)(1)) is amended by adding at the end the following new subparagraph:

"(E) Any creditworthy private entity that satisfies the requirements for a service cooperative under paragraphs (1), (2), and (4) of subsection (a) and subsidiaries of the entity, if the entity is organized to benefit agriculture in furtherance of the welfare of its farmer-members and is operated on a not-for-profit basis.".

**SEC. 507. NON-VOTING REPRESENTATIVE ON BOARD OF FUNDING CORPORATION.**

Paragraph (2) of section 4.9(d) (12 U.S.C. 2160(d)(2)) is amended to read as follows:

"(2) NON-VOTING REPRESENTATIVES.—

"(A) ASSISTANCE BOARD.—During the period in which the Assistance Board is in existence, the board of directors of the Assistance Board shall designate one of its directors to serve as a non-voting representative to the board of directors of the Corporation.

"(B) MEETINGS.—The person designated by the Assistance Board under subparagraph (A) may attend and participate in all deliberations of the board of directors of the Corporation.

"(C) TERMINATION OF ASSISTANCE BOARD.—After termination of the Assistance Board, neither the Assistance Board nor its successor, the Farm Credit System Insurance Corporation, shall have any representation on the board of directors of the Corporation.".

**SEC. 508. REPEAL OF PROHIBITION AGAINST GUARANTEE OF CERTAIN INSTRUMENTS OF INDEBTEDNESS.**

Section 4.16 (12 U.S.C. 2204) is repealed.

**SEC. 509. COMPENSATION OF BANK DIRECTORS.**

Section 4.21 (12 U.S.C. 2209) is amended to read as follows:

**"SEC. 4.21. COMPENSATION OF BANK DIRECTORS.**

"(a) IN GENERAL.—The Farm Credit Administration shall monitor the compensation of members of the board of directors of a System bank received as compensation for serving as a director of the bank to ensure that the amount of the compensation does not exceed a level of $20,000 per year, as adjusted to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, unless the Farm Credit Administration determines that such level adversely affects the safety and soundness of the bank.

"(b) WAIVER.—The Farm Credit Administration may waive the limitation prescribed in subsection (a) under exceptional circumstances, as determined in accordance with regulations promulgated by the Farm Credit Administration.".

**SEC. 510. CLARIFICATION OF TREATMENT OF FARM CREDIT ADMINISTRATION OPERATING EXPENSES.**

Section 5.15(b)(1) (12 U.S.C. 2250(b)(1)) is amended—

(1) by inserting ", for purposes of sequestration," after "regard"; and

(2) by striking "or any other law".

**SEC. 511. APPROVAL OF COMPETITIVE CHARTERS.**

Section 5.17(a) (12 U.S.C. 2252(a)) is amended by adding at the end the following new paragraphs:

"(13)(A) Subject to subparagraph (B), the Farm Credit Administration may approve an amendment to the charter of any institution of the Farm Credit System operating under title I or II, which would authorize the institution to exercise lending authority in any territory—

"(i) in the geographic area served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (12 U.S.C. 2071 note) (where the geographic area was a part of the association's territory as of the date of the reassignment); and

"(ii) in which the charter of an institution that is not seeking the charter amendment authorizes the institution to exercise the type of lending authority that is the subject of the charter request.

"(B) The Farm Credit Administration may approve a charter amendment under subparagraph (A) only on the approval of—

"(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

"(ii) a majority of the stockholders of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholders' meeting; and

"(iii) the respective boards of directors of the Farm Credit Banks that, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).

"(14)(A) Subject to subparagraph (B), the Farm Credit Administration may approve a request to charter an association of the

Farm Credit System to operate under title II where the proposed charter—

"(i) will include any of the geographic area included in the territory served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (12 U.S.C. 2071 note) (where the geographic area was a part of the association's territory as of the date of the reassignment); and

"(ii) will authorize the association to exercise lending authority in any territory in the geographic area in which the charter of an association that is not requesting the charter authorizes the association to exercise the type of lending authority that is the subject of the charter request.

"(B) The Farm Credit Administration may approve a charter request under subparagraph (A) only on the approval of—

"(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

"(ii) a majority vote of the stockholders (if any) of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholder's meeting; and

"(iii) the respective boards of directors of the Farm Credit Banks that, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).".

**SEC. 512. EXAMINATIONS.**

The third sentence of section 5.19(a) (12 U.S.C. 2254(a)) is amended by striking "shall include" and inserting "may include, if appropriate".

**SEC. 513. AUTHORITY TO EXAMINE SYSTEM INSTITUTIONS.**

(a) AUTHORITY OF FARM CREDIT SYSTEM INSURANCE CORPORATION.—Section 5.59 (12 U.S.C. 2277a–8) is amended—

(1) in the section heading, by striking "INSURED SYSTEM BANKS" and inserting "SYSTEM INSTITUTIONS"; and

(2) by striking subsection (b) and inserting the following new subsection:

"(b) EXAMINATION OF SYSTEM INSTITUTIONS.—

"(1) EXAMINATION AUTHORITY.—

"(A) IN GENERAL.—If the Board of Directors considers it necessary to examine an insured System bank, a production credit association, an association making direct loans under the authority provided under section 7.6, or any System institution in receivership, the Board may, using Farm Credit Administration examiners, conduct the examination using reports and other information on the System institution prepared or held by the Farm Credit Administration.

"(B) REQUEST FOR ADDITIONAL EXAMINATION OR OTHER INFORMATION.—If the Board determines that such reports or information are not adequate to enable the Corporation to carry out the duties of the Corporation under this subsection, the Board shall request the Farm Credit Administration to examine or to obtain other information from or about the System institution and provide to the Corporation the resulting examination report or such other information.

"(2) APPOINTMENT OF EXAMINERS.—If the Farm Credit Administration informs the Corporation that the Farm Credit Administration is unable to comply with a request made under paragraph (1)(B) with respect to a System institution, the Board may appoint examiners to examine the institution.

"(3) POWERS AND REPORT.—Each examiner appointed under paragraph (2) shall make such examination of the affairs of the System institution as the Board may direct, and shall make a full and detailed report of the examination to the Corporation.

"(4) APPOINTMENT OF CLAIM AGENTS.—The Board of Directors of the Corporation shall appoint claim agents who may investigate and examine all claims for insured obligations.".

(b) DUTIES OF THE FARM CREDIT ADMINISTRATION.—Section 5.19 (12 U.S.C. 2254) is amended by adding at the end the following new subsection:

"(d) On receipt of a request made under section 5.59(b)(1)(B) with respect to a System institution, the Farm Credit Administration shall—

"(1) furnish for the confidential use of the Farm Credit System Insurance Corporation reports of examination of the institution and other reports or information on the institution; and

"(2)(A) examine, or obtain other information on, the institution and furnish for the confidential use of the Farm Credit System Insurance Corporation the report of the examination and such other information; or

"(B) if the Farm Credit Administration Board determines that compliance with the request would substantially impair the ability of the Farm Credit Administration to carry out the other duties and responsibilities of the Farm Credit Administration under this Act, notify the Board of Directors of the Farm Credit System Insurance Corporation that the Farm Credit Administration will be unable to comply with the request.".

**SEC. 514. FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST REPORTING BY DIRECTORS, OFFICERS, AND EMPLOYEES OF FARM CREDIT SYSTEM INSTITUTIONS.**

(a) FINDINGS.—Congress finds that—

(1) the disclosure of the compensation paid to, loans made to, and transactions made with a Farm Credit System institution by, directors and senior officers of the institution provides the stockholders of the institutions with information necessary to better manage the institutions, provides the Farm Credit Administration with information necessary to efficiently and effectively regulate the institutions, and enhances the financial integrity of the Farm Credit System by making the information available to potential investors;

(2) the reporting of potential conflicts of interest by directors, officers, and employees of institutions of the Farm Credit System benefits the stockholders of the institutions, helps to ensure the financial viability of the institutions, provides information valuable to the Farm Credit Administration in periodic examinations of the institutions, and therefore enhances the safety and soundness of the Farm Credit System; and

(3) the directors, officers, or employees of some Farm Credit System institutions may not be subject to the regulations of the Farm Credit Administration requiring the disclosure of the financial information and the reporting of the potential conflicts of interest.

(b) PURPOSE.—It is the purpose of this section to ensure that the information reported by the directors, officers, and employees of Farm Credit System institutions under regulations of the Farm Credit Administration requiring the disclosure of financial information and the reporting of potential conflicts of interest—

(1) provides the stockholders of all Farm Credit System institutions with information to assist the stockholders in making informed decisions regarding the operation of the institutions;

(2) provides investors and potential investors with information necessary to assist them in making investment decisions regarding Farm Credit System obligations or institutions; and

(3) provides the Farm Credit Administration with information necessary to allow the Farm Credit Administration to effectively and efficiently examine and regulate all Farm Credit System institutions and thus enhance the safety and soundness of the Farm Credit System.

(c) REVIEW.—Not later than 120 days after the date of enactment of this Act, the Farm Credit Administration shall complete a review of the current regulations of the Farm Credit Administration regarding the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of Farm Credit System institutions. Consistent with the purpose of this section as provided in subsection (b), the review shall address whether the regulations—

(1) are adequate to fulfill the purpose of this section and such other purposes as the Farm Credit Administration determines to be consistent with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and other applicable law, and to be otherwise necessary or appropriate;

(2) currently require the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of all Farm Credit System institutions; and

(3) currently require the disclosure or reporting of the information by all of the appropriate directors, officers, or employees of Farm Credit System institutions.

(d) IMPLEMENTATION.—Not later than 360 days after the date of enactment of this Act, the Farm Credit Administration shall amend its current financial disclosure and conflict of interest regulations as the Administration determines necessary to carry out the purpose of this section and to address any deficiencies in the regulations that the Farm Credit Administration determines necessary pursuant to the review conducted under subsection (c).

**SEC. 515. ONE-TIME EFAP ASSISTANCE.**

(a) USE OF ACCOUNT.—The Secretary of Agriculture shall use the account in which funds appropriated under section 214 of the Emergency Food Assistance Act of 1983 (Public Law 98–8; 7 U.S.C. 612c note) are credited or deposited, or another account established for the use of the Secretary of Agriculture, for the purpose of purchasing, processing and distributing additional commodities for the emergency food assistance program established under such Act (7 U.S.C. 612c note) as required by this section.

(b) USE OF RECEIPTS.—

(1) IN GENERAL.—Not later than 10 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall—

(A) calculate the estimated present value of the future receipts available to the Federal Government, under procedures or definitions established in the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), as a result of enactment of this Act and the amendments made by this Act; and

(B) advise the Secretary of Agriculture, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the dollar amount of that value.

(2) CREDIT.—Not later than 20 days after the date of enactment of this Act, an amount equal to the dollar amount of that value

shall be credited to, or deposited in, the account referred to in subsection (a) by the Secretary of the Treasury.

(c) REQUIRED PURCHASE OF COMMODITIES BY THE SECRETARY OF AGRICULTURE.—

(1) IN GENERAL.—The Secretary of Agriculture shall—

(A) use all of the funds provided to the Secretary under subsection (a) to purchase, process, and distribute additional commodities for the emergency food assistance program; and

(B) allot the additional commodities to States in accordance with the application of the allocation formula established in section 214(f) of the Emergency Food Assistance Act of 1983 (Public Law 98-8; 7 U.S.C. 612c note) to the total value of the additional commodities.

(2) TYPES AND VARIETIES.—The additional commodities shall be of the types and varieties required under section 214(d) of such Act.

(3) REALLOCATION.—The additional commodities may be reallocated under procedures established by the Secretary of Agriculture in accordance with section 214(g) of such Act.

(d) ENTITLEMENT TO RECEIVE COMMODITIES.—Each State shall be entitled to receive during fiscal year 1993 its allotment of the additional commodities purchased by the Secretary of Agriculture under this section.

(e) TERMINATION OF AUTHORITY.—The authority provided to carry out this section shall terminate on September 30, 1993.

**SEC. 516. TECHNICAL CORRECTIONS.**

(a) CORRECTION OF REFERENCE TO SECTION 1236 OF THE FOOD SECURITY ACT OF 1985.—The matter under the heading "CONSTRUCTION AND ANADROMOUS FISH" of title I of the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101-512; 104 Stat. 1918) is amended by striking "title 16 U.S.C. section 3832(a)(6)" and inserting "section 1232(a)(6) of the Food Security Act of 1985 (16 U.S.C. 3832(a)(6))".

(b) SECTION 1245(b) OF THE FOOD SECURITY ACT OF 1985.—

(1) CORRECTION.—Section 1245(b) of the Food Security Act of 1985 (16 U.S.C. 3845(b)) is amended by striking "(A) through (G)" and inserting "A through G".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect immediately after section 1443 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3602) took effect.

(c) SECTION 307(a)(6)(B) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTION.—Section 307(a)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1927(a)(6)(B)) is amended by striking clause (ii), and by redesignating clauses (iii) through (viii) as clauses (ii) through (vii), respectively.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by section 501(a) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1865) took effect.

(d) SECTION 310B(c) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—Section 310B(c) (7 U.S.C. 1932(c)) is amended by striking "business enterprises," and inserting "business enterprises or the creation, expansion, and operation of rural distance learning networks or rural learning programs that provide educational instruction or job training instruction related to potential employment or job advancement to adult students,".

(e) SECTION 310D(a) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTION.—Section 310D(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1934(a)) is amended by striking "304(d)(1)" and inserting "304(a)(1)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by section 501(a) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1865) took effect.

(f) SECTION 312(a) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) REPLACEMENT OF UNEXECUTABLE AMENDMENT MADE BY THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT OF 1990.—

(A) CORRECTION.—Subsection (b) of section 1818 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3830) is amended to read as follows:

"(b) OPERATING LOAN PURPOSES.—The first sentence of section 312(a) (7 U.S.C. 1942(a)) is amended—

"(1) by striking 'and' at the end of clause (11); and

"(2) by inserting ', and (13) borrower training under section 359' before the period at the end.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the Food, Agriculture, Conservation, and Trade Act of 1990 at the time such Act became law.

(2) REPEAL OF UNEXECUTABLE AMENDMENT MADE BY THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Subsection (b) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1866) is repealed. The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) shall be applied and administered as if such subsection had never become law.

(g) AMENDMENTS TO SECTION 331E OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTION.—Section 331E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981e) is amended—

(A) in subsection (a), by striking "Disaster Relief Act of 1974" and inserting "Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)"; and

(B) in subsection (b), by inserting "Robert T. Stafford" before "Disaster Relief".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) of this subsection shall take effect immediately after section 501(d) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1866) took effect.

(h) SECTION 335(e)(1)(A)(i) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTIONS TO AMENDMENT MADE BY THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Section 501(f)(1) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1867) is amended—

(A) by inserting "the first place such term appears" before "and all that follows"; and

(B) by striking "borrower-owner (as defined in subparagraph (F)" and inserting "the borrower-owner (as defined in subparagraph (F))".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) of this subsection shall take effect immediately after section 501(f) of the Food, Agriculture, Conservation, and Trade Act of 1990 took effect.

(i) SECTION 352(a) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—Section 352(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000(a)) is amended by redesignating the second paragraph (4) as paragraph (5).

(j) SECTION 352(b)(2) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTION.—Section 352(b)(2) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000(b)(2)) is amended by striking "borrower's" and inserting "borrower-owner's".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by section 501(f) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1867) took effect.

(k) SECTION 702(h)(2) OF THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Section 702(h)(2) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1991) is amended by inserting "section" before "2388(h)(3)".

(l) SECTION 306C(b)(1) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—Section 306C(b)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c(b)(1)) is amended by striking "or connecting such systems to the residences of such individuals" and inserting ", connecting the systems to the residences of the individuals, or installing plumbing and fixtures within the residences of the individuals to facilitate the use of the water supply and waste disposal systems".

(m) SECTION 306C OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c) is amended by adding at the end the following new subsection:

"(f) REGULATIONS.—Not later than 30 days after the date of enactment of this subsection, the Secretary shall issue interim final regulations, with a request for public comments, implementing this section.".

(n) TARGETING OF WATER AND WASTE FACILITY LOANS AND GRANTS TO CERTAIN AREAS.—Paragraph (2) of section 306C(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c(a)(2)) is amended to read as follows:

"(2) CERTAIN AREAS TARGETED.—Loans and grants under paragraph (1) shall be made only if the loan or grant funds will be used primarily to provide water or waste services, or both, to residents of—

"(A) a county—

"(i) the per capita income of the residents of which is not more than 70 percent of the national average per capita income, as determined by the Department of Commerce; and

"(ii) the unemployment rate of the residents of which is not less than 125 percent of the national average unemployment rate, as determined by the Bureau of Labor Statistics; or

"(B) a rural area that was recognized as a Colonias as of October 1, 1989.".

Amend the title so as to read: "An Act to enhance the financial safety and soundness of the banks and associations of the Farm Credit System, and for other purposes.".

## RELIEF OF ELHAM GHANDOUR CICIPPIO

### SPECTER AMENDMENT NO. 3418

Mr. SIMPSON (for Mr. SPECTER) proposed an amendment to the bill (S.

2499) for the relief of Elham Ghandour Cicippio, as follows:

On page 1, line 9, strike "310(d)" insert "316(a)(1)".

On page 1, line 6, strike "316" insert "319(a)".

## MEDICAL COST CONTAINMENT ACT

### LEAHY (AND LUGAR) AMENDMENT NO. 3419

Mr. FORD (for Mr. LEAHY, for himself and Mr. LUGAR) proposed an amendment to the bill (S. 2893) to amend the Internal Revenue Code of 1986 to establish medical care savings benefits, as follows:

In lieu of the matter proposed to be inserted, insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "Agricultural Credit, Rural Development, and Commodity Marketing Improvements Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FARM CREDIT BANKS AND ASSOCIATIONS SAFETY AND SOUNDNESS

Sec. 101. Short title.
Sec. 102. References to the Farm Credit Act of 1971.

Subtitle A—Improvements to Farm Credit System Safety and Soundness

Sec. 111. Definition of permanent capital.
Sec. 112. Qualifications of Farm Credit Administration Board members.

Subtitle B—Farm Credit System Insurance Corporation

Sec. 121. Farm Credit System Insurance Corporation.
Sec. 122. Statutory successor to Assistance Board agreements.
Sec. 123. Use of Farm Credit Administration personnel.
Sec. 124. GAO reports on risk-based insurance premiums, access to association capital, supplemental premiums, and consolidation.

Subtitle C—Repayment of Farm Credit System Debt Obligations

Sec. 131. Capital preservation.
Sec. 132. Preferred stock.
Sec. 133. Systemwide repayment obligation.
Sec. 134. Repayment of Treasury-paid interest
Sec. 135. Transfer of obligations from associations to banks; other matters.
Sec. 136. Defaults.
Sec. 137. Authority of Financial Assistance Corporation.
Sec. 138. Technical amendments.

Subtitle D—Clarification of Certain Authorities

Sec. 141. Clarification of the status and powers of certain institutions of the Farm Credit System.

Subtitle E—Miscellaneous

Sec. 151. Valuation reserves of production credit associations.
Sec. 152. Risk management participation authority.
Sec. 153. Equity voting for one director of each bank for cooperatives.
Sec. 154. Technical amendment.
Sec. 155. Expansion of water and sewer lending authority of banks for cooperatives.
Sec. 156. Eligibility to borrow from a bank for cooperatives.
Sec. 157. Non-voting representative on board of Funding Corporation.
Sec. 158. Repeal of prohibition against guarantee of certain instruments of indebtedness.
Sec. 159. Compensation of bank directors.
Sec. 160. Clarification of treatment of Farm Credit Administration operating expenses.
Sec. 161. Approval of competitive charters.
Sec. 162. Examinations.
Sec. 163. Authority to examine System institutions.
Sec. 164. Financial disclosure and conflict of interest reporting by directors, officers, and employees of Farm Credit System institutions.

TITLE II—AGRICULTURAL CREDIT IMPROVEMENTS

Sec. 201. References to the Consolidated Farm and Rural Development Act.
Sec. 202. Limitation on aggregate indebtedness.
Sec. 203. Interest rate for loans sold into secondary market; guaranteed loan fees.
Sec. 204. Federal-State beginning farmer partnership.
Sec. 205. Grants for private business enterprises.
Sec. 206. Down payment loan program.
Sec. 207. Special assistance to certain qualified beginning farmers and ranchers.
Sec. 208. Graduation of borrowers with operating loans or guarantees to private commercial credit.
Sec. 209. Consideration of borrowers for loan service programs.
Sec. 210. Time period within which county committee is required to meet to consider applications for farm ownership and operating loans and guarantees and beginning farmer plans.
Sec. 211. Increase in period during which county committee loan eligibility certification continues in effect.
Sec. 212. Processing of applications for farm operating loans.
Sec. 213. Graduation of seasoned direct loan borrowers to the loan guarantee program.
Sec. 214. Simplified application for guaranteed loans of $50,000 or less.
Sec. 215. Inventory lease or lease with option to purchase.
Sec. 216. Transfer of Indian lands pledged as collateral for FmHA loans.
Sec. 217. Debt service margin requirements; certified lenders program.
Sec. 218. Definition of qualified beginning farmer or rancher.
Sec. 219. Targeting of funds.
Sec. 220. Equal access to FmHA assistance by gender.
Sec. 221. State mediation programs.
Sec. 222. Regulations.

TITLE III—RURAL ELECTRIFICATION ADMINISTRATION IMPROVEMENTS

Sec. 301. Short title.
Sec. 302. Discounted loan prepayment.
Sec. 303. Improvement of health care services and educational services through telecommunications.

TITLE IV—MISCELLANEOUS

Sec. 401. Use of electronic cotton warehouse receipts.
Sec. 402. One-time EFAP assistance.
Sec. 403. Expedited action on marketing orders.
Sec. 404. Technical corrections.

## TITLE I—FARM CREDIT BANKS AND ASSOCIATIONS SAFETY AND SOUNDNESS

**SEC. 101. SHORT TITLE.**

(a) SHORT TITLE.—This title may be cited as the "Farm Credit Banks and Associations Safety and Soundness Act of 1992".

**SEC. 102. REFERENCES TO THE FARM CREDIT ACT OF 1971.**

Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), except to the extent otherwise provided.

### Subtitle A—Improvements to Farm Credit System Safety and Soundness

**SEC. 111. DEFINITION OF PERMANENT CAPITAL.**

Paragraph (1) of section 4.3A(a) (12 U.S.C. 2154a(a)(1)) is amended to read as follows:

"(1) PERMANENT CAPITAL.—The term 'permanent capital' means—

"(A) current year retained earnings;

"(B) allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

"(C) all surplus (less allowances for losses);

"(D) stock issued by a System institution, except—

"(i) stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder; or

"(ii) stock that is protected under section 4.9A or is otherwise not at risk; and

"(E) any other debt or equity instruments or other accounts that the Farm Credit Administration determines appropriate to be considered permanent capital.".

**SEC. 112. QUALIFICATIONS OF FARM CREDIT ADMINISTRATION BOARD MEMBERS.**

Section 5.8 (12 U.S.C. 2242) is amended by adding at the end the following new subsection:

"(e) The President shall appoint members of the Board who—

"(1) are experienced or knowledgeable in agricultural economics and financial reporting and disclosure;

"(2) are experienced or knowledgeable in the regulation of financial entities; or

"(3) have a strong financial, legal, or regulatory background.".

### Subtitle B—Farm Credit System Insurance Corporation

**SEC. 121. FARM CREDIT SYSTEM INSURANCE CORPORATION.**

(a) IN GENERAL.—Section 5.53 (12 U.S.C. 2277a-2) is amended to read as follows:

**"SEC. 5.53. BOARD OF DIRECTORS.**

"(a) IN GENERAL.—

"(1) ESTABLISHMENT.—The management of the Corporation shall be vested in a Board of Directors (referred to in this section as the 'Board'). The Board shall establish policies for the Corporation. The Board shall provide for the performance of all the powers and duties vested in the Corporation.

"(2) APPOINTMENT.—The Board shall consist of three members, who shall be citizens of the United States and broadly representative of the public interest. Members of the

Board shall be appointed by the President, by and with the advice and consent of the Senate. Not more than two members of the Board shall be members of the same political party.

"(3) CHAIRPERSON.—Of the persons appointed to the Board, one shall be designated by the President to serve as Chairperson of the Board for the duration of the term of the member.

"(4) POSTEMPLOYMENT PROHIBITION.—A member of the Board shall be ineligible during the time the member is in office and for 2 years thereafter to hold any office, position, or employment in any institution of the Farm Credit System.

"(b) TERM OF OFFICE.—

"(1) IN GENERAL.—The term of office of each member of the Board shall be 6 years, except that the terms of the two members, other than the Chairperson, first appointed under subsection (a) shall expire, one on the expiration of 2 years after the date of appointment, and one on the expiration of 4 years after the date of appointment.

"(2) SUCCESSION.—Members of the Board shall not be appointed to succeed themselves, except that the members first appointed under subsection (a) for a term of less than 6 years may be reappointed for a full 6-year term and members appointed to fill unexpired terms of 3 years or less may be reappointed for a full 6-year term.

"(3) VACANCIES.—Any vacancy shall be filled for the unexpired term on like appointment. Any member of the Board shall continue to serve as a member after the expiration of the term of the member until a successor has been appointed and qualified.

"(c) ORGANIZATION.—

"(1) OATH.—Each member of the Board, within 15 days after notice of appointment, shall subscribe to the oath of office.

"(2) QUORUM.—The Board may transact business if a vacancy exists, if a quorum is present. A quorum shall consist of two members of the Board.

"(3) MEETING.—The Board shall hold meetings at such times and places as the Board may fix and determine. The meetings shall be held on the call of the Chairperson or any two Board members.

"(4) RULES; RECORDS.—The Board shall adopt such rules as the Board considers appropriate for the transaction of business by the Board, and shall keep permanent and accurate records and minutes of the actions and proceedings of the Board.

"(d) COMPENSATION.—

"(1) IN GENERAL.—The members of the Board shall devote their full time and attention to the business of the Board.

"(2) CHAIRPERSON.—The Chairperson of the Board shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code.

"(3) OTHER MEMBERS.—Each of the other members of the Board shall receive compensation at the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(4) EXPENSES.—Each member of the Board shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of the official duties of the member without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States.".

(b) CONFORMING AMENDMENTS.—

(1) CHAIRPERSON.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:

"Chairperson, Board of Directors of the Farm Credit System Insurance Corporation.".

(2) MEMBERS.—Section 5315 of such title is amended by adding at the end the following new item:

"Members, Board of Directors of the Farm Credit System Insurance Corporation.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall become effective on January 1, 1996.

(2) TRANSITIONAL PROVISION.—The Board of Directors of the Farm Credit System Insurance Corporation as established by section 5.53 of the Farm Credit Act of 1971 (12 U.S.C. 2277a–2) (as it existed before the amendments made by subsection (a) of this section) shall continue in existence and continue to manage the Farm Credit System Insurance Corporation until at least two members are appointed by the President, by and with the advice and consent of the Senate, to the new Board established by section 5.53 of such Act (as amended by subsection (a) of this section).

**SEC. 122. STATUTORY SUCCESSOR TO ASSISTANCE BOARD AGREEMENTS.**

(a) IN GENERAL.—Section 5.58(2) (12 U.S.C. 2277a–7(2)) is amended by adding at the end the following new sentence: "The Corporation shall succeed to the rights of the Farm Credit System Assistance Board under agreements between the Farm Credit System Assistance Board and System institutions certifying the institutions as eligible to issue preferred stock pursuant to title VI on the termination of the Assistance Board on the date provided in section 6.12.".

(b) CONFORMING AMENDMENTS.—Section 5.35(4) (12 U.S.C. 2271(4)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) after December 31, 1992, mean any significant noncompliance by a System institution (as determined by the Farm Credit Administration, in consultation with the Farm Credit System Insurance Corporation) with any term or condition imposed on the institution by the Farm Credit System Assistance Board under section 6.6 or by the Farm Credit System Insurance Corporation under section 5.61.".

**SEC. 123. USE OF FARM CREDIT ADMINISTRATION PERSONNEL.**

Section 5.59(a) (12 U.S.C. 2277a–8(a)) is amended by adding at the end the following new paragraph:

"(5) USE OF FARM CREDIT ADMINISTRATION PERSONNEL.—To the extent practicable, the Corporation shall use the personnel and resources of the Farm Credit Administration to minimize duplication of effort and to reduce costs.".

**SEC. 124. GAO REPORTS ON RISK-BASED INSURANCE PREMIUMS, ACCESS TO ASSOCIATION CAPITAL, SUPPLEMENTAL PREMIUMS, AND CONSOLIDATION.**

(a) IN GENERAL.—The Comptroller General of the United States shall investigate, review, and evaluate the feasibility and appropriateness, and report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, on the advantages and disadvantages of providing the Farm Credit System Insurance Corporation with—

(1) the authority to directly or indirectly assess associations to ensure that all System capital is available to prevent losses to investors, including a study of—

(A) the effects of direct assessments by the Insurance Corporation on associations, including interest rate charges to borrowers;

(B) the effects of requiring that banks pass along the cost of insurance premiums to owner associations and other financing institutions having a discount relationship with the bank;

(C) the effects of requiring owner associations to purchase stock in the district bank, if needed, to prevent a bank from having to return to the Insurance Corporation for financial assistance once the assistance has been given;

(D) the effects of the purchase of stock from funds of the association (through funds obtained from other than the district bank) or allowing the bank to increase the direct line of credit to the association in order to fund the purchase; and

(E) the effect that authorizing the Insurance Corporation to assess the association could have on the association's incentives for building capital;

(2) the authority to collect supplemental insurance premiums under certain circumstances, including a study of—

(A) the possibility of the Insurance Fund being depleted more rapidly than it could be replenished under the current premium structure;

(B) the effects of the depletion under alternate economic scenarios and the probability of the occurrence of each of those scenarios;

(C) the effects on capital accumulation and interest rates of levying a supplemental premium; and

(D) limitations on any authority to levy supplemental premiums and the underlying basis for the limitations; and

(3) the authority to establish an insurance premium rate structure that would take into account, on an institution-by-institution basis, asset quality risk, interest rate risk, earnings, and capital.

(b) REPORT ON CONSOLIDATION.—

(1) IN GENERAL.—The Comptroller General of the United States shall evaluate and report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on whether there are likely to be benefits to farmer and rancher borrowers of the Farm Credit System institutions of merging the 10 district Farm Credit Banks (and the Federal Intermediate Credit Bank of Jackson) into fewer regional Farm Credit Banks.

(2) FACTORS.—In preparing the report, the Comptroller General shall consider—

(A) the potential reduction in services to farmers and ranchers;

(B) the potential benefits of jointly providing services to farmers and ranchers among these proposed regional districts;

(C) any economy of scale effects on a district-by-district basis;

(D) the potential impact on the cooperative nature of the Farm Credit System;

(E) the potential impact on bank and association relationships; and

(F) the potential impact on System-wide bond issuances.

(c) POTENTIAL SAVINGS.—The Comptroller General of the United States shall evaluate and report to the appropriate committees of Congress on the potential savings to the Farm Credit System and its shareholders that might occur if System institutions and the Farm Credit Administration were required to comply with General Services Administration standards for office space, furniture, and equipment.

(d) DEADLINE.—The reports required under this section shall be provided to Congress not later than 12 months after the date of enactment of this Act.

**Subtitle C—Repayment of Farm Credit System Debt Obligations**

**SEC. 131. CAPITAL PRESERVATION.**

Section 6.9(e)(3) (12 U.S.C. 2278a-9(e)(3)) is amended—

(1) by striking subparagraph (C) and inserting the following new subparagraph:

"(C) PAYMENT OF PRINCIPAL.—

"(i) IN GENERAL.—After the end of the 15-year period beginning on the date of the issuance of any obligation issued to carry out this subsection, the banks operating under this Act shall pay to the Financial Assistance Corporation, on demand, an amount equal to the outstanding principal of the obligation. Each bank shall pay a proportion of the principal equal to—

"(I) the average accruing loan volume of the bank for the preceding 15 years; divided by

"(II) the average accruing loan volume of all banks of the System for the same period.

"(ii) BANKS LEAVING SYSTEM.—Any bank leaving the Farm Credit System pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of the payment required under this subparagraph had the bank remained in the System.

"(iii) BANKS UNDERGOING LIQUIDATION.—With respect to any bank undergoing liquidation under this Act, a liability to the Financial Assistance Corporation in the amount of the payment required under this subparagraph (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of the bank.

"(iv) OBLIGATIONS OF OTHER BANKS.—The obligations of other banks shall not be reduced in anticipation of any recoveries under this subparagraph from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.";

(2) by redesignating subparagraph (D) as subparagraph (E);

(3) by inserting after subparagraph (C) the following new subparagraph:

"(D) ANNUAL PAYMENTS.—

"(i) IN GENERAL.—In order to provide for the orderly funding and discharge over time of the obligation of each System bank to the Financial Assistance Corporation under subparagraph (C), each System bank shall enter into or continue in effect an agreement with the Financial Assistance Corporation under which the bank will make annual annuity-type payments to the Financial Assistance Corporation, beginning no later than December 31, 1992 (except for any bank that did not meet its interim capital requirement on December 31, 1990, in which case the bank shall begin making the payments no later than December 31, 1993) in amounts designed to accumulate, in total, including earnings on the amounts, to 90 percent of the bank's ultimate obligation. The Financial Assistance Corporation shall partially discharge the bank from its obligation under subparagraph (C) to the extent of each such payment and the earnings on the payment as earned.

"(ii) CAPITAL REQUIREMENTS.—The agreement shall not require payments to be made to the extent that making a particular payment or part of a payment would cause the bank to fail to satisfy applicable regulatory permanent capital requirements, but shall provide for recalculation of subsequent payments accordingly.

"(iii) INVESTMENT; AVAILABILITY.—The funds received by the Financial Assistance Corporation pursuant to the agreements shall be invested in eligible investments as defined in section 6.25(a)(1). The funds and the earnings on the funds shall be available only for the payment of the principal of the bonds issued by the Financial Assistance Corporation under this subsection."; and

(4) in subparagraph (E) (as redesignated by paragraph (2)), by inserting before the period at the end the following: ", nor shall the obligation to make future annuity payments to the Financial Assistance Corporation under subparagraph (D) be considered a liability of any System bank".

**SEC. 132. PREFERRED STOCK.**

Subparagraph (B) of section 6.26(d)(1) (12 U.S.C. 2278b-6(d)(1)(B)) is amended to read as follows:

"(B) PAYMENTS BY INSTITUTIONS.—

"(i) IN GENERAL.—Except as provided in subparagraph (C), in order to enable the Financial Assistance Corporation to repay the obligation referred to in subparagraph (A), each institution that issued preferred stock under section 6.27(a) with respect to the obligation (or the successor to the institution) shall pay to the Financial Assistance Corporation, before the maturity date of the obligation, an amount equal to the par value of the stock outstanding for the institution.

"(ii) ANNUAL APPROPRIATION.—Except as provided in clause (iii), each year beginning in 1992, as soon as practicable following the end of the prior year, each such institution (except institutions in receivership and institutions that have previously redeemed their preferred stock) shall appropriate from its earnings in the prior year to an appropriated unallocated surplus account with respect to preferred stock, the sum of—

"(I) the greater of—

"(aa) such amount as the institution may be required to appropriate under any assistance agreement the institution has with the Farm Credit System Assistance Board or the Farm Credit System Insurance Corporation; or

"(bb) the amount that, if appropriated to the account in equal amounts in each year thereafter until the maturity of the obligation referred to in subparagraph (A), would cause the amount in the account to equal the par value of the preferred stock issued by the institution with respect to the obligation; plus

"(II) any amount that had been appropriated to the account in a previous year but had thereafter been offset by losses.

"(iii) LIMITATION.—An annual appropriation shall not be made to the extent that the appropriation would exceed the institution's net income (as determined pursuant to generally accepted accounting principles) in that year or to the extent that the appropriation would cause the institution's preferred stock to be impaired.

"(iv) USE.—The amount in the appropriated unallocated surplus account shall be unavailable to pay dividends or other allocations or distributions to shareholders or holders of participation certificates. The account shall be senior to all other unallocated surplus accounts but junior to all preferred and common stock for purposes of the application of operating losses.

"(v) PREFERRED STOCK.—The appropriations of surplus by an institution shall not affect the treatment of its preferred stock (and of the appropriated unallocated surplus) as equity for purposes of regulatory permanent capital requirements.".

**SEC. 133. SYSTEMWIDE REPAYMENT OBLIGATION.**

Subparagraph (C) of section 6.26(d)(1) (12 U.S.C. 2278b-6(d)(1)(C)) is amended to read as follows:

"(C) SYSTEMWIDE REPAYMENT.—

"(i) IN GENERAL.—In order to enable the Financial Assistance Corporation to repay the obligations issued to provide assistance under subsections (c) and (e) of section 410 of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note) and section 4.9A(c) of this Act, or issued to provide funds to cover the expenses of the Assistance Board or the Financial Assistance Corporation under sections 6.7(a) and 6.24, respectively, of this Act, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the obligation equal to—

"(I) the average accruing retail loan volume of the bank and its affiliated associations for the preceding 15 years; divided by

"(II) the average accruing retail loan volume of all such banks and their affiliated associations for the same period.

"(ii) EXPENSE ITEM.—The annual increase in the present value of the estimated obligation of each bank to the Financial Assistance Corporation under this subparagraph shall be recorded each year as an expense item, in accordance with generally accepted accounting principles, on the books of the bank.

"(iii) PASS THROUGH.—A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of the amount necessary to satisfy the payment requirement to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding 15 years, except that the bank shall remain primarily liable for the amount.

"(iv) BANKS LEAVING SYSTEM.—Any bank leaving the Farm Credit System pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of the payment required under this subparagraph had the bank remained in the System. A liability to the Financial Assistance Corporation in this amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation. The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.

"(v) ASSOCIATIONS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any association leaving the Farm Credit System pursuant to section 7.10 shall be required, under regula-

tions of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the present value of the future payment obligation of its supervising bank. A liability to the bank in this amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation.".

**SEC. 134. REPAYMENT OF TREASURY-PAID INTEREST**

(a) IN GENERAL.—Paragraph (5) of section 6.26(c) (12 U.S.C. 2278b-6(c)(5)) is amended to read as follows:

"(5) REPAYMENT OF TREASURY-PAID INTEREST.—

"(A) IN GENERAL.—On the maturity date of the last-maturing debt obligation issued under subsection (a), the Financial Assistance Corporation shall repay to the Secretary of the Treasury the total amount of any annual interest charges on the debt obligations that Farm Credit System institutions (other than the Financial Assistance Corporation) have not previously paid, and the Financial Assistance Corporation shall not be required to pay any additional interest charges on the payments.

"(B) ASSESSMENT.—In order to provide for the orderly funding by the banks of the System of the repayment by the Financial Assistance Corporation to the Secretary of the Treasury, the Financial Assistance Corporation shall assess each System bank, on or about December 31 of each year beginning in 1992, and each System bank shall promptly pay to the Financial Assistance Corporation, an annual annuity type payment in an amount designed to accumulate, in total, including earnings thereon, the amount of the bank's ultimate obligation (as determined by the Corporation on a fair and equitable basis), and no greater than .0006 nor less than .0004 times the bank's and its affiliated associations' average accruing retail loan volume for the preceding year, subject to—

"(i) upward or downward adjustment, as appropriate, by the Financial Assistance Corporation during each of the last 5 years prior to the date the Financial Assistance Corporation is obligated to make the repayment, in order to ensure that the Financial Assistance Corporation will have the amount of funds needed to make the repayment on the due date; and

"(ii) reduction or termination in any year when the funds paid to the Financial Assistance Corporation, including any anticipated future earnings on the funds, are sufficient to make the repayment on the due date.

"(C) INVESTMENT OF FUNDS.—The Financial Assistance Corporation shall invest funds derived from the investment in eligible investments as defined in section 6.25(a)(1). The funds and the earnings on the funds shall be available only for the repayment to the Secretary of the Treasury provided for in subparagraph (A).

"(D) PASS THROUGH.—A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of the assessments to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding year, but the bank shall remain primarily liable for the amounts.

"(E) LIABILITY.—

"(i) BANKS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any bank terminating System status pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of all future such assessments against the bank had the bank remained in the System. A liability to the Financial Assistance Corporation in this amount (calculated as if the bank had left the System on the date the bank was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation.

"(ii) NO ANTICIPATORY REDUCTIONS IN OTHER OBLIGATIONS.—The obligations of other banks shall not be reduced in anticipation of any recoveries under this subparagraph from banks leaving the System or in liquidation.

"(iii) REFUND OF RECOVERIES.—The Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.

"(F) ASSOCIATIONS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any association terminating System status pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the estimated present value of all future such assessments against the bank. A liability to the bank in this amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation.

"(G) CAPITAL REQUIREMENTS.—

"(i) IN GENERAL.—Until the date that is 5 years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.

"(ii) DURING THE FINAL 5 YEARS PRIOR TO REPAYMENT.—During the—

"(I) period beginning 5 years, and ending 4 years, prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 60 percent;

"(II) period beginning 4 years, and ending 3 years, prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 30 percent; and

"(III) period beginning 3 years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 0 percent,

of all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and of any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.".

(b) CONFORMING AMENDMENT.—Section 6.28 (12 U.S.C. 2278b-8) is amended by striking subsection (b) and redesignating subsection (c) as subsection (b).

**SEC. 135. TRANSFER OF OBLIGATIONS FROM ASSOCIATIONS TO BANKS; OTHER MATTERS.**

Section 6.26 (12 U.S.C. 2278b-6) is amended—

(1) in subsection (c)—

(A) in the subparagraph heading of paragraph (2)(B), by striking "INSTITUTIONS" and inserting "BANKS";

(B) by striking "institutions" each place it appears in paragraphs (2)(B), (3), and (4) and inserting "banks"; and

(C) in paragraph (2), by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

"(C) ALLOCATION.—During each year of the second 5-year period, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the interest due from System banks under this paragraph equal to—

"(i) the amount of the average accruing retail loan volume of the bank and its affiliated associations for the preceding year; divided by

"(ii) the total average accruing retail loan volume of all such banks and their affiliated associations for the preceding year.";

(2) in subsection (d)(1)—

(A) by striking subparagraph (D); and

(B) by redesignating subparagraph (E) as subparagraph (D); and

(3) by adding at the end the following new subsection:

"(e) ADMINISTRATION.—

"(1) DEFINITION OF RETAIL LOAN VOLUME.—As used in this section, the term 'retail loan volume' means all loans (as defined in accordance with generally accepted accounting principles) by a System bank or association, excluding loans by such a bank or association to another System institution.

"(2) CALCULATION OF AVERAGE ANNUAL LOAN VOLUMES.—For purposes of this section and section 6.9, average annual loan volumes shall be calculated using month-end balances.

"(3) EXCLUSION OF BANKS UNDERGOING LIQUIDATION.—For purposes of this section and section 6.9, the term 'bank' shall not include a bank that had entered liquidation prior to the date of enactment of this subsection.".

**SEC. 136. DEFAULTS.**

Section 6.26(d) (12 U.S.C. 2278b-6(d)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking the heading and inserting the following: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(ii) in clause (i)—

(I) by inserting after "subsection (a)," the following: "on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B),";

(II) by striking "of the interest" both places it appears; and

(III) by striking "institution" each place it appears and inserting "bank";

(iii) in clause (ii)—

(I) by striking "of interest";

(II) by striking "institution" and inserting "bank"; and

(III) by striking "such uncollected interest" and inserting "any uncollected amount";

(iv) in clause (iii), by striking "added" and all that follows through the period at the end and inserting "allocated to other System banks in accordance with the allocation mechanism applicable under this Act to the particular defaulted obligation.";

(B) in subparagraph (B), by striking the subparagraph heading and inserting the following new heading: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.—"; and

(C) in subparagraph (C)—

(i) in the heading, by striking "INSTITUTIONS" and inserting "BANKS";

(ii) by striking "institution" and inserting "bank";

(iii) by striking "institutions" both places it appears and inserting "banks"; and

(iv) by striking "the amount of any interest" and inserting "any amounts"; and

(2) in paragraph (4)—

(A) in subparagraph (A), by inserting "or section 6.9(e)(3)(A)" after "subsection (a)";

(B) in subparagraph (B)—

(i) in clause (i)—

(I) by striking the clause heading and inserting the following new heading: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(II) by inserting after "subsection (c)," the following: "on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B),"; and

(III) by striking "institution" each place it appears and inserting "bank"; and

(ii) in clause (ii), by striking the clause heading and inserting the following new heading: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.—".

**SEC. 137. AUTHORITY OF FINANCIAL ASSISTANCE CORPORATION.**

(a) PURPOSE.—Section 6.21 (12 U.S.C. 2278b-1) is amended by inserting before the period at the end the following: "and to assist, pursuant to section 6.9(e) and subsections (c) through (g) of section 6.26, in the repayment by System institutions to those persons who provided funds in connection with the program".

(b) TERMINATION.—Section 6.31(a) (12 U.S.C. 2278b-11(a)) is amended by striking "terminate on" and inserting the following: "terminate on the complete discharge by the Financial Assistance Corporation of its responsibilities under section 6.9(e) and subsections (c) through (g) of section 6.26 with regard to repayments by System institutions, but in no event later than 2 years following".

**SEC. 138. TECHNICAL AMENDMENTS.**

(a) TECHNICAL AMENDMENT TO THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Section 204(3) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237; 105 Stat. 1855) is amended by striking "in section 1221(1)(D) (16 U.S.C. 3821(1)(D))" and inserting "in section 1221(a)(1)(D) (16 U.S.C. 3821(a)(1)(D))".

(b) TECHNICAL AMENDMENTS TO THE FARM CREDIT ACT OF 1971.—

(1) Section 8.3(c)(13) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-3(c)(13)) is amended by striking "8.11(g)" and inserting "8.11(e)".

(2) Section 8.11(a)(1)(B)(ii) of such Act (12 U.S.C. 2279aa-11(a)(1)(B)(ii)) is amended by striking "the date of enactment of this section" and inserting "December 13, 1991".

(3) Section 8.32 of such Act (12 U.S.C. 2279bb-1) is amended—

(A) in each of subsections (a), (b)(1)(D), and (b)(2), by striking "the date of the enactment of this section" each place the term appears and inserting "December 13, 1991"; and

(B) in subsection (b)(1)(E), by striking "the date of the enactment of such Act" and inserting "December 13, 1991".

**Subtitle D—Clarification of Certain Authorities**

**SEC. 141. CLARIFICATION OF THE STATUS AND POWERS OF CERTAIN INSTITUTIONS OF THE FARM CREDIT SYSTEM.**

(a) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—Section 410 of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note) is amended by adding at the end the following new subsection:

"(e) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—

"(1) NEGOTIATED MERGER.—

"(A) REQUIREMENT.—

"(i) IN GENERAL.—Not later than June 30, 1993, except as provided in subparagraph (C), the Federal Intermediate Credit Bank of Jackson (as chartered on the date of enactment of this subsection) shall merge with a Farm Credit Bank pursuant to the procedures prescribed by section 7.12 of the Farm Credit Act of 1971 (12 U.S.C. 2279f).

"(ii) MERGER OF ENTIRE BANK.—Notwithstanding subparagraph (B), or any other provision of law, the Farm Credit Administration shall approve a merger of the Federal Intermediate Credit Bank of Jackson only if the Bank (as chartered on the date of enactment of this subsection, except as provided in subparagraph (B)(ii)(II)(bb)) merges in its entirety with a Farm Credit Bank.

"(iii) LIMITED LENDING AUTHORITY.—Notwithstanding any provision of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), the Farm Credit Bank resulting from a merger under this subsection shall have only the lending authorities in the States of Alabama, Louisiana, and Mississippi that the constituent banks exercised in such States immediately prior to the merger, except as may be provided in section 5.17(a)(2) of such Act (12 U.S.C. 2252(a)(2)).

"(B) OPERATING AND MERGER AUTHORITY.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Federal Intermediate Credit Bank of Jackson may operate subject to such provisions of part A of title II of the Farm Credit Act of 1971 (as in effect immediately before the amendment made by section 401 took effect) and such provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) (as in effect after the amendment), as the Farm Credit Administration deems appropriate to carry out the purposes of this subsection and such Act. This subparagraph shall take effect as if it had become law at the same time as the amendment made by section 401 and shall remain in effect until the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(ii) LIMITATION ON OPERATING AUTHORITY.—

"(I) IN GENERAL.—Notwithstanding clause (i) and subparagraph (A)(ii), the authority of the Federal Intermediate Credit Bank of Jackson to operate as provided under clause (i) shall expire, and the Farm Credit Administration shall revoke the Bank's charter, immediately on the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(II) DISTRICT BOUNDARY MODIFICATION.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson shall not include the authority for the Bank to modify, nor shall the Farm Credit Administration approve such a modification to, the boundaries of the Fifth Farm Credit District to reaffiliate any portion of the District with another Farm Credit Bank, except—

"(aa) in the case of the merger of the entire Bank as an entity with a Farm Credit Bank such that the entire chartered territory of the Federal Intermediate Credit Bank of Jackson (except as provided in item (bb)) is merged with the Farm Credit Bank; and

"(bb) in the case of the reaffiliation of the Northwest Louisiana Production Credit Association with another farm credit district pursuant to the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations under such Act.

"(iii) LIMITATION ON AUTHORITY TO MERGE.—

"(I) IN GENERAL.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank as provided under clause (i) shall expire, and the Farm Credit Administration shall revoke the Bank's charter, immediately on the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(II) BANK INTEGRITY.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank shall be limited to a merger of the Federal Intermediate Credit Bank of Jackson (as chartered on the date of enactment of this subsection to include the territory in the States of Alabama, Louisiana, and Mississippi, except as provided in clause (ii)(II)(bb)) as a whole entity such that the entire chartered territory of the Federal Intermediate Credit Bank of Jackson is merged with the Farm Credit Bank.

"(III) LIMITATION.—Beginning on the date of an order issued by the Farm Credit Administration under subparagraph (D), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank shall be limited to the arbitrated merger provided for in paragraph (2).

"(C) EXTENSION.—

"(i) LETTER OF INTENT.—If no later than June 30, 1993, the Federal Intermediate Credit Bank of Jackson delivers to the Farm Credit Administration a letter of intent to merge with a Farm Credit Bank, summarizing the terms and conditions of the merger (including, but not limited to, board composition, capital structure, exchange, or transfer of equities, and termination) signed by the chief executive officer and the members of the boards of directors of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank, the Farm Credit Administration shall, on its determination that the letter of intent represents a bona fide good faith agreement in principle between the two banks to merge, and that there is at least a reasonable prospect that the merger will be completed in an expeditious manner, grant a one-time extension, until a date certain not later than October 31, 1993, of the requirement under subparagraph (A). Any extension provided under this subparagraph may be conditioned on such terms and conditions as the Farm Credit Administration determines necessary to ensure that the merger described in the letter of intent is completed by the closing date of the extension.

"(ii) COMPLIANCE.—If the Farm Credit Administration grants an extension under

clause (i), it shall issue an order under subparagraph (D) immediately if—

"(I) the Federal Intermediate Credit Bank of Jackson, or the Farm Credit Bank that is a signatory to the letter of intent under clause (i), provides written notification to the Farm Credit Administration that the bank does not intend to complete the merger described in the letter of intent;

"(II) the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is not complying with any term or condition on which an extension under clause (i) was conditioned; or

"(III) the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is not pursuing in good faith the merger provided for in the letter of intent.

If the Farm Credit Administration issues an order under subparagraph (D) pursuant to this clause, the Federal Intermediate Credit Bank of Jackson shall be deemed to have failed to comply with the requirements of subparagraph (A).

"(D) FAILURE TO MERGE; ISSUANCE OF ORDER.—If the Federal Intermediate Credit Bank of Jackson fails to comply, or notifies the Farm Credit Administration in writing that it does not intend to comply with the requirements of subparagraph (A), the Farm Credit Administration shall, within 5 days after the date specified in subparagraph (A), or such other date specified by the Farm Credit Administration under subparagraph (C), issue, notwithstanding any other provision of law, an order requiring the Federal Intermediate Credit Bank of Jackson to merge with the Farm Credit Bank of Texas in accordance with paragraph (2).

"(2) ARBITRATED MERGER.—

"(A) IN GENERAL.—Not later than 30 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), an arbitrator (or panel of arbitrators) shall be named by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association to serve as the arbitrator referred to in this paragraph.

"(B) DUTIES.—The arbitrator shall determine the terms and conditions of the merger required under an order issued under paragraph (1)(D), such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders and borrowers of the associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. The arbitrator shall have the authority to hire staff and secure the services of consultants as necessary to discharge the duties of the arbitrator under this paragraph.

"(C) EXPENSES.—Notwithstanding any other provision of law, the compensation and expenses of the arbitrator, the fees and expenses of the American Arbitration Association, and any expenses associated with the referendum required under subparagraph (F) shall be paid from the Farm Credit Assistance Fund established under section 6.25 of the Farm Credit Act of 1971 (12 U.S.C. 2278b-5).

"(D) DEVELOPMENT OF MERGER PLANS.—

"(i) IN GENERAL.—Not later than 100 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the arbitrator shall develop and submit for certification to the Farm Credit Administration a plan specifying the terms and conditions of the merger of the two banks required under this paragraph, such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders or farmer-borrowers of the associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. In devising the plan, the arbitrator shall, to the extent practicable, achieve the following objectives:

"(I) Implementation of the preferences expressed by the affected and interested parties in submissions under clause (ii).

"(II) Valuation of assets fairly, equitably, and consistently for all parties involved.

"(III) Establishment of capitalization and funding terms in a manner that treats farmer-borrowers and stockholders in the two involved farm credit districts equitably and takes account of risk.

"(IV) Ensure the viability of the resulting Farm Credit Bank and associations of the bank and the ability of the resulting bank and associations of the bank to lend to eligible borrowers at reasonable and competitive rates of interest.

"(ii) SUBMISSION OF VIEWS AND INFORMATION.—The arbitrator shall receive from affected and interested parties written submissions, in accordance with fair and reasonable procedures established by the arbitrator, regarding the terms and conditions of an appropriate plan for the merger of the two banks required under this paragraph. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations shall make available all books, records, financial information, and other material that the arbitrator determines is necessary to the development of the plan or the fulfillment of any other requirement under this paragraph. A copy of any submission or information provided to the arbitrator by any party under this paragraph shall be furnished to the Federal Intermediate Credit Bank of Jackson or the Farm Credit Bank of Texas on the written request of the bank and at the bank's expense. The arbitrator shall provide both banks with a reasonable opportunity to review and respond to any submission or information provided by any party.

"(iii) CONTENT OF PLAN; FARM CREDIT BANK.—The plan developed and submitted under clause (i) shall include provisions regarding the following matters:

"(I) The initial composition, following the merger, of the board of directors of the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(II) The valuation, for purposes of the merger, of the assets and liabilities of the merging banks.

"(III) The terms and conditions on which the shares of capital stock of the Federal Intermediate Credit Bank of Jackson and, if necessary, the Farm Credit Bank of Texas, will be converted into shares of the resulting Farm Credit Bank.

"(IV) The capital structure and capitalization levels of the resulting Farm Credit Bank and the affiliated associations of the Farm Credit Bank in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(V) The terms of financing agreements between any production credit associations or agricultural credit associations described in clause (iv), and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(VI) Any other terms and conditions or other matters that the arbitrator considers necessary.

"(iv) CONTENT OF PLAN; AGRICULTURAL CREDIT ASSOCIATIONS.—If the arbitrator determines that the chartering of agricultural credit associations in the States of Alabama, Louisiana, and Mississippi will be in the best interests of the farmers, ranchers, and aquatic producers eligible to borrow from Farm Credit System associations, the plan required under this subparagraph shall also include, based on submissions from the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas, provisions for the establishment of agricultural credit associations to operate in the States, subject to approval in the referendum under subparagraph (F). Such provisions shall include provisions regarding the following matters:

"(I) A proposal for the establishment of an agricultural credit association in each of the geographic areas specified in subparagraph (F)(iii) (the charters of which, if validly issued under subparagraph (G)(i) pursuant to approval in the referendum under subparagraph (F), shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(II) The initial composition, if the proposal for the establishment of agricultural credit associations is approved, of the board of directors of each such agricultural credit association (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(III) The valuation, for purposes of the proposed merger of the production credit association and the Federal land bank association in each of the geographic areas specified in subparagraph (F)(iii), of the assets and liabilities of the associations.

"(IV) The terms and conditions on which the shares of capital stock of any associations that may merge under the plan to form agricultural credit associations will be converted into shares of the resulting agricultural credit associations.

"(V) The capital structure and capitalization levels of the resulting Farm Credit Bank and such affiliated associations of the Farm Credit Bank in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which capital structure and capitalization levels shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(VI) The terms of financing agreements between any agricultural credit associations and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(VII) Any other terms and conditions or other matters that the arbitrator considers necessary.

"(v) CONSULTATION WITH INSURANCE CORPORATION.—The arbitrator shall consult with the Farm Credit System Insurance Corporation regarding the valuation of the assets and liabilities under the plan of merger, the capitalization of the Farm Credit System institutions resulting under the plan, and any

other matters relevant to the assistance to be provided by the Insurance Corporation to facilitate the merger under subparagraph (H).

"(E) CERTIFICATION OF PLAN.—Not later than 30 days after the receipt of the plan developed by the arbitrator, the Farm Credit Administration shall—

"(i) certify; or

"(ii) recommend to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify,

that the resulting bank and any resulting associations are proposed to be organized in such a fashion that they will, on implementation of the plan, operate in compliance with applicable laws and regulations. The arbitrator and the Farm Credit Administration shall work cooperatively to ensure the expeditious issuance of the certification. If the Farm Credit Administration recommends to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify the plan, the arbitrator shall, not later than 15 days after receipt of the recommended revisions, incorporate the revisions into the plan as the arbitrator deems appropriate to secure the certification.

"(F) REFERENDUM ON ASSOCIATION STRUCTURE.—

"(i) IN GENERAL.—Not later than 170 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the American Arbitration Association shall conduct, and compile and forward to the Farm Credit Administration the results of, a vote of current farmer-borrowers of the production credit associations and the Federal land bank associations in the States of Alabama, Louisiana, and Mississippi, in accordance with the Election Rules of the American Arbitration Association, to determine whether the farmer-borrowers of each association in the geographic areas described in clause (iii) prefer to have credit delivered—

"(I) in the case of production credit association farmer-borrowers, through a production credit association or through an agricultural credit association as proposed in the plan; and

"(II) in the case of Federal land bank association farmer-borrowers, through a Federal land bank association or through an agricultural credit association as proposed in the plan.

Each farmer-borrower shall be entitled to one vote. The arbitrator shall establish record dates and other procedures for conducting the referendum. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations shall cooperate in the conduct of the referendum, as determined necessary by the Arbitrator.

"(ii) DISCLOSURE.—The arbitrator shall send to farmer-borrowers eligible to vote under this subparagraph, with their ballot, a statement describing the potential consequences to the farmer-borrowers, and to the associations from which they borrow, of voting to charter an agricultural credit association and setting forth factors that farmer-borrowers should consider relevant to the choice between credit delivery through the current association structure and the chartering of an agricultural credit association. The arbitrator shall develop the disclosure materials in cooperation with the Farm Credit Administration and ensure that the materials are not inconsistent with applicable laws and regulations.

"(iii) TABULATION OF RESULTS.—The results of the vote under this subparagraph shall be compiled separately for production credit association farmer-borrowers and Federal land bank association farmer-borrowers in each of the following seven geographic areas:

"(I) The area served by the Federal Land Bank Association of South Mississippi.

"(II) The area served by the Federal Land Bank Association of North Mississippi.

"(III) The area served by the Federal Land Bank Association of South Alabama.

"(IV) The area served by the Federal Land Bank Association of North Alabama.

"(V) The area served by the Federal Land Bank Association of South Louisiana.

"(VI) The area served by both the Federal Land Bank Association of North Louisiana and the First South Production Credit Association.

"(VII) The area served by both the Federal Land Bank Association of North Louisiana and the Northwest Louisiana Production Credit Association.

"(iv) PUBLICATION OF RESULTS.—The results of the vote under this subparagraph, as tabulated by the American Arbitration Association, shall be made promptly available to the public in a manner determined appropriate by the Farm Credit Administration.

"(G) IMPLEMENTATION.—Not later than 10 days after the date of the receipt of the results of the referendum conducted under subparagraph (F), the Farm Credit Administration shall issue such charters or charter amendments and take such other regulatory actions as may be necessary to implement the merger or mergers as provided for under the certified plan. In this regard, the Farm Credit Administration shall—

"(i) issue a charter or charter amendment and take any such other regulatory actions as may be necessary to provide for the establishment of an agricultural credit association in each of the geographic areas described in subparagraph (F)(iii) where a majority of the farmer-borrowers of both the production credit association and the Federal land bank association voted under subparagraph (F)(i) that they preferred to have credit delivered through an agricultural credit association (which charter shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations); and

"(ii) not issue a charter or charter amendment or take any such other regulatory action to provide for the establishment of an agricultural credit association in any of the geographic areas described in subparagraph (F)(iii) where less than a majority of the farmer-borrowers of the production credit association or the Federal land bank association voted in the referendum under subparagraph (F)(i) that they preferred to have credit delivered through an agricultural credit association (provided that the charter of any remaining association in such geographic area shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(H) FACILITATION.—

"(i) IN GENERAL.—Beginning on the date of the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the Farm Credit System Insurance Corporation shall expend amounts from the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed in the plan.

"(ii) MAINTENANCE OF BOOK VALUE.—Assistance provided by the Corporation under this subparagraph shall be in amounts not to exceed that required to maintain book value per share of stockholders' equity at the same value reflected on the most recent audited financial statements of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas prior to or effective with the date of the merger.

"(iii) OTHER ASSISTANCE.—Until the expiration of 5 years from the effective date of a merger authorized by this subsection, or the final resolution of any litigation against the Federal Intermediate Credit Bank of Jackson or any of its stockholders pending on the date of the enactment of this subsection, whichever is later, the Corporation shall guarantee prompt payment of any loss experienced by the merged bank, which loss is caused by the failure of any association-stockholder of the merged bank that was a stockholder of the Federal Intermediate Credit Bank of Jackson immediately prior to the merger, or any successor to the association, to pay when due any obligation of principal or interest owed by the association or its successor to the resulting bank.

"(iv) TERMS AND CONDITIONS.—Assistance provided by the Corporation under this subparagraph shall be on such terms and conditions as the Corporation deems appropriate to facilitate the merger.

"(I) SAFETY AND SOUNDNESS.—

"(i) IN GENERAL.—Except as provided in clause (ii), if at any time prior to the completion of the merger required under this subsection the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is being operated in an unsafe or unsound manner (as determined in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)), the Farm Credit Administration, after consultation with the respective boards of directors of the affected banks and taking into consideration the purposes of this subsection, may require the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank, subject to such terms and conditions as the Farm Credit Administration may prescribe. The Farm Credit System Insurance Corporation shall expend amounts in the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed under this subparagraph, including the provision of assistance as provided in section 5.61(a)(2)(A)(iii) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-10(a)(2)(A)(iii)), on such terms and conditions as the Corporation deems appropriate.

"(ii) ARBITRATED MERGER.—If at any time after the Farm Credit Administration issues an order under paragraph (1)(D), but prior to the completion of the merger required under this subsection, the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is being operated in an unsafe or unsound manner (as determined in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)), the Farm Credit Administration shall, after consultation with the boards of directors of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas, take such action as it deems necessary pursuant to the authorities provided under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) to return the operation of the Federal Intermediate Credit Bank of Jackson to a safe and sound condition, pending the completion of the merger under paragraph (2).

"(J) MERGER PLAN FOR AGRICULTURAL CREDIT ASSOCIATIONS.—In any of the States of Alabama, Louisiana, or Mississippi where all of the associations are chartered as agricultural credit associations, the boards of direc-

tors of each such association in each State are encouraged to submit to the farmer-borrowers of each such association for their approval a plan for merging the associations into one statewide agricultural credit association, in accordance with the applicable provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

"(K) DEFINITIONS.—As used in this paragraph:

"(i) AGRICULTURAL CREDIT ASSOCIATION.—The term 'agricultural credit association' means an association having the same authorities, attributes, and obligations as, and for all purposes an agricultural credit association resulting from the implementation of the plan under this paragraph shall be deemed to be, an association resulting from the merger of a production credit association and a Federal land bank association under section 7.8 of the Farm Credit Act of 1971 (12 U.S.C. 2279c-1).

"(ii) FARMER-BORROWER.—The term 'farmer-borrower' means a borrower from a Farm Credit System association in the State of Alabama, Louisiana, or Mississippi who holds voting stock, or is eligible to hold voting stock, in the association or a stockholder in any such association.

"(3) REVIEW.—

"(A) IN GENERAL.—Actions and determinations of the arbitrator, the Farm Credit Administration, or the Farm Credit System Insurance Corporation pursuant to this subsection shall not be subject to judicial review except as provided in this paragraph, nor shall they be subject to the requirements of subchapter II of chapter 5 or chapter 7 of title 5, United States Code.

"(B) AGENCY DETERMINATIONS.—

"(i) IN GENERAL.—Any petition for review of a determination or other action of the Farm Credit Administration or the Farm Credit System Insurance Corporation under this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit not later than 10 days after the determination, or the petition shall be barred. The court shall have exclusive jurisdiction to determine the proceeding in accordance with standard procedures as supplemented by procedures hereinafter provided and no other district court or court of appeals of the United States shall have jurisdiction over any such challenge in any proceeding instituted prior to, on, or after the date of enactment of this subsection. The review of any determination or action of the Farm Credit Administration or the Farm Credit System Insurance Corporation under this subsection shall be based on the examination of all of the information before the Farm Credit Administration or the Farm Credit System Insurance Corporation, as the case may be, at the time the determination was made. The court reviewing the determination or action shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(ii) PROCEDURES.—Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding that set page limits on briefs and time limits for filing briefs and motions and other actions that are shorter than the limits specified in the Federal Rules of Civil or Appellate Procedure.

"(iii) EXPEDITED REVIEW.—Any such proceeding before the court shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way. The court shall render its final decision relative to any challenge not later than 50 days from the date the challenge is brought unless the court determines that a longer period of time is required to satisfy the requirements of the Constitution.

"(C) ARBITRATOR DETERMINATIONS.—

"(i) IN GENERAL.—Except as otherwise provided in this paragraph, any petition for review of a determination or other action of the arbitrator named under paragraph (2) shall be filed in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.). Such Act shall apply to the arbitration conducted pursuant to paragraph (2) to the same extent as if the arbitration were established in a contract evidencing a transaction in commerce between the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas.

"(ii) PROCEDURES.—Notwithstanding the United States Arbitration Act (9 U.S.C. 1 et seq.), any petition for review of a determination or other action of the arbitrator under this subsection shall be filed not later than 10 days after the determination, or the petition shall be barred. The court specified under such Act shall have exclusive jurisdiction to determine the proceeding in accordance with the applicable procedures under such Act, as supplemented by procedures hereinafter provided, and no other district court shall have jurisdiction over any such challenge in any such proceeding. Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding that set page limits on briefs and time limits for filing briefs and motions and other actions that are shorter than the limits specified in the United States Arbitration Act or the Federal Rules of Civil or Appellate Procedure.

"(iii) EXPEDITED REVIEW.—Any such proceeding before the court shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way. The court shall render its final decision relative to any challenge as soon as possible in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.), or not later than 30 days from the date the challenge is brought, whichever is sooner, unless the court determines that a longer period of time is required to satisfy the requirements of the Constitution.".

(b) LONG-TERM LENDING AUTHORITY OF THE FARM CREDIT BANK OF TEXAS WITH RESPECT TO THE STATES OF ALABAMA, LOUISIANA, AND MISSISSIPPI.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Farm Credit Bank of Texas may act in accordance with the exclusive charter of the bank, as amended by the Farm Credit Administration on February 7, 1989, and effective February 9, 1989 (except to the extent that the charter may be further amended by the Farm Credit Administration in accordance with its general authorities under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), subject to such limitations on the issuance of competitive charters as may be provided in section 5.17 of such Act (12 U.S.C. 2252)).

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect as if such paragraph had become law on February 7, 1989.

(c) DENIAL OF COMPETITIVE CHARTERS.—Section 5.17(a)(2) (12 U.S.C. 2252(a)(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end the following new subparagraphs:

"(B) The Farm Credit Administration shall not issue a charter to, or approve an amendment to the charter of, any institution of the Farm Credit System to operate under title I or II that would authorize the institution to exercise lending authority, whether directly or indirectly as an agent of a Farm Credit Bank, in a territory in which the charter of another such institution authorizes the other institution to exercise like authority, whether directly or indirectly as an agent of a Farm Credit Bank, except with the approval of—

"(i) in a case affecting only the charter of one or more associations—

"(I) a majority of the shareholders (present and voting or voting by proxy) of each of the associations that would have like lending authority (whether directly or indirectly as an agent of a Farm Credit Bank) in any of that territory if the charter action were taken; and

"(II) a majority of the board of directors of the Farm Credit Bank with which the affected associations are affiliated; or

"(ii) in a case affecting the charter of one or more banks—

"(I) a majority of the shareholders (present and voting or voting by proxy) of the affiliated associations of each of the banks that would have like lending authority in any of that territory if the charter action were taken;

"(II) a majority of the shareholders (present and voting or voting by proxy) of each of the banks that would have like lending authority in any of that territory if the charter action were taken; and

"(III) a majority vote of the boards of directors of each of the banks that would have like lending authority in any of that territory if the charter action were taken.

"(C) Subparagraph (B) shall apply only in those geographic areas where, due to the failure of a Federal intermediate credit bank to merge in accordance with section 410(a) of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note), the Federal intermediate credit bank or its successor is chartered to provide short- and intermediate-term credit, and a neighboring Farm Credit Bank that is not the successor to the Federal intermediate credit bank is chartered to provide long-term credit, in the same geographic territory.".

**Subtitle E—Miscellaneous**

**SEC. 151. VALUATION RESERVES OF PRODUCTION CREDIT ASSOCIATIONS.**

Subsection (b) of section 2.3 (12 U.S.C. 2074(b)) is amended to read as follows:

"(b) APPLICATION OF EARNINGS.—At the end of each fiscal year, each production credit association shall apply the amount of the earnings of the association for the fiscal year in excess of the operating expenses of the association (including provision for valuation reserves against loan assets in accordance with generally accepted accounting principles)—

"(1) first, to the restoration of the impairment (if any) of capital; and

"(2) second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Farm Credit Bank.".

**SEC. 152. RISK MANAGEMENT PARTICIPATION AUTHORITY.**

Section 3.1(11) (12 U.S.C. 2122(11)) is amended—

(1) by inserting "(A)" after "(11)"; and

(2) by adding at the end the following new subparagraph:

"(B)(i) Participate in any loan of a type otherwise authorized under this title that is made to a similar entity by any institution in the business of extending credit, including

purchases of participations in loans to finance international trade transactions involving the sale of agricultural commodities or the products thereof, except that—

"(I) a bank for cooperatives may not participate in a loan—

"(aa) if the participation would cause the total amount of all loan participations by the bank under this subparagraph involving a single credit risk to exceed 10 percent of the bank's total capital; or

"(bb) if the participation by the bank will itself equal or exceed 50 percent of the principal of the loan or, when taken together with participations in the loan by the other banks for cooperatives under this subparagraph, will cause the cumulative amount of the participations by all banks for cooperatives in the loan to equal or exceed 50 percent of the principal of the loan;

"(II) a bank for cooperatives may not participate in a loan to a similar entity under this subparagraph if the similar entity has a loan or loan commitment outstanding with a Farm Credit Bank or an association chartered under this Act, unless agreed to by the Bank or association; and

"(III) the cumulative amount of participations that a bank for cooperatives may have outstanding under this subparagraph at any time may not exceed 15 percent of the bank's total assets.

"(ii) As used in this subparagraph, the term 'similar entity' means an entity that, while not eligible for a loan under section 3.8, is functionally similar to an entity eligible for a loan under section 3.8 in that it derives a majority of its income from, or has a majority of its assets invested in, the conduct of activities functionally similar to those conducted by the entity.

"(iii) With respect to similar entities that are eligible to borrow from a Farm Credit Bank or association under title I or II, the authority of a bank for cooperatives to participate in loans to the entities under this subparagraph shall be subject to the prior approval of the Farm Credit Bank or Banks in whose chartered territory the entity is eligible to borrow. The approval may be granted on an annual basis and under such terms and conditions as may be agreed on between the bank for cooperatives and the Farm Credit Bank or Banks that serve the territory.".

**SEC. 153. EQUITY VOTING FOR ONE DIRECTOR OF EACH BANK FOR COOPERATIVES.**

Section 3.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2123(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2)(A) If approved by the stockholders through a bylaw amendment, the nomination and election of one member from a bank for cooperatives (other than the National Bank for Cooperatives) shall be carried out with each voting stockholder of a bank for cooperatives having one vote, plus a number of votes (or fractional part thereof) equal to—

"(i) the number of stockholders eligible to vote; multiplied by

"(ii) the percentage (or fractional part thereof) of the total equity interest (including allocated, but not unallocated, surplus and reserves) in the bank of all stockholders held by the individual voting stockholder at the close of the immediately preceding fiscal year of the bank.

"(B) The total number of votes under this paragraph shall be the number of voting stockholders of a bank for cooperatives multiplied by two.".

**SEC. 154. TECHNICAL AMENDMENT.**

The first sentence of section 3.7(a) (12 U.S.C. 2128(a)) is amended by inserting "at any time (whether or not they have a loan from the bank outstanding)" after "technical and financial assistance".

**SEC. 155. EXPANSION OF WATER AND SEWER LENDING AUTHORITY OF BANKS FOR COOPERATIVES.**

Section 3.7(f) (12 U.S.C. 2128(f)) is amended—

(1) by striking "the installation, expansion, or improvement of" and inserting "installing, maintaining, expanding, improving, or operating"; and

(2) by striking "to extend" and inserting "extending".

**SEC. 156. ELIGIBILITY TO BORROW FROM A BANK FOR COOPERATIVES.**

Section 3.8(b)(1) (12 U.S.C. 2129(b)(1)) is amended by adding at the end the following new subparagraph:

"(E) Any creditworthy private entity that satisfies the requirements for a service cooperative under paragraphs (1), (2), and (4) of subsection (a) and subsidiaries of the entity, if the entity is organized to benefit agriculture in furtherance of the welfare of its farmer-members and is operated on a not-for-profit basis.".

**SEC. 157. NON-VOTING REPRESENTATIVE ON BOARD OF FUNDING CORPORATION.**

Paragraph (2) of section 4.9(d) (12 U.S.C. 2160(d)(2)) is amended to read as follows:

"(2) NON-VOTING REPRESENTATIVES.—

"(A) ASSISTANCE BOARD.—During the period in which the Assistance Board is in existence, the board of directors of the Assistance Board shall designate one of its directors to serve as a non-voting representative to the board of directors of the Corporation.

"(B) MEETINGS.—The person designated by the Assistance Board under subparagraph (A) may attend and participate in all deliberations of the board of directors of the Corporation.

"(C) TERMINATION OF ASSISTANCE BOARD.—After termination of the Assistance Board, neither the Assistance Board nor its successor, the Farm Credit System Insurance Corporation, shall have any representation on the board of directors of the Corporation.".

**SEC. 158. REPEAL OF PROHIBITION AGAINST GUARANTEE OF CERTAIN INSTRUMENTS OF INDEBTEDNESS.**

Section 4.16 (12 U.S.C. 2204) is repealed.

**SEC. 159. COMPENSATION OF BANK DIRECTORS.**

Section 4.21 (12 U.S.C. 2209) is amended to read as follows:

**"SEC. 4.21. COMPENSATION OF BANK DIRECTORS.**

"(a) IN GENERAL.—The Farm Credit Administration shall monitor the compensation of members of the board of directors of a System bank received as compensation for serving as a director of the bank to ensure that the amount of the compensation does not exceed a level of $20,000 per year, as adjusted to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, unless the Farm Credit Administration determines that such level adversely affects the safety and soundness of the bank.

"(b) WAIVER.—The Farm Credit Administration may waive the limitation prescribed in subsection (a) under exceptional circumstances, as determined in accordance with regulations promulgated by the Farm Credit Administration.".

**SEC. 160. CLARIFICATION OF TREATMENT OF FARM CREDIT ADMINISTRATION OPERATING EXPENSES.**

Section 5.15(b)(1) (12 U.S.C. 2250(b)(1)) is amended—

(1) by inserting ", for purposes of sequestration," after "regard"; and

(2) by striking "or any other law".

**SEC. 161. APPROVAL OF COMPETITIVE CHARTERS.**

Section 5.17(a) (12 U.S.C. 2252(a)) is amended by adding at the end the following new paragraphs:

"(13)(A) Subject to subparagraph (B), the Farm Credit Administration may approve an amendment to the charter of any institution of the Farm Credit System operating under title I or II, which would authorize the institution to exercise lending authority in any territory—

"(i) in the geographic area served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (12 U.S.C. 2071 note) (where the geographic area was a part of the association's territory as of the date of the reassignment); and

"(ii) in which the charter of an institution that is not seeking the charter amendment authorizes the institution to exercise the type of lending authority that is the subject of the charter request.

"(B) The Farm Credit Administration may approve a charter amendment under subparagraph (A) only on the approval of—

"(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

"(ii) a majority of the stockholders of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholders' meeting; and

"(iii) the respective boards of directors of the Farm Credit Banks that, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).

"(14)(A) Subject to subparagraph (B), the Farm Credit Administration may approve a request to charter an association of the Farm Credit System to operate under title II where the proposed charter—

"(i) will include any of the geographic area included in the territory served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (12 U.S.C. 2071 note) (where the geographic area was a part of the association's territory as of the date of the reassignment); and

"(ii) will authorize the association to exercise lending authority in any territory in the geographic area in which the charter of an association that is not requesting the charter authorizes the association to exercise the type of lending authority that is the subject of the charter request.

"(B) The Farm Credit Administration may approve a charter request under subparagraph (A) only on the approval of—

"(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

"(ii) a majority vote of the stockholders (if any) of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholder's meeting; and

"(iii) the respective boards of directors of the Farm Credit Banks that, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).".

**SEC. 162. EXAMINATIONS.**

The third sentence of section 5.19(a) (12 U.S.C. 2254(a)) is amended by striking "shall

include" and inserting "may include, if appropriate".

**SEC. 163. AUTHORITY TO EXAMINE SYSTEM INSTITUTIONS.**

(a) AUTHORITY OF FARM CREDIT SYSTEM INSURANCE CORPORATION.—Section 5.59 (12 U.S.C. 2277a-8) is amended—

(1) in the section heading, by striking "**INSURED SYSTEM BANKS**" and inserting "**SYSTEM INSTITUTIONS**"; and

(2) by striking subsection (b) and inserting the following new subsection:

"(b) EXAMINATION OF SYSTEM INSTITUTIONS.—

"(1) EXAMINATION AUTHORITY.—

"(A) IN GENERAL.—If the Board of Directors considers it necessary to examine an insured System bank, a production credit association, an association making direct loans under the authority provided under section 7.6, or any System institution in receivership, the Board may, using Farm Credit Administration examiners, conduct the examination using reports and other information on the System institution prepared or held by the Farm Credit Administration.

"(B) REQUEST FOR ADDITIONAL EXAMINATION OR OTHER INFORMATION.—If the Board determines that such reports or information are not adequate to enable the Corporation to carry out the duties of the Corporation under this subsection, the Board shall request the Farm Credit Administration to examine or to obtain other information from or about the System institution and provide to the Corporation the resulting examination report or such other information.

"(2) APPOINTMENT OF EXAMINERS.—If the Farm Credit Administration informs the Corporation that the Farm Credit Administration is unable to comply with a request made under paragraph (1)(B) with respect to a System institution, the Board may appoint examiners to examine the institution.

"(3) POWERS AND REPORT.—Each examiner appointed under paragraph (2) shall make such examination of the affairs of the System institution as the Board may direct, and shall make a full and detailed report of the examination to the Corporation.

"(4) APPOINTMENT OF CLAIM AGENTS.—The Board of Directors of the Corporation shall appoint claim agents who may investigate and examine all claims for insured obligations.".

(b) DUTIES OF THE FARM CREDIT ADMINISTRATION.—Section 5.19 (12 U.S.C. 2254) is amended by adding at the end the following new subsection:

"(d) On receipt of a request made under section 5.59(b)(1)(B) with respect to a System institution, the Farm Credit Administration shall—

"(1) furnish for the confidential use of the Farm Credit System Insurance Corporation reports of examination of the institution and other reports or information on the institution; and

"(2)(A) examine, or obtain other information on, the institution and furnish for the confidential use of the Farm Credit System Insurance Corporation the report of the examination and such other information; or

"(B) if the Farm Credit Administration Board determines that compliance with the request would substantially impair the ability of the Farm Credit Administration to carry out the other duties and responsibilities of the Farm Credit Administration under this Act, notify the Board of Directors of the Farm Credit System Insurance Corporation that the Farm Credit Administration will be unable to comply with the request.".

**SEC. 164. FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST REPORTING BY DIRECTORS, OFFICERS, AND EMPLOYEES OF FARM CREDIT SYSTEM INSTITUTIONS.**

(a) FINDINGS.—Congress finds that—

(1) the disclosure of the compensation paid to, loans made to, and transactions made with a Farm Credit System institution by, directors and senior officers of the institution provides the stockholders of the institutions with information necessary to better manage the institutions, provides the Farm Credit Administration with information necessary to efficiently and effectively regulate the institutions, and enhances the financial integrity of the Farm Credit System by making the information available to potential investors;

(2) the reporting of potential conflicts of interest by directors, officers, and employees of institutions of the Farm Credit System benefits the stockholders of the institutions, helps to ensure the financial viability of the institutions, provides information valuable to the Farm Credit Administration in periodic examinations of the institutions, and therefore enhances the safety and soundness of the Farm Credit System; and

(3) the directors, officers, or employees of some Farm Credit System institutions may not be subject to the regulations of the Farm Credit Administration requiring the disclosure of the financial information and the reporting of the potential conflicts of interest.

(b) PURPOSE.—It is the purpose of this section to ensure that the information reported by the directors, officers, and employees of Farm Credit System institutions under regulations of the Farm Credit Administration requiring the disclosure of financial information and the reporting of potential conflicts of interest—

(1) provides the stockholders of all Farm Credit System institutions with information to assist the stockholders in making informed decisions regarding the operation of the institutions;

(2) provides investors and potential investors with information necessary to assist them in making investment decisions regarding Farm Credit System obligations or institutions; and

(3) provides the Farm Credit Administration with information necessary to allow the Farm Credit Administration to effectively and efficiently examine and regulate all Farm Credit System institutions and thus enhance the safety and soundness of the Farm Credit System.

(c) REVIEW.—Not later than 120 days after the date of enactment of this Act, the Farm Credit Administration shall complete a review of the current regulations of the Farm Credit Administration regarding the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of Farm Credit System institutions. Consistent with the purpose of this section as provided in subsection (b), the review shall address whether the regulations—

(1) are adequate to fulfill the purpose of this section and such other purposes as the Farm Credit Administration determines to be consistent with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and other applicable law, and to be otherwise necessary or appropriate;

(2) currently require the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of all Farm Credit System institutions; and

(3) currently require the disclosure or reporting of the information by all of the appropriate directors, officers, or employees of Farm Credit System institutions.

(d) IMPLEMENTATION.—Not later than 360 days after the date of enactment of this Act, the Farm Credit Administration shall amend its current financial disclosure and conflict of interest regulations as the Administration determines necessary to carry out the purpose of this section and to address any deficiencies in the regulations that the Farm Credit Administration determines necessary pursuant to the review conducted under subsection (c).

## TITLE II—AGRICULTURAL CREDIT IMPROVEMENTS

**SEC. 201. REFERENCES TO THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.**

Wherever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), except to the extent otherwise specifically provided.

**SEC. 202. LIMITATION ON AGGREGATE INDEBTEDNESS.**

Section 305 (7 U.S.C. 1925) is amended by striking "and 310D of this title" and inserting "310D, and 310E".

**SEC. 203. INTEREST RATE FOR LOANS SOLD INTO SECONDARY MARKET; GUARANTEED LOAN FEES.**

Section 309(h) (7 U.S.C. 1929(h)) is amended—

(1) in inserting "(1)" after "(h)"; and

(2) by adding at the end the following new paragraphs:

"(2) The interest rate payable by a borrower on the portion of a guaranteed loan that is sold by a lender to the secondary market under this title may be lower than the interest rate charged on the portion retained by the lender, but shall not exceed the average interest rate charged by the lender on loans made to farm and ranch borrowers.

"(3) With regard to any loan guarantee on a loan made by a commercial or cooperative lender related to a loan made by the Secretary under section 310E—

"(A) the Secretary shall not charge a fee to any person (including a lender); and

"(B) a lender may charge a loan origination and servicing fee in an amount not to exceed 1 percent of the amount of the loan.".

**SEC. 204. FEDERAL-STATE BEGINNING FARMER PARTNERSHIP.**

(a) COORDINATION OF ASSISTANCE FOR QUALIFIED BEGINNING FARMERS AND RANCHERS.—Section 309 (7 U.S.C. 1929) is amended by adding at the end the following new subsection:

"(i)(1) Not later than 60 days after any State expresses to the Secretary, in writing, a desire to coordinate the provision of financial assistance to qualified beginning farmers and ranchers in the State, the Secretary and the State shall conclude a joint memorandum of understanding that shall govern the coordination of the provision of the financial assistance by the State and the Secretary.

"(2) The memorandum of understanding shall provide that if a State beginning farmer program makes a commitment to provide a qualified beginning farmer or rancher with financing to establish or maintain a viable farming or ranching operation, the Secretary shall, subject to applicable law, normal loan approval criteria, and the availability of funds provide the farmer or rancher with a down payment loan under section 310E or a guarantee of the financing provided by the State program, or both.

"(3) The Secretary shall not charge any person (including a lender) any fee with respect to the provision of any guarantee under this subsection.

"(4) The Secretary shall notify each State of the provisions of this subsection.

"(5) As used in paragraph (1), the term 'State beginning farmer program' means any program that is—

"(A) carried out by, or under contract with, a State; and

"(B) designed to assist persons in obtaining the financial assistance necessary to enter agriculture and establish viable farming or ranching operations.".

(b) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT; PURPOSE.—Not later than 18 months after the date of enactment of this Act, the Secretary of Agriculture shall establish an advisory committee, to be known as the "Advisory Committee on Beginning Farmers and Ranchers", which shall provide advice to the Secretary on—

(A) the development of the program of coordinated assistance to qualified beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act (as added by subsection (a) of this section);

(B) methods of maximizing the number of new farming and ranching opportunities created through the program;

(C) methods of encouraging States to participate in the program;

(D) the administration of the program; and

(E) other methods of creating new farming or ranching opportunities.

(2) MEMBERSHIP.—The Secretary shall appoint the members of the Advisory Committee. The Advisory Committee shall include representatives from the following:

(A) The Farmers Home Administration.

(B) State beginning farmer programs (as defined in section 309(i)(5) of the Consolidated Farm and Rural Development Act (as added by subsection (a) of this section)).

(C) Commercial lenders.

(D) Private nonprofit organizations with active beginning farmer or rancher programs.

(E) The Cooperative Extension Service.

(F) Community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers.

(G) Other entities or persons providing lending or technical assistance for qualified beginning farmers or ranchers.

**SEC. 205. GRANTS FOR PRIVATE BUSINESS ENTERPRISES.**

Section 310B(c) (7 U.S.C. 1932(c)) is amended—

(1) by inserting "(1)" after "(c)";

(2) by striking "business enterprises," and inserting "business enterprises or the creation, expansion, and operation of rural distance learning networks or rural learning programs that provide educational instruction or job training instruction related to potential employment or job advancement to adult students,"; and

(3) by adding at the end the following new paragraph:

"(2) The Secretary may make grants to qualified nonprofit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities. Assistance provided under this paragraph may include on-site technical assistance to local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas, the development of training materials, and the provision of necessary training assistance to local officials and agencies in rural areas.".

**SEC. 206. DOWN PAYMENT LOAN PROGRAM.**

(a) IN GENERAL.—Subtitle A (7 U.S.C. 1922 et seq.) is amended by adding at the end the following new section:

**"SEC. 310E. DOWN PAYMENT LOAN PROGRAM.**

"(a) IN GENERAL.—

"(1) ESTABLISHMENT.—Notwithstanding any other section of this subtitle, the Secretary shall establish, within the farm ownership loan program established under this subtitle, a program under which loans shall be made under this section to qualified beginning farmers and ranchers for down payments on farm ownership loans.

"(2) ADMINISTRATION.—The Secretary shall be the primary coordinator of credit supervision for the down payment loan program established under this section, in consultation with the commercial or cooperative lender and, if applicable, the contracting credit counseling service selected under section 360(c).

"(b) LOAN TERMS.—

"(1) PRINCIPAL.—Each loan made under this section shall be in an amount equal to 30 percent of the purchase price or appraisal value, whichever is lower, of the farm or ranch to be acquired, unless the borrower requests a lesser amount.

"(2) INTEREST RATE.—The interest rate on any loan made by the Secretary under this section shall be 4 percent.

"(3) DURATION.—Each loan under this section shall be made for a period of 10 years or less, at the option of the borrower.

"(4) REPAYMENT.—Each borrower of a loan under this section shall repay the loan to the Secretary in equal annual installments.

"(5) NATURE OF RETAINED SECURITY INTEREST.—The Secretary shall retain an interest in each farm or ranch acquired with a loan made under this section that shall—

"(A) be secured by the farm or ranch;

"(B) be junior only to such interests in the farm or ranch as may be conveyed at the time of acquisition to the person (including a lender) from whom the borrower obtained a loan used to acquire the farm or ranch; and

"(C) require the borrower to obtain the permission of the Secretary before the borrower may grant an additional security interest in the farm or ranch.

"(c) LIMITATIONS.—

"(1) BORROWERS REQUIRED TO MAKE MINIMUM DOWN PAYMENT.—The Secretary shall not make a loan under this section to any borrower with respect to a farm or ranch if the contribution of the borrower to the down payment on the farm or ranch will be less than 10 percent of the purchase price of the farm or ranch.

"(2) MAXIMUM PRICE OF PROPERTY TO BE ACQUIRED.—The Secretary shall not make a loan under this section with respect to a farm or ranch for which the purchase price or appraisal value, whichever is lower, exceeds $250,000.

"(3) PROHIBITED TYPES OF FINANCING.—The Secretary shall not make a loan under this section with respect to a farm or ranch if the farm or ranch is to be acquired with other financing that contains any of the following conditions:

"(A) The financing is to be amortized over a period of less than 30 years.

"(B) A balloon payment will be due on the financing during the 10-year period beginning on the date the loan is to be made by the Secretary.

"(d) ADMINISTRATION.—In carrying out this section, the Secretary shall, to the maximum extent practicable—

"(1) facilitate the transfer of farms and ranches from retiring farmers and ranchers to persons eligible for insured loans under this subtitle;

"(2) make efforts to widely publicize the availability of loans under this section among—

"(A) potentially eligible recipients of the loans;

"(B) retiring farmers and ranchers; and

"(C) applicants for farm ownership loans under this subtitle;

"(3) encourage retiring farmers and ranchers to assist in the sale of their farms and ranches to qualified beginning farmers and ranchers by providing seller financing; and

"(4) coordinate the loan program established by this section with State programs that provide farm ownership or operating loans for beginning farmers and ranchers.".

(b) AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN BEGINNING FARMERS AND RANCHERS.—Subtitle A (7 U.S.C. 1922 et seq.) (as amended by subsection (a) of this section) is further amended by adding at the end the following new section:

**"SEC. 310F. AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN QUALIFIED BEGINNING FARMERS AND RANCHERS.**

"(a) ASSISTANCE PROHIBITED FOR A LIMITED PERIOD.—Except as otherwise provided in this section, if the Secretary approves the application of a qualified beginning farmer or rancher (referred to in this section as the 'applicant') for assistance under section 318, the Secretary shall not make a loan under this subtitle to the applicant or provide a guarantee under section 309(h) with respect to any farm real estate loan made to the applicant.

"(b) AVAILABILITY OF DOWN PAYMENT LOANS.—After the applicable period, the Secretary may make an insured loan under this subtitle, or a down payment loan under section 310E, to an applicant if—

"(1) throughout the applicable period, the applicant conducted an operation for which assistance is provided under section 318 in accordance with the plan for special assistance; and

"(2) the applicant is otherwise eligible for the loan.

"(c) AVAILABILITY OF LOAN GUARANTEES.—After the applicable period, the Secretary may guarantee under section 309(h) the repayment of a commercial or cooperative loan made to an applicant referred to in subsection (a) if—

"(1) throughout the applicable period, the applicant conducted the operation for which assistance is provided under section 318 in accordance with the plan for special assistance; and

"(2) the applicant is otherwise eligible for the loan guarantee.

"(d) APPLICABLE PERIOD DEFINED.—As used in this section, the term 'applicable period' means the first 5 years for which an applicant has operated a farm or ranch, including the period of time the applicant is provided assistance under section 318.".

**SEC. 207. SPECIAL ASSISTANCE TO CERTAIN QUALIFIED BEGINNING FARMERS AND RANCHERS.**

Subtitle B (7 U.S.C. 1941 et seq.) is amended by adding at the end the following new section:

**"SEC. 318. SPECIAL ASSISTANCE TO CERTAIN QUALIFIED BEGINNING FARMERS AND RANCHERS.**

"(a) IN GENERAL.—The Secretary shall provide special assistance in accordance with this section to enable a qualified beginning

farmer or rancher who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 5 years (referred to in this section as the 'applicant'), to conduct viable farming or ranching operations.

"(b) SUBMISSION OF PLAN OF FARM OPERATION.—An applicant who desires to apply for special assistance under this section shall submit a plan, in coordination with activities conducted under sections 359, 360, 361, and 362, that—

"(1) describes, for each of the first 5 years for which assistance under this section is sought for the operation—

"(A) how the operation is to be conducted;

"(B) the types and quantities of commodities to be produced by the operation;

"(C) the production methods and practices to be employed by the operation;

"(D) the conservation measures to be taken in the operation;

"(E) the equipment needed to conduct the operation (including any expected replacements for the equipment) and, with respect to each item of needed equipment, whether the applicant owns, leases, or otherwise has access to the item, or proposes to purchase, lease, or otherwise gain access to the item;

"(F) the expected income and expenses of the operation;

"(G) the expected credit needs of the operation, including the types and amounts of assistance to be sought under this section; and

"(H) the site or sites at which the operation is (or is to be) located; and

"(2) projects the financial status of the operation after assistance under this section has been provided for a period of not more than 10 years, consistent with section 319, as is necessary for the operation to become financially viable without further assistance from the Secretary, including specific goals that the applicant projects to meet in order to progress toward graduation as expeditiously as possible.

"(c) DETERMINATIONS BY THE COUNTY COMMITTEE; APPROVAL OF PLAN.—The county committee shall approve a plan submitted by an applicant in accordance with subsection (b) if the county committee determines that—

"(1) the applicant has not operated a farm or ranch, or has operated a farm or ranch for not more than 5 years;

"(2) during the 5-year period ending with the submission of the plan, the applicant has had sufficient education and experience to indicate that the applicant is able to conduct a successful farming or ranching operation, as the case may be;

"(3) the applicant owns, leases, or has a commitment to have leased to the applicant the site or sites of the operation;

"(4) there is, or will be, available to the applicant equipment sufficient to conduct the operation in accordance with the plan;

"(5) the applicant agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require; and

"(6) the applicant is otherwise eligible for assistance under this title.

"(d) DETERMINATION BY THE SECRETARY; APPROVAL OF APPLICATION FOR ASSISTANCE.—The Secretary shall approve an application for assistance under this section for an operation described in a plan approved by a county committee under this section if the Secretary determines that—

"(1) the operation would generate income sufficient to cover the expenses of the operation, debt service, and adequate living expenses of the applicant, to the extent that other income would not cover the living expenses, if the operation received assistance under this section as provided for in the plan; and

"(2) during the commitment period established in accordance with subsection (e)(1), the operation will be financially viable without further assistance from the Secretary and the identified goals are reasonable and practicable.

"(e) PROVISION OF ASSISTANCE.—

"(1) DETERMINATION OF COMMITMENT PERIOD.—

"(A) INITIAL DETERMINATION.—In approving an application under subsection (d), the Secretary shall, subject to subparagraph (C), determine the period during which assistance under this section is to be provided for the operation described in the application (referred to in this subsection as the 'commitment period').

"(B) AUTHORITY TO EXTEND PERIOD; NO AUTHORITY TO REDUCE PERIOD.—At any time, the Secretary may, subject to subparagraph (C) and subsections (f) and (g), extend the duration of the commitment period. The Secretary shall not reduce the duration of the commitment period.

"(C) LIMITATIONS.—

"(i) IN GENERAL.—The duration of any commitment period (including any extensions of the period) shall not exceed 10 years and shall be consistent with section 319.

"(ii) ELIGIBILITY FOR INSURED OPERATING LOANS.—During the commitment period, an applicant shall not be eligible to receive an insured operating loan under this section after the date that is 8 years after the date on which the applicant first receives assistance under this section.

"(2) OPERATING LOANS; LOAN GUARANTEES.—

"(A) IN GENERAL.—To the extent that an applicant whose application is approved under subsection (d) is unable to obtain sufficient credit from commercial or cooperative lenders to finance the operation described in the application at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is (or is to be) located, for loans for similar purposes and periods of time), the Secretary shall, subject to the availability of funds and to subsections (f) and (g) and consistent with sections 360 and 362, make a conditional commitment to the applicant for each of the years of the commitment period—

"(i) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of 90 percent of the loan principal and interest;

"(ii)(I) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of 90 percent of the loan principal and interest and an interest subsidy payment in the amount necessary to ensure that the applicant qualifies for such a loan but not more than the amount of interest assistance allowed by section 351; or

"(II) if during any of the first 4 years for which assistance is provided under this section the Secretary determines that the applicant will not qualify for a loan described in subclause (I), an interest subsidy payment sufficient to ensure that the effective rate of interest payable by the applicant on the loan equals the rate of interest charged to low income, limited resource borrowers on insured operating loans made under this subtitle that are of comparable size and maturity; or

"(iii) to make an insured loan under this subtitle to the applicant, in the amount specified in the plan contained in the application, at an interest rate that is no higher than the interest rate charged to regular borrowers and no lower than the interest rate charged to low income, limited resource borrowers under this subtitle.

"(3) LOANS OR GUARANTEES FOR NEW OR IMPROVED EQUIPMENT.—The Secretary shall make a commitment to any applicant whose application is approved under subsection (d) to provide the applicant with loans under this subtitle or loan guarantees under section 309(h) to finance the acquisition, improvement, or repair of equipment needed in the operation described in the application if the plan contained in the application provides for the commitment, to the extent that the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for such purposes at reasonable rates and terms (taking into consideration prevailing private and cooperative rates and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time).

"(4) PRIORITY IN PURCHASE OF INVENTORY EQUIPMENT; LOANS OR GUARANTEES FOR THE PURCHASES IN CERTAIN CASES.—During the commitment period, the Secretary shall—

"(A) accord the applicant whose application is approved under subsection (d) priority for the purchase of equipment in the inventory of the Farmers Home Administration necessary for the success of the operation described in the application; and

"(B) provide the applicant with loans under this subtitle or loan guarantees under section 309(h) to finance the purchases if the plan contained in the application provides for the assistance, to the extent that the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for such purpose at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time).

"(5) OTHER KINDS OF ASSISTANCE.—During the commitment period, the Farmers Home Administration, the Extension Service, the Soil Conservation Service, and the other entities of the Department of Agriculture shall provide the applicant with such other assistance and information as may be needed in developing and implementing the operation described in the application.

"(6) FEES.—

"(A) SECRETARY.—The Secretary shall not charge a fee to any person (including a lender) in connection with any loan guarantee provided in accordance with this section.

"(B) LENDER.—A lender may charge a loan origination and servicing fee in connection with a loan or loan guarantee provided in accordance with this section in an amount not to exceed 1 percent of the amount of the loan.

"(f) ANNUAL PLAN REVISIONS REQUIRED AS CONDITION OF CONTINUED ASSISTANCE.—The Secretary shall not provide assistance under this section for an operation for any particular year after the first year for which the assistance is provided, unless—

"(1) not later than 60 days before the assistance is to be first provided for the particular year, the plan describing the operation has been revised, pursuant to section 360, based on the experience of the year preceding the particular year, to provide the information required by subsection (b) for the 5-year period beginning with the particular

year (or, if shorter, the period beginning with the particular year and ending with the year in which the plan projects the operation as becoming financially viable); and

"(2) the Secretary has approved the revised plan.

"(g) EFFECTS OF AVOIDABLE FAILURE TO ACHIEVE GOALS.—

"(1) TERMINATION OF COMMITMENTS.—The Secretary shall revoke commitment for assistance made to an applicant under this section if the operation of the applicant fails, for 2 consecutive years, to meet the goals specified in the plan, unless the failure has not materially reduced the likelihood of the operation becoming financially viable and is due to circumstances beyond the control of the applicant.

"(2) SUSPENSION OF ELIGIBILITY FOR ASSISTANCE.—During the 3-year period that begins with the date a commitment made to an applicant is revoked under paragraph (1), the applicant shall not be eligible for assistance under this section.".

**SEC. 208. GRADUATION OF BORROWERS WITH OPERATING LOANS OR GUARANTEES TO PRIVATE COMMERCIAL CREDIT.**

Subtitle B (7 U.S.C. 1941 et seq.) (as amended by section 207 of this Act) is further amended by adding at the end the following new section:

**"SEC. 319. GRADUATION OF BORROWERS WITH OPERATING LOANS OR GUARANTEES TO PRIVATE COMMERCIAL CREDIT.**

"(a) GRADUATION PLAN.—The Secretary shall establish a plan, in coordination with activities under sections 359, 360, 361, and 362, to encourage each borrower with an outstanding loan under this subtitle or with respect to whom there is an outstanding guarantee under this subtitle to graduate to private commercial or other sources of credit.

"(b) LIMITATION ON PERIOD FOR WHICH BORROWERS ARE ELIGIBLE FOR ASSISTANCE UNDER THIS SUBTITLE.—Notwithstanding any other provision of this subtitle:

"(1) GENERAL RULE.—Except as provided in paragraph (2), the Secretary shall not—

"(A) make a loan to a borrower under this subtitle for any year after the 10th year for which such a loan is made to the borrower; or

"(B) guarantee for any year a loan made to a borrower for a purpose specified in this subtitle, after the 15th year for which loans under this subtitle are made to, or such a guarantee is provided with respect to, the borrower.

"(2) TRANSITION RULE.—If, as of the date of enactment of this section, the Secretary has made a loan to a borrower under this subtitle for 5 or more years, or has provided a guarantee for 10 or more years with respect to one or more loans made to the borrower for a purpose specified in this subtitle, the Secretary shall not make a loan to the borrower under this subtitle, or provide such a guarantee with respect to a loan made to the borrower for a purpose specified in this subtitle, after the 5th year occurring after the date of enactment for which a loan is made under this subtitle to, or such a guarantee is provided with respect to, the borrower.".

**SEC. 209. CONSIDERATION OF BORROWERS FOR LOAN SERVICE PROGRAMS.**

The first sentence of section 331D(e) (7 U.S.C. 1981d(e)) is amended by inserting after "not later than 60 days after receipt of the notice required in this section" the following: "or, in extraordinary circumstances as determined by the applicable State director, after the 60-day period".

**SEC. 210. TIME PERIOD WITHIN WHICH COUNTY COMMITTEE IS REQUIRED TO MEET TO CONSIDER APPLICATIONS FOR FARM OWNERSHIP AND OPERATING LOANS AND GUARANTEES AND BEGINNING FARMER PLANS.**

Section 332 (7 U.S.C. 1982) is amended—

(1) in subsection (c), by striking "The committee" and inserting "Subject to subsection (e), the committee"; and

(2) by adding at the end the following new subsection:

"(e) The county committee shall meet to consider approval of an application received by the committee for a loan under this title, a guarantee under section 309(h), or a plan of farm operation under section 318, not later than—

"(1) 5 days after receipt of the application if at the time of the receipt there is at least one other such application or plan pending; or

"(2) 15 days after receipt of the application if at the time of the receipt there are no other such applications or plans pending.".

**SEC. 211. INCREASE IN PERIOD DURING WHICH COUNTY COMMITTEE LOAN ELIGIBILITY CERTIFICATION CONTINUES IN EFFECT.**

Section 333(2)(A)(iii) (7 U.S.C. 1983(2)(A)(iii)) is amended by striking "2 years" and inserting "5 years".

**SEC. 212. PROCESSING OF APPLICATIONS FOR FARM OPERATING LOANS.**

Section 333A(a)(2) (7 U.S.C. 1983a(a)(2)) is amended—

(1) by inserting "(A)" after "(2)";

(2) by inserting "(other than under subtitle B)" after "under this title"; and

(3) by adding at the end the following new subparagraph:

"(B)(i) Not later than 10 calendar days after the Secretary receives an application for an operating loan or loan guarantee under subtitle B, the Secretary shall notify the applicant of any information required before a decision may be made on the application. On receipt of an application, the Secretary shall request from other parties such information as may be needed in connection with the application.

"(ii) Not later than 15 calendar days after the date an agency of the Department of Agriculture receives a request for information made pursuant to clause (i), the agency shall provide the Secretary with the requested information.

"(iii) If, not later than 20 calendar days after the date a request is made pursuant to clause (i) with respect to an application, the Secretary has not received the information requested, the Secretary shall notify the applicant and the district office of the Farmers Home Administration, in writing, of the outstanding information.

"(iv) A county office shall notify the district office of the Farmers Home Administration of each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 days after receipt, and the reasons the application is pending.

"(v) A district office that receives a notice provided under clause (iv) with respect to an application shall immediately take steps to ensure that final action is taken on the application not later than 15 days after the date of the receipt of the notice.

"(vi) The district office shall report to the State office of the Farmers Home Administration on each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 days after receipt by the county committee, and the reasons the application is pending.

"(vii) Each month, the Secretary shall notify the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, on a State-by-State basis, as to each application for an operating loan or loan guarantee under subtitle B on which final action had not been taken within 60 calendar days after receipt by the Secretary, and the reasons final action had not been taken.".

**SEC. 213. GRADUATION OF SEASONED DIRECT LOAN BORROWERS TO THE LOAN GUARANTEE PROGRAM.**

Section 333A (7 U.S.C. 1983a) is amended by adding at the end the following new subsection:

"(f)(1) As used in this subsection:

"(A) The term 'approved lender' means a lender approved prior to the date of enactment of this subsection by the Secretary under the approved lender program established by exhibit A to subpart B of part 1980 of title 7, Code of Federal Regulations (as in effect on January 1, 1991), or a lender certified under section 114.

"(B) The term 'seasoned direct loan borrower' means a borrower receiving a direct loan under this title who has been classified as 'commercial' or 'standard' under subpart W of part 2006 of the Instruction Manual (as in effect on January 1, 1991).

"(2) The Secretary, or a contracting third party, shall annually review under section 360 the loans of each seasoned loan borrower. If, based on the review, it is determined that a borrower would be able to obtain a loan, guaranteed by the Secretary, from a commercial or cooperative lender at reasonable rates and terms for loans for similar purposes and periods of time, the Secretary shall assist the borrower in applying for the commercial or cooperative loan.

"(3) In accordance with section 362, the Secretary shall prepare a prospectus on each seasoned direct loan borrower determined eligible to obtain a guaranteed loan. The prospectus shall contain a description of the amounts of loan guarantee and interest assistance that the Secretary will provide to the seasoned direct loan borrower to enable the seasoned direct loan borrower to carry out a financially viable farming plan if a guaranteed loan is made.

"(4) With the approval of the borrower, the Secretary shall provide the prospectus of the seasoned direct loan borrower to each approved lender whose lending area includes the location of the seasoned direct loan borrower. If the Secretary receives an offer from an approved lender to extend credit to the seasoned direct loan borrower under terms and conditions contained in the prospectus, the seasoned direct loan borrower shall not be eligible for an insured loan from the Secretary under subtitle A or B, except as otherwise provided in this subsection.

"(5) If the Secretary is unable to provide loan guarantees and, if necessary, interest assistance to the seasoned direct loan borrower under this subsection in amounts sufficient to enable the seasoned direct loan borrower to borrow from commercial sources the amount required to carry out a financially viable farming plan, or if the Secretary does not receive an offer from an approved lender to extend credit to a seasoned direct loan borrower under the terms and conditions contained in the prospectus, the Secretary shall make an insured loan to the seasoned direct loan borrower under subtitle A or B, whichever is applicable.

"(6) To the extent necessary for the borrower to obtain a loan, guaranteed by the Secretary, from a commercial or cooperative lender, the Secretary shall provide interest

rate reductions as provided for under section 351.".

**SEC. 214. SIMPLIFIED APPLICATION FOR GUARANTEED LOANS OF $50,000 OR LESS.**

Section 333A (7 U.S.C. 1983a) (as amended by section 213 of this Act) is further amended by adding at the end the following new subsection:

"(g)(1) The Secretary shall provide to lenders a short, simplified application form for guarantees under this title of loans the principal amount of which is $50,000 or less.

"(2) In developing the application, the Secretary shall—

"(A) consult with commercial and cooperative lenders; and

"(B) ensure that—

"(i) the form can be completed manually or electronically, at the option of the lender;

"(ii) the form minimizes the documentation required to accompany the form;

"(iii) the cost of completing and processing the form is minimal; and

"(iv) the form can be completed and processed in an expeditious manner.".

**SEC. 215. INVENTORY LEASE OR LEASE WITH OPTION TO PURCHASE.**

The fourth sentence of section 335(c)(1) (7 U.S.C. 1985(c)(1)) is amended—

(1) by inserting "(A)" after "shall be"; and

(2) by inserting before the period at the end the following: "or (B) leased to persons eligible for assistance under the provisions of any law administered by the Farmers Home Administration or the Rural Development Administration under an annual lease or a lease with an option to purchase, with a preference for sale".

**SEC. 216. TRANSFER OF INDIAN LANDS PLEDGED AS COLLATERAL FOR FmHA LOANS.**

Section 335(e)(1) (7 U.S.C. 1985(e)(1)) is amended—

(1) in subparagraph (D)(i), by striking "If" and inserting "Except as provided in subparagraph (G), if"; and

(2) by adding at the end the following new subparagraph:

"(G)(i) If—

"(I) the real property described in subparagraph (A)(i) is located within an Indian reservation;

"(II) the borrower-owner is an Indian tribe that has jurisdiction over the reservation in which the real property is located or the borrower-owner is a member of an Indian tribe;

"(III) the borrower-owner has obtained a loan made, insured, or guaranteed under this title; and

"(IV) the borrower-owner and the Secretary have exhausted all of the procedures provided for in this title to permit a borrower-owner to retain title to the real property, such that it is necessary for the borrower-owner to relinquish title,

the Secretary shall dispose of or administer the property only as provided in subparagraph (D), as modified by this subparagraph.

"(ii) The Secretary shall provide the borrower-owner of real property that is described in clause (i) with written notice of—

"(I) the right of the borrower-owner to voluntarily convey the real property to the Secretary; and

"(II) the fact that real property so conveyed will be placed in the inventory of the Secretary.

"(iii) The Secretary shall provide the borrower-owner of the real property with written notice of the rights and protections provided under this title to the borrower-owner, and the Indian tribe that has jurisdiction over the reservation in which the real property is located, from foreclosure or liquidation of the real property, including written notice of—

"(I) the provisions of subparagraphs (C)(i), (C)(ii), and (D), this subparagraph, and subsection (g)(6);

"(II) if the borrower-owner does not voluntarily convey the real property to the Secretary, that—

"(aa) the Secretary may foreclose on the property;

"(bb) in the event of foreclosure, the property will be offered for sale;

"(cc) the Secretary must offer a bid for the property that is equal to the fair market value of the property or the outstanding principal and interest of the loan, whichever is higher;

"(dd) the property may be purchased by another party; and

"(ee) if the property is purchased by another party, the property will not be placed in the inventory of the Secretary and the borrower-owner will forfeit the rights and protections provided under this title; and

"(III) the opportunity of the borrower-owner to consult with the Indian tribe that has jurisdiction over the reservation in which the real property is located or counsel to determine if State or tribal law provides rights and protections that are more beneficial than those provided the borrower-owner under this title.

"(iv)(I) Except as provided in subclause (II), the Secretary shall accept the voluntary conveyance of real property described in clause (i).

"(II) If a hazardous substance (as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) is located on the property and the Secretary takes remedial action to protect human health or the environment if the property is taken into inventory, the Secretary shall accept the voluntary conveyance of the property only if the Secretary determines that it is in the best interests of the Federal Government.

"(v) If a borrower-owner does not voluntarily convey to the Secretary real property described in clause (i), at least 30 days before a foreclosure sale of the property, the Secretary shall provide written notice to the Indian tribe that has jurisdiction over the reservation in which the real property is located of—

"(I) the sale;

"(II) the fair market value of the property; and

"(III) the requirements of this subparagraph.

"(vi)(I) Except as provided in subclause (II), at a foreclosure sale of real property described in clause (i), the Secretary shall offer a bid for the property that is equal to the higher of—

"(aa) the fair market value of the property; or

"(bb) the outstanding principal and interest of the loan.

"(II) If a hazardous substance (as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) is located on the property and the Secretary takes remedial action to protect human health or the environment if the property is taken into inventory, subclause (I) shall apply only if the Secretary determines that it is in the best interests of the Federal Government.".

**SEC. 217. DEBT SERVICE MARGIN REQUIREMENTS; CERTIFIED LENDERS PROGRAM.**

Section 339 (7 U.S.C. 1989) is amended—

(1) by striking "SEC. 339. The" and inserting the following:

**"SEC. 339. RULES AND REGULATIONS.**

"(a) IN GENERAL.—The"; and

(2) by adding at the end the following new subsections:

"(b) DEBT SERVICE MARGIN REQUIREMENTS.—Notwithstanding subsection (a), in providing farmer program loan guarantees under this title, the Secretary shall consider the income of the borrower adequate if the income is equal to or greater than the income necessary—

"(1) to make principal and interest payments on all debt obligations of the borrower, in a timely manner;

"(2) to cover the necessary living expenses of the family of the borrower; and

"(3) to pay all other obligations and expenses of the borrower not financed through debt obligations referred to in paragraph (1), including expenses of replacing capital items (determined after taking into account depreciation of the items).

"(c) CERTIFIED LENDERS PROGRAM.—

"(1) IN GENERAL.—The Secretary shall establish a program under which the Secretary shall guarantee loans for any purpose specified in subtitle B that are made by lending institutions certified by the Secretary.

"(2) CERTIFICATION REQUIREMENTS.—The Secretary shall certify a lending institution that meets such criteria as the Secretary may prescribe in regulations, including the ability of the institution to properly make, service, and liquidate the loans of the institution.

"(3) CONDITION OF CERTIFICATION.—As a condition of the certification, the Secretary shall require the institution to undertake to service the loans guaranteed by the Secretary under this subsection, using standards that are not less stringent than generally accepted banking standards concerning loan servicing employed by prudent commercial or cooperative lenders. The Secretary shall, at least annually, monitor the performance of each certified lender to ensure that the conditions of the certification are being met.

"(4) EFFECT OF CERTIFICATION.—Notwithstanding any other provision of law:

"(A) The Secretary shall guarantee 80 percent of a loan made under this subsection by a certified lending institution as described in paragraph (1), subject to county committee certification that the borrower of the loan meets the eligibility requirements and such other criteria as may be applicable to loans guaranteed by the Secretary under other provisions of this title.

"(B) With respect to loans to be guaranteed by the Secretary under this subsection, the Secretary shall permit certified lending institutions to make appropriate certifications (as provided by regulations issued by the Secretary)—

"(i) relating to issues such as creditworthiness, repayment ability, adequacy of collateral, and feasibility of farm operation; and

"(ii) that the borrower is in compliance with all requirements of law, including regulations issued by the Secretary.

"(C) The Secretary shall approve or disapprove a guarantee not later than 14 calendar days after the date that the lending institution applied to the Secretary for the guarantee. If the Secretary rejects the loan application within the 14-day period, the Secretary shall state, in writing, all of the reasons the application was rejected.

"(5) RELATIONSHIP TO OTHER REQUIREMENTS.—This subsection shall not affect the responsibility of the Secretary to certify eligibility, review financial information, and otherwise assess an application.".

**SEC. 218. DEFINITION OF QUALIFIED BEGINNING FARMER OR RANCHER.**

Section 343(a) (7 U.S.C. 1991(a)) is amended—

(1) by striking "this title (1) the term" and all that follows through "fish farming," at the end of paragraph (1) and inserting "this title:

"(1) The term 'farmer' includes a person who is engaged in, or who, with assistance afforded under this title, intends to engage in, fish farming.";

(2) by indenting, and aligning the margins of, paragraphs (2) through (10) so as to align with paragraph (1) (as amended by paragraph (1));

(3) by striking "the" the first place it appears in each of such paragraphs and inserting "The";

(4) by striking the comma at the end of each of paragraphs (2) through (8) and inserting a period;

(5) by striking ", and" at the end of paragraph (9) and inserting a period; and

(6) by adding at the end the following new paragraph:

"(11) The term 'qualified beginning farmer or rancher' means an applicant—

"(A) who is eligible for assistance under this title;

"(B) who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years;

"(C) in the case of a cooperative, corporation, partnership, or joint operation, who has members, stockholders, partners, or joint operators who are all related to one another by blood or marriage;

"(D)(i) in the case of an owner and operator of a farm or ranch, who—

"(I) in the case of a loan made to an individual, individually or with the immediate family of the applicant—

"(aa) materially and substantially participates in the operation of the farm or ranch; and

"(bb) provides substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located; or

"(II)(aa) in the case of a loan made to a cooperative, corporation, partnership, or joint operation, has members, stockholders, partners, or joint operators, materially and substantially participate in the operation of the farm or ranch; and

"(bb) in the case of a loan made to a corporation, has stockholders, all of whom are qualified beginning farmers or ranchers; and

"(ii) in the case of an applicant seeking to own and operate a farm or ranch, who—

"(I) in the case of a loan made to an individual, individually or with the immediate family of the applicant, will—

"(aa) materially and substantially participate in the operation of the farm or ranch; and

"(bb) provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located; or

"(II)(aa) in the case of a loan made to a cooperative, corporation, partnership, or joint operation, will have members, stockholders, partners, or joint operators, materially and substantially participate in the operation of the farm or ranch; and

"(bb) in the case of a loan made to a corporation, has stockholders, all of whom are qualified beginning farmers or ranchers;

"(E) who agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require;

"(F) who does not own land or who, directly or through interests in family farm corporations, owns land, the aggregate acreage of which does not exceed 15 percent of the median acreage of the farms or ranches, as the case may be, in the county in which the farm or ranch operations of the applicant are located, as reported in the most recent census of agriculture taken under section 142 of title 13, United States Code; and

"(G) who demonstrates that the available resources of the applicant and spouse (if any) of the applicant are not sufficient to enable the applicant to continue farming or ranching on a viable scale.".

**SEC. 219. TARGETING OF FUNDS.**

(a) FARM OPERATING LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b) (7 U.S.C. 1994(b)) is amended by adding at the end the following new paragraph:

"(5)(A) In expending funds available for insured operating loans under subtitle B, including loans made under section 318—

"(i) during the first 6 months of fiscal year 1994, the Secretary shall reserve not less than 30 percent of the funds available for the fiscal year to make insured operating loans to qualified beginning farmers or ranchers;

"(ii) during the first 6 months of each of fiscal years 1995 and 1996, the Secretary shall reserve not less than 40 percent of the funds available for the fiscal year to make insured operating loans to qualified beginning farmers or ranchers; and

"(iii) during the first 6 months of each of fiscal years 1997 and thereafter, the Secretary may reserve not more than 50 percent of the funds available for the fiscal year to make insured operating loans to qualified beginning farmers or ranchers.

"(B) In each fiscal year described in subparagraph (A), with regard to the funds not reserved under subparagraph (A), a qualified beginning farmer or rancher may apply for insured operating loans, but shall not receive any preference as a result of status as a qualified beginning farmer or rancher.".

(b) PORTIONS OF FARM OWNERSHIP LOAN GUARANTEE FUNDS TARGETED TO BEGINNING FARMERS OR RANCHERS.—Section 346(b)(2) (7 U.S.C. 1994(b)(2)) is amended by adding at the end the following new sentence:

"Not less than 25 percent of the amounts appropriated for guarantees of farm ownership loans for each of the fiscal years 1994, 1995, 1996, and 1997 shall be reserved by the Secretary during the first 6 months of the respective fiscal year for guarantees of farm ownership loans to beginning farmers or ranchers.".

(c) FARM OWNERSHIP LOANS.—

(1) PERCENTAGE OF INSURED FARM OWNERSHIP LOAN FUNDS RESERVED FOR BEGINNING FARMERS OR RANCHERS.—Section 346(b)(3) is amended by adding at the end the following new subparagraph:

"(D) To the extent that it is not inconsistent with an exercise of authority under section 355, in expending funds available for insured farm ownership loans—

"(i) during fiscal year 1994, the Secretary shall reserve not less than 55 percent of the funds available for the fiscal year to make insured farm ownership loans to qualified beginning farmers or ranchers;

"(ii) during fiscal year 1995, the Secretary shall reserve not more than 65 percent of the funds available for the fiscal year to make insured farm ownership loans to qualified beginning farmers or ranchers; and

"(iii) during each of fiscal years 1996 and thereafter, the Secretary may reserve not less than 65 percent and not more than 70 percent of the funds available for the fiscal year to make insured farm ownership loans to qualified beginning farmers or ranchers.".

(2) FUNDS RESERVED FOR DOWN PAYMENT LOAN PROGRAM.—Section 346(b)(3) (as amended by paragraph (1) of this subsection) is further amended by adding at the end the following new subparagraph:

"(E) To the extent that it is not inconsistent with an exercise of authority under section 355, the Secretary shall reserve not less than 60 percent of the amounts reserved for qualified beginning farmers or ranchers under subparagraph (D) for any fiscal year for down payment loans under section 310E.".

(3) CERTAIN UNOBLIGATED DOWN PAYMENT LOAN PROGRAM FUNDS AVAILABLE FOR ANY TYPE OF INSURED FARM OWNERSHIP LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b)(3) (as amended by paragraph (2) of this subsection) is further amended by adding at the end the following new subparagraph:

"(F) To the extent that it is not inconsistent with an exercise of authority under section 355, to the maximum extent practicable, any funds reserved for down payment loans under section 310E for a fiscal year by reason of subparagraph (E) that are not obligated by the end of the second quarter of the fiscal year shall be available during the third quarter of the fiscal year for any type of insured farm ownership loans to beginning farmers and ranchers.".

(d) INTEREST RATE ASSISTANCE PROGRAM.—Section 346(b)(3) (as amended by subsection (c)(3) of this section) is further amended by adding at the end the following new subparagraph:

"(G) Not less than 40 percent of the amounts available for the interest rate reduction program under section 351 shall be reserved for the first 6 months of each fiscal year for assistance to beginning farmers or ranchers.".

(e) DOWN PAYMENT LOAN PROGRAM.—Section 346(b) (as amended by subsection (a) of this section) is further amended by adding at the end the following new paragraph:

"(6) Notwithstanding any other provision of this title, at the end of the third quarter of each fiscal year, the Secretary shall transfer, and use to carry out section 310E, 75 percent of the amount that would otherwise be available for guaranteed operating loans.".

**SEC. 220. EQUAL ACCESS TO FmHA ASSISTANCE BY GENDER.**

(a) TARGET PARTICIPATION RATES.—Section 355(a) (7 U.S.C. 2003(a)) is amended—

(1) in paragraph (2), by striking "In establishing" and inserting "Except as provided in paragraph (3), in establishing"; and

(2) by adding at the end the following new paragraph:

"(3) GENDER.—With respect to gender, target participation rates shall take into consideration the number of current and potential socially disadvantaged farmers and ranchers in a State in proportion to the total number of farmers and ranchers in the State.".

(b) TARGETING OF LOANS TO MEMBERS OF GROUPS WHOSE MEMBERS HAVE BEEN SUBJECTED TO GENDER PREJUDICE.—Section 355(e)(1) (7 U.S.C. 2003(e)(1)) is amended by striking "or ethnic" and inserting ", ethnic, or gender".

(c) RECORDKEEPING OF LOANS BY BORROWER'S GENDER.—Subtitle D (7 U.S.C. 1981 et seq.) is amended by adding at the end the following new section:

**"SEC. 369. RECORDKEEPING OF LOANS BY BORROWER'S GENDER.**

"The Secretary shall classify, by gender, records of applicants for loans and loan guarantees under this title.".

**SEC. 221. STATE MEDIATION PROGRAMS.**

Section 502 of the Agricultural Credit Act of 1987 (7 U.S.C. 5102) is amended—

(1) in subsection (b)(1), by striking "50" and inserting "70"; and

(2) in subsection (c), by inserting "with respect to which the amount was paid" before the period.

**SEC. 222. REGULATIONS.**

(a) INTERIM REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall issue such interim regulations as are necessary to implement this title and the amendments made by this title.

(b) FINAL REGULATIONS.—Not later than October 1, 1993, the Secretary of Agriculture shall issue such final regulations as are necessary to implement this title and the amendments made by this title.

## TITLE III—RURAL ELECTRIFICATION ADMINISTRATION IMPROVEMENTS

**SEC. 301. SHORT TITLE.**

This title may be cited as the "Rural Electrification Administration Improvement Act of 1992".

**SEC. 302. DISCOUNTED LOAN PREPAYMENT.**

(a) IN GENERAL.—Subsection (a) of section 306B of the Rural Electrification Act of 1936 (7 U.S.C. 936b(a)) is amended to read as follows:

"(a) DISCOUNTED PREPAYMENT BY BORROWERS OF ELECTRIC LOANS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a direct or insured loan made under this Act shall not be sold or prepaid at a value that is less than the outstanding principal balance on the loan.

"(2) EXCEPTION.—On request of the borrower, an electric loan made under this Act, or a portion of such a loan, that was advanced before May 1, 1992, or has been advanced for not less than 2 years, shall be sold to or prepaid by the borrower at the lesser of—

"(A) the outstanding principal balance on the loan; or

"(B) the present value of the loan discounted from the face value at maturity at the rate established by the Administrator.

"(3) DISCOUNT RATE.—The discount rate applicable to the prepayment under this subsection of a loan or loan advance shall be the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the remaining term of the loan.

"(4) TAX EXEMPT FINANCING.—If a borrower prepays a loan under this subsection using tax exempt financing, the discount shall be adjusted to ensure that the borrower receives a benefit that is equal to the benefit the borrower would receive if the borrower used fully taxable financing. The borrower shall certify in writing whether the financing will be tax exempt and shall comply with such other terms and conditions as the Administrator may establish that are reasonable and necessary to carry out this subsection.

"(5) ELIGIBILITY.—

"(A) IN GENERAL.—A borrower that has prepaid an insured or direct loan shall remain eligible for assistance under this Act in the same manner as other borrowers, except that—

"(i) a borrower that has prepaid a loan, either before or after the date of enactment of this subsection, at a discount rate as provided by paragraph (3), shall not be eligible, except at the discretion of the Administrator, to apply for or receive direct or insured loans under this Act during the 120-month period beginning on the date of the prepayment; and

"(ii) a borrower that prepaid a loan before the date of enactment of this subsection at a discount rate greater than that provided by paragraph (3), shall not be eligible—

"(I) except at the discretion of the Administrator, to apply for or receive direct or insured loans described in clause (i) during the 180-month period beginning on the date of the prepayment; or

"(II) to apply for or receive direct or insured loans described in clause (i) until the borrower has repaid to the Federal Government the sum of—

"(aa) the amount (if any) by which the discount the borrower received by reason of the prepayment exceeds the discount the borrower would have received had the discount been based on the cost of funds to the Department of the Treasury at the time of the prepayment; and

"(bb) interest on the amount described in item (aa), for the period beginning on the date of the prepayment and ending on the date of the repayment, at a rate equal to the average annual cost of borrowing by the Department of the Treasury.

"(B) EFFECT ON EXISTING AGREEMENTS.—If a borrower and the Administrator have entered into an agreement with respect to a prepayment occurring before the date of enactment of this subsection, this paragraph shall supersede any provision in the agreement relating to the restoration of eligibility for loans under this Act.

"(C) DISTRIBUTION BORROWERS.—A distribution borrower not in default on the repayment of loans made or insured under this Act shall be eligible for discounted prepayment as provided in this subsection. For the purpose of determining eligibility for discounted prepayment under this subsection or eligibility for assistance under this Act, a default by a borrower from which a distribution borrower purchases wholesale power shall not be considered a default by the distribution borrower.

"(6) DEFINITIONS.—As used in this subsection:

"(A) DIRECT LOAN.—The term 'direct loan' means a loan made under section 4.

"(B) INSURED LOAN.—The term 'insured loan' means a loan made under section 305.".

(b) CONFORMING AMENDMENT.—Section 306B(b) of such Act (7 U.S.C. 936b(b)) is amended by striking "(b) Notwithstanding" and inserting the following:

"(b) MERGERS OF ELECTRIC BORROWERS.—Notwithstanding".

**SEC. 303. IMPROVEMENT OF HEALTH CARE SERVICES AND EDUCATIONAL SERVICES THROUGH TELECOMMUNICATIONS.**

(a) PROGRAMS FOR CONSORTIA IN QUALIFIED LOCAL EXCHANGE SERVICE AREAS.—Chapter 1 of subtitle D of title XXIII of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 950aaa et seq.) is amended by adding at the end the following new section:

**"SEC. 2335A. SPECIAL HEALTH CARE AND DISTANCE LEARNING PROGRAM FOR QUALIFIED SERVICE AREAS.**

"(a) DEVELOPMENT OF CONSORTIA.—The Administrator shall encourage the development of consortia to provide health care services or educational services through telecommunications in rural areas of a qualified local exchange carrier service area. Each consortium shall be composed of—

"(1) a tertiary care facility, rural referral center, medical teaching institution, or educational institution accredited by the State;

"(2) any number of institutions that provide health care services or educational services; and

"(3) not less that three rural hospitals, clinics, community health centers, migrant health centers, local health departments, or similar facilities, or not less than three educational institutions accredited by the State.

"(b) SPECIAL PROGRAM FOR QUALIFIED LOCAL EXCHANGE CARRIER SERVICE AREAS.—

"(1) REGULATIONS AND SPECIAL PROGRAM.—Through regulations issued not later than 190 days after the date of enactment of this section, the Administrator shall establish a program under which qualified consortia described in subsection (a) located within qualified local exchange carrier service areas may apply to the Administrator for grants to support the costs of activities involved in the sending and receiving of information that will improve the delivery of health care services or educational services through telecommunications in rural areas.

"(2) SELECTION OF GRANTEES.—The Administrator shall—

"(A) establish application procedures;

"(B) review the applications submitted under this subsection in a timely manner; and

"(C) make grants in accordance with this subsection and with regulations issued by the Administrator.

"(3) PRIORITIES.—

"(A) IN GENERAL.—Priority for grants under this subsection shall be accorded applicants whose applications and plans demonstrate—

"(i) the greatest likelihood of successfully and efficiently carrying out the activities described in the application and the plan of the applicant;

"(ii) the greatest likelihood of improving health care services or educational services in the rural areas;

"(iii) coordination between local exchange carriers to carry out activities as described in the application; and

"(iv) unconditional financial support from each affected local community.

"(B) GEOGRAPHIC DIVERSITY.—In awarding grants, the Administrator shall seek to achieve geographic diversity among the grantees.

"(4) MAXIMUM AMOUNT OF GRANT.—The amount of each grant awarded under this subsection shall not exceed $1,500,000.

"(5) DISTRIBUTION OF GRANTS.—Grants to a qualified consortium under this subsection shall be disbursed over a period of not more than 3 years.

"(6) USE OF FUNDS.—

"(A) IN GENERAL.—Grants under this subsection may be used to support the costs of activities involving the sending and receiving of information to improve health care services or educational services in rural areas, including—

"(i) in the case of grants to improve health care services—

"(I) consultations between health care providers;

"(II) transmitting and analyzing x-rays, lab slides, and other images;

"(III) developing and evaluating automated claims processing, and transmitting automated patient records; and

"(IV) developing innovative health professions education programs;

"(ii) in the case of grants to improve educational services—

"(I) developing innovative education programs and expanding curriculum offerings;

"(II) providing continuing education to all members of the community;

"(III) providing means for libraries of educational institutions or public libraries to share resources;

"(IV) providing the public with access to State and national data bases;

"(V) conducting town meetings; and

"(VI) covering meetings of agencies of State government; and

"(iii) in all cases—

"(I) transmitting financial information; and

"(II) such other related activities as the Administrator considers to be consistent with the purposes of this section.

"(7) LIMITATION ON ACQUISITION OF INTERACTIVE TELECOMMUNICATIONS EQUIPMENT.—Not more than 40 percent of the amount of any grant made under this subsection may be used to acquire interactive telecommunications end user equipment.

"(8) LIMITATION ON USE OF CONSULTANTS.—Not more than 5 percent of the amount of any grant made under this subsection may be used to employ or contract with any consultant or similar person.

"(9) PROHIBITIONS.—Grants made under this subsection may not be used, in whole or in part, to establish or operate a telecommunications network or to provide any telecommunications services for hire.

"(c) EXPEDITED TELEPHONE LOANS.—Local exchange carriers located in a qualified local exchange carrier service area shall be eligible to apply for expedited loans under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.). The Administrator shall respond to a completed application for such a loan no later than 45 days after receipt. The Administrator shall notify the applicant in writing of its decision regarding each such application.

"(d) DEFINITION.—As used in this section, the term 'qualified local exchange carrier service area' means the service area of a local telephone exchange carrier in which the local exchange carrier has a plan approved by the Administrator for upgrading and modernizing the rural telecommunications infrastructure of the service area. The plan shall—

"(1) provide for eliminating party line service within the local exchange carrier service area and for other improvements and modernization in rural telephone service;

"(2) provide for the enhancement of the availability of educational opportunities or the availability of improved medical care through telecommunications;

"(3) encourage and improve the use of telecommunications, computer networks, and related advanced technologies to provide educational and medical benefits to people in rural areas; and

"(4) provide for the achievement of the goals described in subparagraphs (A) through (C) not later than 10 years after the approval of the plan.".

(b) EXTENSION OF CHAPTER 1.—Notwithstanding any other provision of law, chapter 1 of subtitle D of title XXIII of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 950aaa et seq.), including the amendments made by this section, shall be effective until September 30, 1997.

(c) ALLOCATION OF FUNDS.—Section 2335(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 950aaa-4) is amended by adding at the end the following new paragraph:

"(8) USE OF APPROPRIATED FUNDS.—

"(A) IN GENERAL.—Subject to subparagraph (B), the Administrator shall make available—

"(i) 50 percent of the funds made available pursuant to paragraph (3) for grants for end users that are consortia participating in the special program established under section 2335A; and

"(ii) 50 percent of the funds made available pursuant to paragraph (3) to provide funds for the programs, and end users participating in the programs, authorized by sections 2331 through 2335.

"(B) RELEASE OF FUNDS.—Not earlier than April 1 and not later than May 1 of each year, the Administrator shall make such funds described in subparagraph (A) as remain unobligated, available for any purpose described in subparagraph (A).".

(d) EFFECT OF AMENDMENTS.—The amendments made by this section shall not apply to funds appropriated for fiscal year 1993 to carry out subtitle D of title XXIII of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 950aaa et seq.) or require the revision of any regulation proposed to carry out such subtitle during fiscal year 1993.

## TITLE IV—MISCELLANEOUS

### SEC. 401. USE OF ELECTRONIC COTTON WAREHOUSE RECEIPTS.

Section 17(c) of the United States Warehouse Act (7 U.S.C. 259(c)) is amended—

(1) in paragraph (1)(A)—

(A) by striking "The Secretary" and inserting "Notwithstanding any other provision of Federal or State law, the Secretary";

(B) by inserting after "licensed under this Act" the following: "or in any other warehouse"; and

(C) by striking "under section 18" and inserting "(i) under section 18 in the case of a warehouse licensed under this Act or (ii) under any applicable State law in the case of a warehouse not licensed under this Act";

(2) in paragraph (2)—

(A) by striking "provision of law—" and inserting "provision of Federal or State law:";

(B) in subparagraph (A)—

(i) by striking "the record" and inserting "The record";

(ii) by striking "ownership" both places it appears and inserting "possessory";

(iii) by striking "of this Act" and inserting "of this Act or State law"; and

(iv) by striking "; and" and inserting a period; and

(C) by striking subparagraph (B) and inserting the following new subparagraph:

"(B) Any person designated as a holder of an electronic warehouse receipt authorized under this subsection and subsection (d) shall, for the purpose of perfecting the security interest of the person under Federal or State law with respect to the cotton covered by the warehouse receipt, be considered to be in possession of the warehouse receipt. If more than one security interest exists in the cotton reflected on the electronic warehouse receipt, the priority of the security interests shall be determined by the applicable Federal or State law. This subsection is applicable to electronic cotton warehouse receipts and any other security interests covering cotton stored in a cotton warehouse, regardless of whether the warehouse is licensed under this Act."; and

(3) in paragraph (3)—

(A) by striking "licensed under this Act" and inserting "covered under this subsection"; and

(B) by striking "owner" and inserting "holder".

### SEC. 402. ONE-TIME EFAP ASSISTANCE.

(a) USE OF ACCOUNT.—The Secretary of Agriculture shall use the account in which funds appropriated under section 214 of the Emergency Food Assistance Act of 1983 (Public Law 98-8; 7 U.S.C. 612c note) are credited or deposited, or another account established for the use of the Secretary of Agriculture, for the purpose of purchasing, processing and distributing additional commodities for the emergency food assistance program established under such Act (7 U.S.C. 612c note) as required by this section.

(b) USE OF RECEIPTS.—

(1) IN GENERAL.—Not later than 10 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall—

(A) calculate the estimated present value of the future receipts available to the Federal Government, under procedures or definitions established in the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), as a result of enactment of this Act and the amendments made by this Act; and

(B) advise the Secretary of Agriculture, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the dollar amount of that value.

(2) CREDIT.—Not later than 20 days after the date of enactment of this Act, an amount equal to the dollar amount of that value shall be credited to, or deposited in, the account referred to in subsection (a) by the Secretary of the Treasury.

(c) REQUIRED PURCHASE OF COMMODITIES BY THE SECRETARY OF AGRICULTURE.—

(1) IN GENERAL.—The Secretary of Agriculture shall—

(A) use all of the funds provided to the Secretary under subsection (a) to purchase, process, and distribute additional commodities for the emergency food assistance program; and

(B) allot the additional commodities to States in accordance with the application of the allocation formula established in section 214(f) of the Emergency Food Assistance Act of 1983 (Public Law 98-8; 7 U.S.C. 612c note) to the total value of the additional commodities.

(2) TYPES AND VARIETIES.—The additional commodities shall be of the types and varieties required under section 214(d) of such Act.

(3) REALLOCATION.—The additional commodities may be reallocated under procedures established by the Secretary of Agriculture in accordance with section 214(g) of such Act.

(d) ENTITLEMENT TO RECEIVE COMMODITIES.—Each State shall be entitled to receive during fiscal year 1993 its allotment of the additional commodities purchased by the Secretary of Agriculture under this section.

(e) TERMINATION OF AUTHORITY.—The authority provided to carry out this section shall terminate on September 30, 1993.

### SEC. 403. EXPEDITED ACTION ON MARKETING ORDERS.

Section 8c(1) of the Agricultural Adjustment Act (7 U.S.C. 608c(1)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by adding at the end the following new sentences: "In carrying out this section, the Secretary shall complete all informal rulemaking actions necessary to respond to recommendations submitted by administrative committees for such orders as expeditiously as possible, but not more than 45 days (to the extent practicable) after submission of the committee recommendations. The Secretary shall es-

tablish time frames for each office and agency within the Department of Agriculture to consider the committee recommendations.".

**SEC. 404. TECHNICAL CORRECTIONS.**

(a) CORRECTION OF REFERENCE TO SECTION 1236 OF THE FOOD SECURITY ACT OF 1985.—The matter under the heading "CONSTRUCTION AND ANADROMOUS FISH" of title I of the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101-512; 104 Stat. 1918) is amended by striking "title 16 U.S.C. section 3832(a)(6)" and inserting "section 1232(a)(6) of the Food Security Act of 1985 (16 U.S.C. 3832(a)(6))".

(b) SECTION 1245(b) OF THE FOOD SECURITY ACT OF 1985.—

(1) CORRECTION.—Section 1245(b) of the Food Security Act of 1985 (16 U.S.C. 3845(b)) is amended by striking "(A) through (G)" and inserting "A through G".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect immediately after section 1443 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3602) took effect.

(c) SECTION 318 OF ACT OF FEBRUARY 16, 1938.—Section 318 of the Act of February 16, 1938 (7 U.S.C. 1314d) is amended by striking subsection (e) and inserting the following new subsection:

"(e) The transfer of an allotment or quota under this section shall be approved acre for acre.".

(d) SECTION 307(a)(6)(B) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTION.—Section 307(a)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1927(a)(6)(B)) is amended by striking clause (ii), and by redesignating clauses (iii) through (viii) as clauses (ii) through (vii), respectively.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by section 501(a) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1865) took effect.

(e) SECTION 310D(a) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTION.—Section 310D(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1934(a)) is amended by striking "304(d)(1)" and inserting "304(a)(1)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by section 501(a) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1865) took effect.

(f) SECTION 312(a) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) REPLACEMENT OF UNEXECUTABLE AMENDMENT MADE BY THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT OF 1990.—

(A) CORRECTION.—Subsection (b) of section 1818 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3830) is amended to read as follows:

"(b) OPERATING LOAN PURPOSES.—The first sentence of section 312(a) (7 U.S.C. 1942(a)) is amended—

"(1) by striking 'and' at the end of clause (11); and

"(2) by inserting ', and (13) borrower training under section 359' before the period at the end.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the Food, Agriculture, Conservation, and Trade Act of 1990 at the time such Act became law.

(2) REPEAL OF UNEXECUTABLE AMENDMENT MADE BY THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Subsection (b) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1866) is repealed. The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) shall be applied and administered as if such subsection had never become law.

(g) AMENDMENTS TO SECTION 331E OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTION.—Section 331E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981e) is amended—

(A) in subsection (a), by striking "Disaster Relief Act of 1974" and inserting "Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)"; and

(B) in subsection (b), by inserting "Robert T. Stafford" before "Disaster Relief".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) of this subsection shall take effect immediately after section 501(d) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1866) took effect.

(h) SECTION 335(e)(1)(A)(i) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTIONS TO AMENDMENT MADE BY THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Section 501(f)(1) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1867) is amended—

(A) by inserting "the first place such term appears" before "and all that follows"; and

(B) by striking "borrower-owner (as defined in subparagraph (F)" and inserting "the borrower-owner (as defined in subparagraph (F))".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) of this subsection shall take effect immediately after section 501(f) of the Food, Agriculture, Conservation, and Trade Act of 1990 took effect.

(i) SECTION 352(a) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—Section 352(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000(a)) is amended by redesignating the second paragraph (4) as paragraph (5).

(j) SECTION 352(b)(2) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—

(1) CORRECTION.—Section 352(b)(2) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000(b)(2)) is amended by striking "borrower's" and inserting "borrower-owner's".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by section 501(f) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1867) took effect.

(k) SECTION 702(h)(2) OF THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Section 702(h)(2) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1881) is amended by inserting "section" before "2388(h)(3)".

(l) SECTION 306C(b)(1) OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—Section 306C(b)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c(b)(1)) is amended by striking "or connecting such systems to the residences of such individuals" and inserting ", connecting the systems to the residences of the individuals, or installing plumbing and fixtures within the residences of the individuals to facilitate the use of the water supply and waste disposal systems".

(m) SECTION 306C OF THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c) is amended by adding at the end the following new subsection:

"(f) REGULATIONS.—Not later than 30 days after the date of enactment of this subsection, the Secretary shall issue interim final regulations, with a request for public comments, implementing this section.".

Amend the title so as to read: "An Act to enhance the financial safety and soundness of the banks and associations of the Farm Credit System, and for other purposes.".

## CONSUMER PROTECTION ACT

### BRYAN AMENDMENT NO. 3420

Mr. FORD (for Mr. BRYAN) proposed an amendment to the amendments of the House to the bill (S. 1392) to strengthen the authority of the Federal Trade Commission regarding fraud committed in connection with sales made with a telephone, and for other purposes; as follows:

In lieu of the matter proposed to be inserted by the House amendment to the bill, insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Telemarketing and Consumer Fraud and Abuse Prevention Act".

**SEC. 2. FINDINGS.**

The Congress makes the following findings:

(1) Telemarketing differs from other sales activities in that it can be carried out by sellers across State lines without direct contact with the consumer. Telemarketers can also be very mobile, easily moving from State to State.

(2) Interstate telemarketing fraud has become a problem of such magnitude that the resources of the Federal Trade Commission are not sufficient to ensure adequate consumer protection from such fraud.

(3) Consumers and others are estimated to lose $40 billion a year in telemarketing fraud.

(4) Consumers are victimized by other forms of telemarketing deception and abuse.

(5) Consequently, Congress should enact legislation that will offer consumers necessary protection from telemarketing deception (including fraud) and abuse.

**SEC. 3. TELEMARKETING RULES.**

(a) IN GENERAL.—

(1) The Commission shall prescribe rules prohibiting deceptive (including fraudulent) telemarketing activities and other abusive telemarketing activities.

(2) The Commission shall include in such rules respecting deceptive telemarketing activities—

(A) a definition of deceptive telemarketing activities, and

(B) criteria that are symptomatic of deceptive telemarketing as distinguished from ordinary telemarketing business practices.

(3) The Commission shall include in such rules respecting other abusive telemarketing activities (A) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reason-

able consumer would consider coercive or abusive of such consumer's right to privacy, and (B) restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers. In prescribing the rules described in this paragraph, the Commission shall also consider—

(A) including a requirement that goods or services offered by telemarketing be shipped or provided within a specified period and that if the goods or services are not shipped or provided within such period, a refund be required;

(B) including, where practicable, authority for a person who orders a good or service through telemarketing to cancel the order within a specified period; and

(C) recordkeeping requirements.

(b) RULEMAKING.—

(1) The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(2) A rule issued under subsection (a) shall be considered a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

(d) SECURITIES AND EXCHANGE COMMISSION RULES.—

(1) PROMULGATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under subsection (a), the Securities and Exchange Commission shall promulgate, or require any national securities exchange or registered securities association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing activities by persons described in paragraph (2).

(B) EXCEPTION.—The Securities and Exchange Commission is not required to promulgate a rule under subparagraph (A) if it determines that—

(i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in paragraph (2) substantially similar to that provided by rules promulgated by the Federal Trade Commission under subsection (a); or

(ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets.

If the Securities and Exchange Commission determines that an exception described in clause (i) or (ii) applies, the Securities and Exchange Commission shall publish in the Federal Register its determination with the reasons for it.

(2) APPLICATION.—

(A) IN GENERAL.—The rules promulgated by the Securities and Exchange Commission under paragraph (1)(A) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company. The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in the preceding sentence.

(B) DEFINITIONS.—For purposes of subparagraph (A)—

(i) the terms "broker", "dealer", "transfer agent", "municipal securities dealer", "municipal securities broker", "government securities broker", and "government securities dealer" have the meanings given such terms by paragraphs (4), (5), (25), (30), (31), (43), and (44) of section 3(a) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a) (4), (5), (25), (30), (31), (43), and (44));

(ii) the term "investment adviser" has the meaning given such term by section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)); and

(iii) the term "investment company" has the meaning given such term by section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)).

(e) COMMODITY FUTURES TRADING COMMISSION RULES.—

(1) APPLICATION.—The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in subsection (f)(1) of section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a).

(2) PROMULGATION.—Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a) is amended by adding at the end the following new subsection:

"(f)(1) Except as provided in paragraph (2), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Commission shall promulgate, or require each registered futures association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing activities by any person registered or exempt from registration under this Act in connection with such person's business as a futures commission merchant, introducing broker, commodity trading advisory, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

"(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

"(A) rules adopted by the Commission under this Act provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act; or

"(B) such a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.".

**SEC. 4. ACTIONS BY STATES.**

(a) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 3, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) VENUE; SERVICE OF PROCESS.—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the telemarketing occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) ACTIONS BY THE COMMISSION.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 3, no State may, during the pendency of such action instituted by the Commission, institute a civil action under subsection (a) against any defendant named in the Commission's complaint for acts or omissions alleged in the complaint for violation of any rule as alleged in the Commission's complaint.

(f) ACTIONS BY OTHER STATE OFFICIALS.—

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice of telemarketing which violates a rule of the Commission under section 3.

**SEC. 5. ACTIONS BY PRIVATE PERSONS.**

(a) IN GENERAL.—Any person adversely affected by any pattern or practice of telemarketing which violates any rule of the Commission under section 3, or an authorized person acting on such person's behalf, may, within 3 years after discovery of the violation, bring a civil action in an appropriate district court of the United States against a person who has engaged or is engaging in such pattern or practice of tele-

marketing if the amount in controversy exceeds the sum or value of $50,000 in actual damages for each person adversely affected by such telemarketing. Such an action may be brought to enjoin such telemarketing, to enforce compliance with any rule of the Commission under section 3, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The plaintiff shall serve prior written notice of the action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the person shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(c) ACTIONS BY THE COMMISSION.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 3, no person may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(d) COSTS AND FEES.—The court, in issuing any final order in any action brought under subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.

(e) CONSTRUCTION.—Nothing in this section shall restrict any right which any person may have under any statute or common law.

**SEC. 6. PROCESS.**

(a) CIVIL SUITS.—In any suit brought against a person, partnership, or corporation under section 13(b) of the Federal Trade Commission Act (15 U.S.C. 53(b)) to enjoin—

(1) deceptive telemarketing activities or other abusive telemarketing activities in violation of the rules prescribed under this Act, or

(2) unfair or deceptive telemarketing acts or practices in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1)),

the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be summoned without regard to whether they reside or transact business in the district in which the suit is brought, and to that end process may be served wherever such other person, partnership, or corporation may be found.

(b) CRIMINAL CONTEMPT ACTIONS.—In any case described in subsection (a) (1) or (2), the Commission may bring a criminal contempt action for violations of orders obtained in such case in the same manner as civil penalty and other Federal court actions apply under section 16(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)(1)). Such criminal cases may be initiated by the Commission pursuant to the appointment as a Special Assistant United States Attorney by the Attorney General of an attorney employed full-time by the Commission to assist the Attorney General in the prosecution of such cases. Such appointment may be instituted at the request of the court which has entered the order for which contempt is sought. The Attorney General shall decide on the appointment within 45 days after receipt of such request for appointment of a Commission lawyer as a Special Assistant United States Attorney. The authority to bring criminal contempt actions under this subsection expires 3 years after the date of enactment of this Act.

**SEC. 7. INVESTIGATION.**

(a) CIVIL INVESTIGATIVE DEMAND FOR PHYSICAL EVIDENCE.—In any investigation by the Commission with respect to—

(1) deceptive telemarketing activities or other abusive telemarketing activities in violation of the rules prescribed under this Act, or

(2) unfair or deceptive telemarketing acts or practices in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1)),

the Commission's powers with respect to a civil investigative demand shall include a demand for the production of physical evidence.

(b) ISSUANCE OF DEMAND.—A civil investigative demand in an investigation described in subsection (a)(1) or (2) may require the person upon whom the demand is served to produce physical evidence for inspection, to give oral testimony concerning physical evidence, or to furnish such physical evidence and testimony in combination with documentary material, answers, or testimony described in section 20(c)(1) of the Federal Trade Commission Act (15 U.S.C. 57b-1(c)(1)).

(c) CONTENTS.—Each such civil investigative demand for the production of physical evidence shall—

(1) describe each class of physical evidence to be produced under the demand with such definiteness and certainty as to permit such evidence to be fairly identified;

(2) prescribe a return date or dates which will provide a reasonable period of time within which the physical evidence so demanded may be assembled and made available for inspection and copying or reproduction; and

(3) identify the custodian to whom such physical evidence shall be made available.

(d) PRODUCTION OF EVIDENCE IN RESPONSE TO DEMAND.—The production of physical evidence in response to such civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the physical evidence required by demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(e) OTHER REQUIREMENTS.—Except as provided in this section, the requirements of section 20 of the Federal Trade Commission Act (15 U.S.C. 57b-1) apply to a civil investigative demand in an investigation described in subsection (a) (1) or (2).

(f) DEFINITION.—In this subsection, the term "physical evidence" means any object or device.

**SEC. 8. ADMINISTRATION AND APPLICABILITY OF ACT.**

(a) IN GENERAL.—Except as otherwise provided in sections 4 and 5, this Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act.

(b) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 3 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

**SEC. 9. DEFINITIONS.**

For purposes of this Act:

(1) The term "attorney general" means the chief legal officer of a State.

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term "telemarketing" means a plan, program, or campaign which is conducted to induce purchases of goods or services by significant use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which—

(A) contains a written description or illustration of the goods or services offered for sale,

(B) includes the business address of the seller,

(C) includes multiple pages of written material or illustrations, and

(D) has been issued not less frequently than once a year,

where the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation.

**SEC. 10. REVIEW.**

Upon the expiration of 5 years following the date of the enactment of this Act, the Commission shall review the implementation of this Act and its effect on deceptive telemarketing activities and report the results of the review to the Congress.

## INTER-AMERICAN SCIENTIFIC COOPERATION ACT

### BINGAMAN (AND LIEBERMAN) AMENDMENT NO. 3421

Mr. FORD (for Mr. BINGAMAN, for himself and Mr. LIEBERMAN) proposed an amendment to the bill (H.R. 3215) to reinvigorate cooperation between the United States and Latin America in science and technology, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Inter-American Scientific Cooperation Act of 1992".

**SEC. 2. FINDINGS AND DEFINITION.**

(a) FINDINGS.—The Congress finds the following:

(1) Latin America shares a wide range of scientific and technological concerns with the United States.

(2) The need for science and technology cooperation with Latin America has increased

significantly since the 1970s, but mechanisms for cooperation have decreased significantly since many countries in Latin America graduated from programs sponsored by the Agency for International Development.

(3) Latin American scientists and engineers have increasingly looked to Europe and Japan for advanced training and research. This trend may result in a loss of mutually beneficial commerce and scientific cooperation between Latin America and the United States.

(4) Investment by the United States in the Latin American science and technology infrastructure and participation of United States scientists and engineers in short-term and long-term assignments in Latin America can further improve relations between the United States and Latin America, and bring many benefits to the United States, including scientific access, enhanced trade and investment relations, and the opportunity to contribute to economic growth and democratization in the hemisphere.

(5) Science and technology cooperation with the United States, and advanced training and research in the United States, can bring many benefits to Latin America. In developing countries, cooperation can contribute to the strengthening of basic science and technology infrastructure. In industrially advanced Latin American countries, cooperation can increase opportunities in many scientific disciplines and in the frontier scientific fields.

(6) Considerable progress in science and technology cooperation can be made with relatively modest investments.

(7) The return to democracy in a number of Latin American countries provides renewed vigor for freedom of scientific inquiry, cooperation, and progress, as well as a focus for the reversal of the decline in science and technology cooperation between the United States and Latin America.

(b) DEFINITIONS.—As used in this Act—

(1) the term "debt-for-science exchange" means an agreement, between a grantee under section 4 and a Latin American country, that provides that the grantee shall cancel its right to collect payment on a portion of the commercial external debt of that Latin American country, in exchange for the country's contribution to the grantee of local currencies or other assets to support scientific and technological research in the country;

(2) the term "Director" means the Director of the National Science Foundation; and

(3) the term "Latin America" means Mexico, the Caribbean basin, Central America, and South America.

**SEC. 3. ESTABLISHMENT OF THE PROGRAM.**

The National Science Foundation shall establish an Inter-American Scientific Cooperation Program (hereafter in this Act referred to as the "Program") aimed at increasing the level of science and technology cooperation between the United States and Latin America. The National Science Foundation, in establishing the Program, shall identify and cooperate with private and governmental funding bodies, both in Latin America and in the United States. The Program shall include the following elements:

(1) Encouragement and funding of project development interchanges and joint research projects between United States and Latin American scientists and engineers. Joint projects and interchanges funded by the National Science Foundation shall, whenever possible, include cost sharing from sources within the Latin American countries whose citizens participate. The Director shall determine the amount of cost sharing which is required.

(2) Establishment in accordance with section 13 of the National Science Foundation Act of 1950 (42 U.S.C. 1872) of an Inter-American Scientific Exchange. The Exchange's activities shall include collection and dissemination of information to Latin Americans on avenues for advanced study in science and engineering in the United States; United States assistance to Latin American institutions, at the institutions' request, for development of courses, seminars, and curricula in science and engineering; and other forms of scientific and technological cooperation as may be mutually agreeable, such as research projects in furtherance of professional development. In carrying out this paragraph the Director shall coordinate with other Federal agencies offering programs for foreign nationals for advanced study and research in the sciences and in engineering.

(3) Exchange of information and technical assistance between United States and Latin American scientists and engineers interested in establishing data bases and connecting to computer networks such as the National Research and Education Network.

(4) Exchange of information to facilitate the routing of scientific equipment between the United States and Latin America, including information with respect to matching equipment with need, identifying technical maintenance requirements, and meeting customs regulations.

(5) Promotion of research programs which utilize unique natural environments or existing or potential centers of scientific research excellence in Latin America.

**SEC. 4. DEBT-FOR-SCIENCE EXCHANGES**

(a) GRANTS.—The Director is authorized to make grants to nongovernmental organizations within the United States, including colleges and universities, for the purpose of acquiring the commercial external debt of Latin American Countries and undertaking such other activities as are necessary to carry out debt-for-science exchanges. Before making any grant under this section, the Director shall ascertain that—

(1) funds received from a Latin American country in connection with the debt-for-science exchange to which the grant applies will be expended only for cooperative research and development projects, including those described in section 3; or to fund endowments for the long-term support of cooperative research and development projects;

(2) the debt-for-science exchange will result in making funds available for such cooperative projects which otherwise would not be available;

(3) the amount of local currency provided by the Latin American country as a result of the debt-for-science exchange will be substantially greater than the cost of acquiring the country's commercial external debt;

(4) the grantee certifies that the Latin American country has accepted the terms of the exchange and that an agreement has been reached to cancel the commercial debt in an agreed upon fashion; and

(5) Federal grants made under this section will be equally matched by non-Federal contributions to acquire the commercial external debt of the Latin American country.

(b) RETENTION OF INTEREST.—Grantees or subgrantees of funds provided under this section may retain, without deposit in the Treasury of the United States and without further appropriation, interest earned on the proceeds of any resulting debt-for-science exchange pending disbursements of such proceeds and interest for approved program purposes, which may include the establishment of an endowment, the income of which is used for such purposes.

(c) COORDINATION WITH OTHER FEDERAL AGENCIES.—In carrying out subsection (a) the Director shall coordinate with Federal agencies, such as the Agency for International Development, that have expertise in debt exchanges.

**SEC. 5. REPORT ON BINATIONAL SCIENCE FOUNDATIONS.**

(a) REPORT TO CONGRESS.—Within 180 days after the date of enactment of this Act, the Director shall submit to Congress a report which—

(1) describes existing Binational Science Foundations in Latin America and elsewhere and the research funded by them;

(2) identifies successful binational foundations in Latin America in areas other than science and technology;

(3) evaluates the advantages and disadvantages of Binational Science Foundations in comparison to direct funding of joint research projects;

(4) identifies countries in Latin America that might benefit by establishment of a Binational Science Foundation between that country and the United States;

(5) identifies types of cooperative scientific research and educational projects that might most effectively be funded through Binational Science Foundations;

(6) assesses, by country, the availability of private-sector funding and in-country funding to match United States funding of Binational Science Foundations in Latin America; and

(7) identifies legislative or administrative changes needed if the National Science Foundation is to fund establishment of Binational Science Foundations.

(b) CONSULTATION.—In carrying out subsection (a), the Director shall consult with Federal agencies, such as the Department of State and the Agency for International Development, that have participate in binational foundations in Latin America and elsewhere.

**SEC. 6. REPORT ON PROGRAM.**

Within 180 days after the date of enactment of this Act, the Director shall submit to Congress a report which—

(1) details activities funded by the National Science Foundation and carried out by or in cooperation with Latin American countries during the preceding fiscal year;

(2) includes a description of how activities of the Program relate to other ongoing and prospective National Science Foundation activities in Latin America;

(3) describes plans for the current and upcoming fiscal years' activities of the Program;

(4) recommends priorities for the Program for cooperation in terms of scientific disciplines and geographic regions; and

(5) recommends necessary legislative or administrative changes in the Program.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Director for carrying out this Act—

(1) $10,000,000 for fiscal year 1993; and

(2) $10,000,000 for fiscal year 1994.

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## HOLLINGS (AND THURMOND) AMENDMENT NO. 3422

Mr. FORD (for Mr. HOLLINGS, for himself and Mr. THURMOND) proposed an amendment to amendment No. 3421 proposed by Mr. BINGAMAN (and Mr. LIEBERMAN) to the bill H.R. 3215, supra; as follows:

At the end, add the following:

SEC. 8. SHORT TITLE.—This section may be cited as the "Wind Engineering Program Act of 1992".

(b) FINDINGS AND PURPOSES.—The Congress finds the following:

(1) Hurricanes and tornadoes kill more Americans and destroy more property than any other natural disaster.

(2) Each year, in the United States, extreme winds cause billions of dollars of damage to homes, schools, and other buildings, roads and bridges, electrical power distribution networks, and communications networks.

(3) Research on wind and wind engineering has resulted in improved methods for making buildings and other structures less vulnerable to extreme winds, but additional research funding is needed to develop new, improved, and more cost-effective methods of wind-resistant construction.

(4) Federal funding for wind engineering research has decreased over the last twenty years.

(5) Wind research has been hampered by a lack of data on near-surface wind speed and distribution during hurricanes, tornadoes, and other severe storms.

(6) Many existing methods for wind-resistant construction are inexpensive and easy to implement but often they are not applied because the construction industry and the general public are unaware of such methods.

(7) Various Federal agencies have important roles to play in wind engineering research, but at present there is little interagency cooperation or coordination in this area.

(8) Establishment of a Federal Wind Engineering Program would result in new technologies for wind-resistant construction, broader application of such technologies in construction, and ultimately decreased loss of life and property due to extreme winds.

(c) PURPOSE.—The purpose of this section is to create a Wind Engineering Program within the National Institute of Standards and Technology, which would—

(1) provide for wind engineering research;

(2) serve as a clearinghouse for information on wind engineering; and

(3) improve interagency coordination on wind engineering research between the National Institute of Standards and Technology, the National Oceanic and Atmospheric Administration, the National Science Foundation, the Federal Aviation Administration, and other appropriate agencies.

(d) ESTABLISHMENT.—Within the National Institute of Standards and Technology, there shall be established a Wind Engineering Program which shall—

(1) conduct research and development, in cooperation with the private sector and academia, on new methods for mitigating wind damage due to tornadoes, hurricanes, and other severe storms;

(2) fund construction and maintenance of wind tunnels and other research facilities needed for wind engineering research;

(3) promote the application of existing methods for, and research results on, reducing wind damage to buildings that are usually incompletely- or non-engineered, such as single family dwellings, mobile homes, light industrial buildings, and small commercial structures;

(4) transfer technology developed in wind engineering research to the private sector so that it may be applied in building codes, design practice, and construction;

(5) conduct, in conjunction with the National Oceanic and Atmospheric Administration, post-disaster research following hurricanes, tornadoes, and other severe storms to evaluate the vulnerability of different types of buildings to extreme winds;

(6) serve as a point of contact for dissemination of research information on wind engineering and work with the private sector to develop education and training programs on construction techniques, developed from research results, for reducing wind damage;

(7) work with the National Oceanic and Atmospheric Administration, the Federal Aviation Administration, and other agencies as is appropriate, on meteorology programs to collect and disseminate more data on extreme wind events; and

(8) work with the National Science Foundation to support and expand basic research on wind engineering.

(e) AUTHORIZATIONS.—(1) There are authorized to be appropriated to the National Institute of Standards and Technology for the purposes of this section, $1,000,000 for fiscal year 1993 and $3,000,000 for fiscal year 1994.

(2) Of the amounts authorized under paragraph (1), no less than 50 percent shall be used for cooperative agreements with the National Oceanic and Atmospheric Administration, the National Science Foundation, the Federal Aviation Administration, or other agencies, for wind engineering research, development of improved practices for structures, and the collection and dissemination of meteorological data needed for wind engineering.

## UTAH LAND EXCHANGE ACT

### GARN AMENDMENT NO. 3423

Mr. FORD (for Mr. GARN) proposed an amendment to the bill (H.R. 5118) to exchange lands with the State of Utah, between the United States and the State of Utah, as follows:

(1) On page 3, lines 9 and 10, strike "Nevada, amounting to about" and insert "Nevada, comprising approximately".

(2) On page 5, line 2, strike "Act, credit to" and insert "Act, compensate".

(3) On page 5, line 3, strike "Utah the" and insert "Utah for".

(4) On page 5, line 11, strike "shall send" and insert "shall transmit to".

(5) On page 6, line 6, strike "coal in" and insert "coal located in".

(6) On page 6, line 8, strike "coal in" and insert "coal located in".

(7) On page 6, starting on line 11, strike "Secretary may" and insert "Secretary shall".

(8) On page 6, line 12, strike "the right to receive".

(9) On page 7, strike lines 1 through 3 and insert "royalties under this section exceeding $12,500,000 annually."

(10) On page 7, line 22, strike "shall arrange" and insert "shall provide".

(11) On page 8, strike lines 3 through 14 and insert:

(b) DEADLINE AND DISPUTE RESOLUTION.—(1) If after two years from the date of enactment of this Act, the parties have not agreed upon the final terms of some or all of the exchanges authorized by this Act, including the value of the lands involved in some or all of such exchanges, notwithstanding any other provisions of law, the United States District Court for the District of Utah, Central Division, shall have jurisdiction to hear, determine, and render judgment on the value of any and all lands, or interests therein, involved in the exchange.

(12) On page 8, strike lines 15 through 24.

(13) On page 9, after line 5 insert:

(c) ADJUSTMENT.—If the State shares revenue from the selected Federal properties the value of such properties shall be the value otherwise established under this section, less the percentage which represents the Federal revenue sharing obligation, but such adjustment shall not be considered as reflecting a property right of the State of Utah.

(d) INTEREST.—Any royalty offer by the Secretary pursuant to subsection 7(b) shall be adjusted to reflect net present value as of the effective date of the exchange. The State shall be entitled to receive a reasonable rate of interest at a rate equivalent to a five year treasury note on the balance of the value owed by the United States from the effective date of the exchange until full value is received by the State and mineral rights revert to the United States as prescribed by subsection 9(a)(3).

(14) On page 12, line 24, strike "establish funding," and insert "establish a funding mechanism,".

## JEMEZ NATIONAL RECREATION AREA

### BINGAMAN (AND DOMENICI) AMENDMENT NO. 3424

Mr. FORD (for Mr. BINGAMAN, for himself and Mr. DOMENICI) proposed an amendment to the bill (H.R. 2502) to establish the Jemez National Recreation Area in the State of New Mexico, and for other purposes, as follows:

At the end of the bill, add the following new section:

**SEC. 8. COMPLETION OF PREHISTORIC TRACKWAYS STUDY.**

The Secretary of the Interior is authorized to contract with the Smithsonian Institution for the completion of the prehistoric trackways study required under section 303 of the Act entitled "An Act to conduct certain studies in the State of New Mexico", approved November 15, 1990 (Public Law 101-578).

On page 9, lines 1 through 19, strike section 3 in its entirety and insert in lieu thereof the following:

**"SEC. 3. ACQUISITION OF LAND.**

"(a) IN GENERAL.—The Secretary is authorized to acquire lands and interests therein within the boundaries of the recreation area by donation, purchase with donated or appropriated funds, or exchange: *Provided*, That no lands or interests therein may be acquired except with the consent of the owner thereof.

"(b) STATE LANDS.—Lands or interests therein owned by the State of New Mexico or a political subdivision thereof may be acquired only by donation or exchange.

"(c) OFFERS TO SELL.—The Secretary shall give prompt and careful consideration to any offer made by any person owning property within the boundaries of the recreation area to sell such property.

"(d) NO ADDITIONAL LANDS.—No lands or interests therein outside of the boundaries of the recreation area may be added to the recreation area without specific authorization by Congress.".

## DELAWARE RIVER WILD AND SCENIC RIVERS ACT

### BUMPERS AMENDMENT NO. 3425

Mr. FORD (for Mr. BUMPERS) proposed an amendment to the bill (H.R. 3457) to amend the Wild and Scenic Rivers Act to designate certain segments of the Delaware River in Pennsylvania and New Jersey as components of the national wild and scenic rivers system, as follows:

On page 7, line 6, strike "Pennsylvania." and insert in lieu thereof, "Pennsylvania, excluding river mile 196.0 to 193.8.".

On page 8, line 4, strike "3(a)" and insert in lieu thereof, "5(a)".

On page 9, line 14, strike "or" and insert in lieu thereof, "the Martins Creek Steam Electric Station and associated facilities,

On page 10, line 14, strike "the administration of".

## STOCK RAISING HOMESTEAD ACT AMENDMENTS

### BINGAMAN AMENDMENT NO. 3426

Mr. FORD (for Mr. BINGAMAN) proposed an amendment to the amendments of the House to the bill (S. 1187) to amend the Stock Raising Homestead Act to provide certain procedures for entry onto Stock Raising Homestead Act lands, and for other purposes; as follows:

Strike all after the enacting clause and insert:

**SECTION 1. MINING CLAIMS ON STOCK RAISING HOMESTEAD ACT LANDS.**

(a) MINERAL ENTRY UNDER THE STOCK RAISING HOMESTEAD ACT.—Section 9 of the Act of December 29, 1916, entitled "An Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299), is amended by adding the following at the end thereof:

"(b) EXPLORATION; LOCATION OF MINING CLAIMS; NOTICES.—

"(1) IN GENERAL.—(A) Notwithstanding subsection (a) and any other provision of law to the contrary, after the effective date of this subsection no person other than the surface owner may enter lands subject to this Act to explore for, or to locate, a mining claim on such lands without—

"(i) filing a notice of intention to locate a mining claim pursuant to paragraph (2); and

"(ii) providing notice to the surface owner pursuant to paragraph (3).

"(B) Any person who has complied with the requirements referred to in subparagraph (A) may, during the authorized exploration period, in order to locate a mining claim, enter lands subject to this Act to undertake mineral activities related to exploration that cause no more than minimal disturbance of surface resources and do not involve the use of mechanized earthmoving equipment, explosives, the construction of roads, drill pads, or the use of toxic or hazardous materials.

"(C) The authorized exploration period referred to in subparagraph (B) shall begin 30 days after notice is provided under paragraph (3) with respect to lands subject to such notice and shall end with the expiration of the 90-day period referred to in paragraph (2)(A), or any extension provided under paragraph (2).

"(2) NOTICE OF INTENTION TO LOCATE A MINING CLAIM.—Any person seeking to locate a mining claim on lands subject to this Act in order to engage in the mineral activities relating to exploration referred to under paragraph (1)(B) shall file with the Secretary of the Interior a notice of intention to locate a claim on the lands concerned. The notice shall be in such form as the Secretary shall prescribe. The notice shall contain the name and mailing address of the person filing the notice and a legal description of the lands to which the notice applies. The legal description shall be based on the public land survey or on such other description as is sufficient to permit the Secretary to record the notice on the land status records of the Secretary. Whenever any person has filed a notice under this paragraph with respect to any lands, during the 90-day period following the date of such filing, or any extension thereof pursuant to this paragraph, no other person (including the surface owner) may—

"(A) file such a notice with respect to any portions of such lands;

"(B) explore for minerals or locate a mining claim on any portion of such lands; or

"(C) file an application to acquire any interest in any portion of such lands pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

If, within such 90-day period, the person who filed a notice under this paragraph files a plan of operations with the Secretary pursuant to subsection (f), such 90-day period shall be extended until the approval or disapproval of the plan by the Secretary pursuant to subsection (f).

"(3) NOTICE TO SURFACE OWNER.—Any person who has filed a notice of intention to locate a mining claim under paragraph (2) for any lands subject to this Act shall provide written notice of such filing, by registered or certified mail with return receipt, to the surface owner (as evidenced by local tax records) of the lands covered by the notice under paragraph (2). The notice shall be provided at least 30 days before entering such lands and shall contain each of the following:

"(A) A brief description of the proposed mineral activities.

"(B) A map and legal description of the lands to be sublet to mineral exploration.

"(C) The name, address and phone number of the person managing such activities.

"(D) A statement of the dates on which such activities will take place.

"(4) ACREAGE LIMITATIONS.—The total acreage covered at any time by notices of intention to locate a mining claim under paragraph (2) filed by any person and by affiliates of such person may not exceed 6,400 acres of lands subject to this Act in any one State and 1,280 acres of such lands for a single surface owner. for purposes of this paragraph, the term 'affiliate' means, with respect to any person, any other person which controls, is controlled by, or is under common control with, such person.

"(c) CONSENT.—Notwithstanding subsection (a) and any other provision of law, after the effective date of this subsection no person may engage in the conduct of mineral activities (other than those relating to exploration referred to in subsection (b)(1)(B)) on a mining claim located on lands subject to this Act without the written consent of the surface owner thereof unless the Secretary has authorized the conduct of such activities under subsection (d).

"(d) AUTHORIZED MINERAL ACTIVITIES.—The Secretary shall authorize a person to conduct mineral activities (other than those relating to exploration referred to in subsection (b)(1) (B)) on lands subject to this Act without the consent of the surface owner thereof if such person complies with the requirements of subsections (e) and (f).

"(e) BOND.—(1) Before the Secretary may authorize any person to conduct mineral activities the Secretary shall require such person to post a bond or other financial guarantee in an amount to insure the completion of reclamation pursuant to this Act. Such bond or other financial guarantee shall insure—

"(A) payment to the surface owner, after the completion of such mineral activities and reclamation, compensation for any permanent damages to crops and tangible improvements of the surface owner that resulted from mineral activities; and

"(B) payment to the surface owner of compensation for any permanent loss of income of the surface owner due to loss or impairment of grazing, or other uses of the land by the surface owner to the extent that reclamation required by the plan of operations would not permit such uses to continue at the level existing prior to the commencement of mineral activities.

"(2) In determining the bond amount to cover permanent loss of income under paragraph (1)(B), the Secretary shall consider, where appropriate, the potential loss of value due to the estimated permanent reduction in utilization of the land.

"(f) PLAN OF OPERATIONS.—(1) Before the Secretary may authorize any person to conduct mineral activities on lands subject to this Act, the Secretary shall require such person to submit a plan of operations. Such plan shall include procedures for—

"(A) the minimization of damages to crops and tangible improvements of the surface owner;

"(B) the minimization of disruption to grazing or other uses of the land by the surface owner; and

"(C) payment of a fee equivalent to the loss of income to the ranch operation as established pursuant to subsection (g).

"(2) The Secretary shall provide a copy of the proposed plan of operations to the surface owner at least 45 days prior to the date the Secretary makes a determination as to whether such plan complies with the requirements of this subsection. During such 45 day period the surface owner may submit comments and recommend modifications to the proposed plan of operations to the Secretary.

"(3)(A) The Secretary shall, within 60 days of receipt of the plan, approve the plan of operations if it complies with the requirements of this Act, including each of the following:

"(i) The proposed plan of operations is complete and accurate.

"(ii) The person submitting the proposed plan of operations has demonstrated that all other applicable Federal and State requirements have been met.

"(B) The Secretary shall notify the person submitting a plan of operations of any modifications to such plan required to bring it into compliance with the requirements of this Act. If the person submitting the plan agrees to modify such plan in a manner acceptable to the Secretary, the Secretary shall approve the plan as modified. In the event no agreement can be reached on the modifications to the plan which, in the opinion of the Secretary, will bring such plan into compliance with the requirements of this Act, then the Secretary shall disapprove the plan and notify both the surface owner and the person submitting the plan of the decision.

"(C) The 60-day period referred to in paragraph (A) may be extended by the Secretary

where additional time is required to comply with other applicable requirements of law.

"(D) The Secretary shall suspend or revoke a plan of operation whenever the Secretary determines, on the Secretary's own motion or on a motion made by the surface owner, that the person conducting mineral activities is in substantial noncompliance with the terms and conditions of an approved plan of operations and has failed to remedy a violation after notice from the Secretary within the time required by the Secretary.

"(4) Final approval of a plan of operations under this subsection shall be conditioned upon compliance with subsections (e) and (g).

"(g) FEE.—The fee referred to in subsection (f)(1) shall be—

"(1) paid to the surface owner by the person submitting the plan of operations;

"(2) paid in advance of any mineral activities or at such other time or times as may be agreed to by the surface owner and the person conducting such activities; and

"(3) established by the Secretary taking into account the acreage involved and the degree of potential disruption to existing surface uses (including the loss of income to the surface owner and such surface owner's operations due to the loss or impairment of existing surface uses for the duration of the mineral activities), except that such fee shall not exceed the fair market value for the surface of the land.

"(h) RECLAMATION.—Lands affected by mineral activities under a plan of operations approved pursuant to subsection (f)(3) shall be reclaimed, to the maximum extent practicable, to a condition capable of supporting the uses to which such lands were capable of supporting prior to surface disturbance. Reclamation shall proceed as contemporaneously as practicable with the conduct of mineral activities.

"(i) STATE LAW.—(1) Nothing in this Act shall be construed as affecting any reclamation, bonding, inspection, enforcement, air or water quality standard or requirement of any State law or regulation which may be applicable to mineral activities on lands subject to this Act to the extent that such law or regulation is not inconsistent with this title.

"(2) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, the interest of such person in water resources affected by mineral activities.

"(j) INSPECTIONS.—Should any surface owner of land subject to this Act have reason to believe that they are or may be adversely affected by mineral activities due to any violation of the terms and conditions of a plan of operations approved under subsection (f), such surface owner may request an inspection of such lands. The Secretary shall determine within 10 days of the receipt of the request whether the request states a reason to believe that a violation exists, except in the event the surface owner alleges and provides reason to believe that an imminent danger exists the 10 day period shall be waived and the inspection conducted immediately. When an inspection is conducted under this paragraph, the Secretary shall notify the surface owner and such surface owner shall be allowed to accompany the inspector on the inspection.

"(k) DAMAGES FOR FAILURE TO COMPLY.—(1) Whenever the surface owner of any land subject to this Act has suffered any permanent damages to crops or tangible improvements of the surface owner, or any permanent loss of income due to loss or impairment of grazing, or other uses of the land by the surface owner, if such damages or loss results from:

"(A) any mineral activity undertaken without the consent of the surface owner under subsection (c) or an authorization by the Secretary under subsection (d); or

"(B) from the failure of the person conducting mineral exploration, development, or production activities to remedy to the satisfaction of the Secretary any substantial noncompliance with the terms and conditions of a plan under subsection (f);

the surface owner may bring an action in the appropriate United States district court for, and the court may award, double damages plus costs for willful misconduct or gross negligence.

"(2) The surface owner of any land subject to this Act may also bring an action in the appropriate United States district court for double damages plus costs for willful misconduct or gross negligence against any person undertaking any mineral activities on lands subject to this Act in violation of any requirement of subsection (b).

"(3) Any double damage plus costs awarded by the court under this subsection shall be reduced by the amount of any compensation which the surface owner has received (or is eligible to receive) pursuant to the bond or financial guarantee required under subsection (e).

"(1) FULL PAYMENT OF DAMAGES.—The surface owner of any land subject to this Act may petition the Secretary for payment of all or any portion of a bond or other financial guarantee required under subsection (e) as compensation for any permanent damages to crops and tangible improvements of the surface owner, or any permanent or temporary loss of income due to loss or impairment or grazing, or other uses of the land by the surface owner. Pursuant to such a petition, the Secretary may use such bond or other guarantee to provide compensation to the surface owner for such damages and to insure the required reclamation.

"(m) BOND RELEASE.—The Secretary shall release the bond or other financial guarantee required under subsection (e) upon the successful completion of all requirements pursuant to a plan of operations approved under subsection (f).

"(n) CONVEYANCE TO SURFACE OWNER.—The Secretary shall take such actions as may be necessary to simplify the procedures which must be complied with by surface owners of lands subject to this Act who apply to the Secretary to obtain title to interests in such lands owned by the United States.

"(o) DEFINITIONS.—For the purpose of subsections (b) through (n)—

"(1) The term 'mineral activities' means any activity for, related to or incidental to mineral exploration, mining, and beneficiation activities for any locatable mineral on a mining claim. When used with respect to this term—

"(A) The term 'exploration' means those techniques employed to locate the presence of a locatable mineral deposit and to establish its nature, position, size, shape, grade and value;

"(B) The term 'mining' means the processes employed for the extraction of a locatable mineral from the earth; and

"(C) The term 'beneficiation' means the crushing and grinding of locatable mineral ore and such processes are employed to free the mineral from the other constituents, including but not necessarily limited to, physical and chemical separation techniques.

"(2) The term 'mining claim' means a claim located under the general mining laws of the United States (which generally comprise 30 U.S.C. chapters 2, 12A, and 16, and sections 161 and 162) subject to the terms and conditions of subsections (b) through (n) of this section.

"(3) The term 'tangible improvements' includes agricultural, residential and commercial improvements, including improvements made by residential subdividers.

"(p) MINERALS COVERED.—Subsections (b) through (n) of this section apply only to minerals not subject to disposition under—

"(A) the Mineral Leasing Act (30 U.S.C. 181 and following);

"(B) the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following); or

"(C) the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).".

(b) TECHNICAL CONFORMING AMENDMENT.—Section 9 of the Act of December 29, 1916, entitled "An Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299) is amended by inserting "(a) GENERAL PROVISIONS.—" before the words "That all entries made".

(c) EFFECTIVE DATE.—The amendments made by this Act shall take effect 180 days after the date of enactment.

(d) REGULATIONS.—The Secretary of the Interior shall issue final regulations to implement the amendments made by this Act not later than the effective date of this Act. Failure to promulgate these regulations by reason of any appeal or judicial review shall not delay the effective date as specified in paragraph (d).

**SEC. 2. REPORT TO CONGRESS ON FOREIGN MINERAL INTEREST.**

(1) The Secretary of the Interior is directed to submit a report to the Congress within two years after the date of enactment of this Act on the acquisition of mineral interests made after the date of enactment of this Act by foreign firms on lands subject to the Act of December 29, 1916, entitled "Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299), as amended.

(b) DEFINITION.—For purposes of this section the term "foreign firm" means a business entity that conducts business operations in the United States and is 51 percent or more owned and controlled by a foreign person or entity.

## EXTENSION TO THE AIR AND SPACE MUSEUM

### WARNER AMENDMENT NO. 3427

Mr. SIMPSON (for Mr. WARNER) proposed an amendment to the bill (S. 289) to authorize the Board of Regents of the Smithsonian Institution to plan and design an extension of the National Air and Space Museum at Washington Dulles International Airport, and for other purposes; as follows:

On page 2, line 4, immediately after the period, add the following: "The Board of Regents of the Smithsonian Institution shall designate and name an appropriate public area within such extension to honor Edwin Jacob Garn, currently a member of the Board of Regents, Smithsonian Institution, having served since 1981, and the first Member of Congress to fly in space while serving as a Member."

## BIG THICKET NATIONAL PRESERVE EXPANSION

### BUMPERS AMENDMENT NO. 3428

Mr. FORD (for Mr. BUMPERS) proposed an amendment to the bill (H.R. 1592) to increase the size of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, the Canyonlands unit, the Sabine River Blue Elbow unit, and addition to the Lower Neches Corridor unit; as follows:

On page 7, lines 5 and 6, strike "dated October 19, 1990, and numbered 20031 C," and insert in lieu thereof, "dated October 1992, and numbered 80,0008,".

## COMPETITIVENESS POLICY COUNCIL AUTHORIZATION

### BINGAMAN (AND RIEGLE) AMENDMENT NO. 3429

Mr. FORD (for Mr. BINGAMAN, for himself and Mr. RIEGLE) proposed an amendment to the bill (S. 2936) to amend the Competitiveness Policy Council Act to provide for reauthorization, to rename the Council, and for other purposes; as follows:

Strike all after the enacting clause, and insert in lieu thereof the following:

**SECTION 1. REAUTHORIZATION.**

Section 5209 of the Competitiveness Policy Council Act (15 U.S.C. 4808) is amended

(1) by striking "1991 and 1992" and inserting "1993 and 1994"; and

(2) by striking "$5,000,000" and inserting "$2,500,000".

**SEC. 2. RENAMING OF COUNCIL.**

The Competitiveness Policy Council Act (15 U.S.C. 4810 et seq.) is amended as follows:

(1) In the subtitle heading—

(A) insert "National" before "Competitiveness"; and

(B) strike "Council" and insert "Commission".

(2) In section 5201—

(A) insert "National" before "Competitiveness"; and

(B) strike "Council" and insert "Commission".

(3) In section 5202(b)(2)—

(A) insert "National" before "Competitiveness"; and

(B) strike "Council" and insert "Commission".

(4) In section 5203—

(A) in the section caption, strike "COUNCIL" and insert "COMMISSION";

(B) insert "National" before "Competitiveness"; and

(C) strike "Council" and insert "Commission".

(5) In section 5204—

(A) in the section caption, strike "COUNCIL" and insert "COMMISSION";

(B) strike "Council" and insert "Commission".

(6) In sections 5205 through 5208, strike "Council" each place such term appears and insert "Commission".

(7) In section 5207, in the section caption, strike "COUNCIL" and insert "COMMISSION".

(8) In section 5210—

(A) in paragraph (1)—

(i) insert "National" before "Competitiveness"; and

(ii) strike "Council" each place it appears and insert "Commission"; and

(B) in paragraph (2)—

(i) insert "National" before "Competitiveness"; and

(ii) strike "Council" and insert "Commission".

**SEC. 3. DUTIES OF THE COMMISSION.**

Section 5204 of the National Competitiveness Policy Commission Act (15 U.S.C. 4803) is amended by striking paragraphs (11) and (12) and inserting the following:

"(11) prepare, publish, and distribute reports that—

"(A) contain the analysis and recommendations of the Commission; and

"(B) comment on the overall competitiveness of the American economy, including the report described in section 5208; and

"(12) submit an annual report to the President and to the Congress on the activities of the Commission.".

**SEC. 4. EXECUTIVE DIRECTOR AND STAFF OF COMMISSION.**

Section 5206 of the National Competitiveness Policy Commission Act (15 U.S.C. 4805) is amended—

(1) in subsection (a)(1), by striking "GS-18 of the General Schedule" and inserting "the highest level allowed under section 5376 of title 5, United States Code";

(2) in subsection (b)—

(A) by striking paragraph (1);

(B) by redesignating paragraph (2) as paragraph (4); and

(C) by inserting before paragraph (4), as redesignated, the following:

"(1) FULL-TIME STAFF.—The Executive Director may appoint such officers and employees as may be necessary to carry out the functions of the Commission in accordance with the Federal civil service and classification laws, and fix compensation in accordance with the provisions of title 5, United States Code.

"(2) SENIOR EXECUTIVE SERVICE.—The Commission may establish positions in the Senior Executive Service in accordance with the provisions of subchapter II of chapter 31 of title 5, United States Code.

"(3) TEMPORARY STAFF.—The Executive Director may appoint such employees as may be necessary to carry out the functions of the Commission for a period of not more than 1 year, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, at rates not to exceed the maximum rate payable under section 5376 of title 5, United States Code."; and

(3) in subsection (c), strike "GS-16 of the General Schedule" and insert "the maximum rate payable under section 5376 of title 5, United States Code.".

**SEC. 5. POWERS OF THE COMMISSION.**

Section 5207 of the National Competitiveness Policy Commission Act (15 U.S.C. 4806) is amended—

(1) by inserting before the period at the end of subsection (b)(1)(B) ", except that such information may be provided to members and staff of the Council subject to existing national security laws and regulations";

(2) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(3) by inserting after subsection (f) the following:

"(g) CONTRACTING AUTHORITY.—Within the limitation of appropriations to the Commission, the Commission may enter into contracts with State agencies, private firms, institutions, and individuals for the purpose of carrying out its duties under this subtitle.".

**SEC. 6. REPORTING REQUIREMENTS.**

Section 5208 of the National Competitiveness Policy Commission Act (15 U.S.C. 4807) is amended—

(1) by striking the caption and inserting the following:

**"SEC. 5208. ANNUAL PUBLICATION OF ANALYSIS AND RECOMMENDATIONS.";**

(2) in subsection (a)—

(A) by striking the subsection heading and inserting "(a) PUBLICATION OF ANALYSIS AND RECOMMENDATIONS.—"; and

(B) by striking "on" and inserting "not later than"; and

(3) by adding at the end of the following:

"(d) PERIODICAL REPORTS.—The Commission may submit to the President and the Congress such other reports containing analysis and recommendations as the Commission deems necessary.".

## AGRICULTURAL CREDIT IMPROVEMENT ACT OF 1992

### CONRAD (AND OTHERS) AMENDMENT NO. 3430

Mr. FORD (for Mr. CONRAD, for himself, Mr. GRASSLEY, Mr. BUMPERS, Mr. DASCHLE, Mr. WELLSTONE, Mr. HARKIN, Mr. DURENBERGER, Mr. BAUCUS, and Mr. LEAHY) proposed an amendment to the bill (H.R. 4906) to amend the Consolidated Farm and Rural Development Act to establish a program to aid beginning farmers and ranchers and to improve the operation of the Farmers Home Administration, and to amend the Farm Credit Act of 1971, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "Agricultural Credit Improvement Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to the Consolidated Farm and Rural Development Act.
Sec. 3. Limitation on aggregate indebtedness.
Sec. 4. Interest rate for loans sold into secondary market; guaranteed loan fees.
Sec. 5. Federal-State beginning farmer partnership.
Sec. 6. Grants for private business enterprises.
Sec. 7. Down payment loan program.
Sec. 8. Special assistance to certain qualified beginning farmers and ranchers.
Sec. 9. Graduation of borrowers with operating loans or guarantees to private commercial credit.
Sec. 10. Consideration of borrowers for loan service programs.
Sec. 11. Time period within which county committee is required to meet to consider applications for farm ownership and operating loans and guarantees and beginning farmer plans.
Sec. 12. Increase in period during which county committee loan eligibility certification continues in effect.

Sec. 13. Processing of applications for farm operating loans.
Sec. 14. Graduation of seasoned direct loan borrowers to the loan guarantee program.
Sec. 15. Simplified application for guaranteed loans of $50,000 or less.
Sec. 16. Inventory lease or lease with option to purchase.
Sec. 17. Transfer of Indian lands pledged as collateral for FmHA loans.
Sec. 18. Debt service margin requirements; certified lenders program.
Sec. 19. Definition of qualified beginning farmer or rancher.
Sec. 20. Targeting of funds.
Sec. 21. Equal access to FmHA assistance by gender.
Sec. 22. State mediation programs.
Sec. 23. Regulations.

**SEC. 2. REFERENCES TO THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.**

Wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), except to the extent otherwise specifically provided.

**SEC. 3. LIMITATION ON AGGREGATE INDEBTEDNESS.**

Section 305 (7 U.S.C. 1925) is amended by striking "and 310D of this title" and inserting "310D, and 310E".

**SEC. 4. INTEREST RATE FOR LOANS SOLD INTO SECONDARY MARKET; GUARANTEED LOAN FEES.**

Section 309(h) (7 U.S.C. 1929(h)) is amended—

(1) in inserting "(1)" after "(h)"; and

(2) by adding at the end the following new paragraphs:

"(2) The interest rate payable by a borrower on the portion of a guaranteed loan that is sold by a lender to the secondary market under this title may be lower than the interest rate charged on the portion retained by the lender, but shall not exceed the average interest rate charged by the lender on loans made to farm and ranch borrowers.

"(3) With regard to any loan guarantee on a loan made by a commercial or cooperative lender related to a loan made by the Secretary under section 310E—

"(A) the Secretary shall not charge a fee to any person (including a lender); and

"(B) a lender may charge a loan origination and servicing fee in an amount not to exceed 1 percent of the amount of the loan.".

**SEC. 5. FEDERAL-STATE BEGINNING FARMER PARTNERSHIP.**

(a) COORDINATION OF ASSISTANCE FOR QUALIFIED BEGINNING FARMERS AND RANCHERS.—Section 309 (7 U.S.C. 1929) is amended by adding at the end the following new subsection:

"(i)(1) Not later than 60 days after any State expresses to the Secretary, in writing, a desire to coordinate the provision of financial assistance to qualified beginning farmers and ranchers in the State, the Secretary and the State shall conclude a joint memorandum of understanding that shall govern the coordination of the provision of the financial assistance by the State and the Secretary.

"(2) The memorandum of understanding shall provide that if a State beginning farmer program makes a commitment to provide a qualified beginning farmer or rancher with financing to establish or maintain a viable farming or ranching operation, the Secretary shall, subject to applicable law, normal loan approval criteria, and the availability of funds provide the farmer or rancher with a down payment loan under section 310E or a guarantee of the financing provided by the State program, or both.

"(3) The Secretary shall not charge any person (including a lender) any fee with respect to the provision of any guarantee under this subsection.

"(4) The Secretary shall notify each State of the provisions of this subsection.

"(5) As used in paragraph (1), the term 'State beginning farmer program' means any program that is—

"(A) carried out by, or under contract with, a State; and

"(B) designed to assist persons in obtaining the financial assistance necessary to enter agriculture and establish viable farming or ranching operations.".

(b) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT; PURPOSE.—Not later than 18 months after the date of enactment of this Act, the Secretary of Agriculture shall establish an advisory committee, to be known as the "Advisory Committee on Beginning Farmers and Ranchers", which shall provide advice to the Secretary on—

(A) the development of the program of coordinated assistance to qualified beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act (as added by subsection (a) of this section);

(B) methods of maximizing the number of new farming and ranching opportunities created through the program;

(C) methods of encouraging States to participate in the program;

(D) the administration of the program; and

(E) other methods of creating new farming or ranching opportunities.

(2) MEMBERSHIP.—The Secretary shall appoint the members of the Advisory Committee. The Advisory Committee shall include representatives from the following:

(A) The Farmers Home Administration.

(B) State beginning farmer programs (as defined in section 309(i)(5) of the Consolidated Farm and Rural Development Act (as added by subsection (a) of this section)).

(C) Commercial lenders.

(D) Private nonprofit organizations with active beginning farmer or rancher programs.

(E) The Cooperative Extension Service.

(F) Community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers.

(G) Other entities or persons providing lending or technical assistance for qualified beginning farmers or ranchers.

**SEC. 6. GRANTS FOR PRIVATE BUSINESS ENTERPRISES.**

Section 310B(c) (7 U.S.C. 1932(c)) is amended—

(1) by inserting "(1)" after "(c)"; and

(2) by adding at the end the following new paragraph:

"(2) The Secretary may make grants to qualified nonprofit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities. Assistance provided under this paragraph may include on-site technical assistance to local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas, the development of training materials, and the provision of necessary training assistance to local officials and agencies in rural areas.".

**SEC. 7. DOWN PAYMENT LOAN PROGRAM.**

(a) IN GENERAL.—Subtitle A (7 U.S.C. 1922 et seq.) is amended by adding at the end the following new section:

**"SEC. 310E. DOWN PAYMENT LOAN PROGRAM.**

"(a) IN GENERAL.—

"(1) ESTABLISHMENT.—Notwithstanding any other section of this subtitle, the Secretary shall establish, within the farm ownership loan program established under this subtitle, a program under which loans shall be made under this section to qualified beginning farmers and ranchers for down payments on farm ownership loans.

"(2) ADMINISTRATION.—The Secretary shall be the primary coordinator of credit supervision for the down payment loan program established under this section, in consultation with the commercial or cooperative lender and, if applicable, the contracting credit counseling service selected under section 360(c).

"(b) LOAN TERMS.—

"(1) PRINCIPAL.—Each loan made under this section shall be in an amount equal to 30 percent of the purchase price or appraisal value, whichever is lower, of the farm or ranch to be acquired, unless the borrower requests a lesser amount.

"(2) INTEREST RATE.—The interest rate on any loan made by the Secretary under this section shall be 4 percent.

"(3) DURATION.—Each loan under this section shall be made for a period of 10 years or less, at the option of the borrower.

"(4) REPAYMENT.—Each borrower of a loan under this section shall repay the loan to the Secretary in equal annual installments.

"(5) NATURE OF RETAINED SECURITY INTEREST.—The Secretary shall retain an interest in each farm or ranch acquired with a loan made under this section that shall—

"(A) be secured by the farm or ranch;

"(B) be junior only to such interests in the farm or ranch as may be conveyed at the time of acquisition to the person (including a lender) from whom the borrower obtained a loan used to acquire the farm or ranch; and

"(C) require the borrower to obtain the permission of the Secretary before the borrower may grant an additional security interest in the farm or ranch.

"(c) LIMITATIONS.—

"(1) BORROWERS REQUIRED TO MAKE MINIMUM DOWN PAYMENT.—The Secretary shall not make a loan under this section to any borrower with respect to a farm or ranch if the contribution of the borrower to the down payment on the farm or ranch will be less than 10 percent of the purchase price of the farm or ranch.

"(2) MAXIMUM PRICE OF PROPERTY TO BE ACQUIRED.—The Secretary shall not make a loan under this section with respect to a farm or ranch for which the purchase price or appraisal value, whichever is lower, exceeds $250,000.

"(3) PROHIBITED TYPES OF FINANCING.—The Secretary shall not make a loan under this section with respect to a farm or ranch if the farm or ranch is to be acquired with other financing that contains any of the following conditions:

"(A) The financing is to be amortized over a period of less than 30 years.

"(B) A balloon payment will be due on the financing during the 10-year period beginning on the date the loan is to be made by the Secretary.

"(d) ADMINISTRATION.—In carrying out this section, the Secretary shall, to the maximum extent practicable—

"(1) facilitate the transfer of farms and ranches from retiring farmers and ranchers

to persons eligible for insured loans under this subtitle;

"(2) make efforts to widely publicize the availability of loans under this section among—

"(A) potentially eligible recipients of the loans;

"(B) retiring farmers and ranchers; and

"(C) applicants for farm ownership loans under this subtitle;

"(3) encourage retiring farmers and ranchers to assist in the sale of their farms and ranches to qualified beginning farmers and ranchers by providing seller financing; and

"(4) coordinate the loan program established by this section with State programs that provide farm ownership or operating loans for beginning farmers and ranchers.".

(b) AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN BEGINNING FARMERS AND RANCHERS.—Subtitle A (7 U.S.C. 1922 et seq.) (as amended by subsection (a) of this section) is further amended by adding at the end the following new section:

**"SEC. 310F. AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN QUALIFIED BEGINNING FARMERS AND RANCHERS.**

"(a) ASSISTANCE PROHIBITED FOR A LIMITED PERIOD.—Except as otherwise provided in this section, if the Secretary approves the application of a qualified beginning farmer or rancher (referred to in this section as the 'applicant') for assistance under section 318, the Secretary shall not make a loan under this subtitle to the applicant or provide a guarantee under section 309(h) with respect to any farm real estate loan made to the applicant.

"(b) AVAILABILITY OF DOWN PAYMENT LOANS.—After the applicable period, the Secretary may make an insured loan under this subtitle, or a down payment loan under section 310E, to an applicant if—

"(1) throughout the applicable period, the applicant conducted an operation for which assistance is provided under section 318 in accordance with the plan for special assistance; and

"(2) the applicant is otherwise eligible for the loan.

"(c) AVAILABILITY OF LOAN GUARANTEES.—After the applicable period, the Secretary may guarantee under section 309(h) the repayment of a commercial or cooperative loan made to an applicant referred to in subsection (a) if—

"(1) throughout the applicable period, the applicant conducted the operation for which assistance is provided under section 318 in accordance with the plan for special assistance; and

"(2) the applicant is otherwise eligible for the loan guarantee.

"(d) APPLICABLE PERIOD DEFINED.—As used in this section, the term 'applicable period' means the first 5 years for which an applicant has operated a farm or ranch, including the period of time the applicant is provided assistance under section 318.".

**SEC. 8. SPECIAL ASSISTANCE TO CERTAIN QUALIFIED BEGINNING FARMERS AND RANCHERS.**

Subtitle B (7 U.S.C. 1941 et seq.) is amended by adding at the end the following new section:

**"SEC. 318. SPECIAL ASSISTANCE TO CERTAIN QUALIFIED BEGINNING FARMERS AND RANCHERS.**

"(a) IN GENERAL.—The Secretary shall provide special assistance in accordance with this section to enable a qualified beginning farmer or rancher who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 5 years (referred to in this section as the 'applicant'), to conduct viable farming or ranching operations.

"(b) SUBMISSION OF PLAN OF FARM OPERATION.—An applicant who desires to apply for special assistance under this section shall submit a plan, in coordination with activities conducted under sections 359, 360, 361, and 362, that—

"(1) describes, for each of the first 5 years for which assistance under this section is sought for the operation—

"(A) how the operation is to be conducted;

"(B) the types and quantities of commodities to be produced by the operation;

"(C) the production methods and practices to be employed by the operation;

"(D) the conservation measures to be taken in the operation;

"(E) the equipment needed to conduct the operation (including any expected replacements for the equipment) and, with respect to each item of needed equipment, whether the applicant owns, leases, or otherwise has access to the item, or proposes to purchase, lease, or otherwise gain access to the item;

"(F) the expected income and expenses of the operation;

"(G) the expected credit needs of the operation, including the types and amounts of assistance to be sought under this section; and

"(H) the site or sites at which the operation is (or is to be) located; and

"(2) projects the financial status of the operation after assistance under this section has been provided for a period of not more than 10 years, consistent with section 319, as is necessary for the operation to become financially viable without further assistance from the Secretary, including specific goals that the applicant projects to meet in order to progress toward graduation as expeditiously as possible.

"(c) DETERMINATIONS BY THE COUNTY COMMITTEE; APPROVAL OF PLAN.—The county committee shall approve a plan submitted by an applicant in accordance with subsection (b) if the county committee determines that—

"(1) the applicant has not operated a farm or ranch, or has operated a farm or ranch for not more than 5 years;

"(2) during the 5-year period ending with the submission of the plan, the applicant has had sufficient education and experience to indicate that the applicant is able to conduct a successful farming or ranching operation, as the case may be;

"(3) the applicant owns, leases, or has a commitment to have leased to the applicant the site or sites of the operation;

"(4) there is, or will be, available to the applicant equipment sufficient to conduct the operation in accordance with the plan;

"(5) the applicant agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require; and

"(6) the applicant is otherwise eligible for assistance under this title.

"(d) DETERMINATION BY THE SECRETARY; APPROVAL OF APPLICATION FOR ASSISTANCE.—The Secretary shall approve an application for assistance under this section for an operation described in a plan approved by a county committee under this section if the Secretary determines that—

"(1) the operation would generate income sufficient to cover the expenses of the operation, debt service, and adequate living expenses of the applicant, to the extent that other income would not cover the living expenses, if the operation received assistance under this section as provided for in the plan; and

"(2) during the commitment period established in accordance with subsection (e)(1), the operation will be financially viable without further assistance from the Secretary and the identified goals are reasonable and practicable.

"(e) PROVISION OF ASSISTANCE.—

"(1) DETERMINATION OF COMMITMENT PERIOD.—

"(A) INITIAL DETERMINATION.—In approving an application under subsection (d), the Secretary shall, subject to subparagraph (C), determine the period during which assistance under this section is to be provided for the operation described in the application (referred to in this subsection as the 'commitment period').

"(B) AUTHORITY TO EXTEND PERIOD; NO AUTHORITY TO REDUCE PERIOD.—At any time, the Secretary may, subject to subparagraph (C) and subsections (f) and (g), extend the duration of the commitment period. The Secretary shall not reduce the duration of the commitment period.

"(C) LIMITATIONS.—

"(i) IN GENERAL.—The duration of any commitment period (including any extensions of the period) shall not exceed 10 years and shall be consistent with section 319.

"(ii) ELIGIBILITY FOR INSURED OPERATING LOANS.—During the commitment period, an applicant shall not be eligible to receive an insured operating loan under this section after the date that is 8 years after the date on which the applicant first receives assistance under this section.

"(2) OPERATING LOANS; LOAN GUARANTEES.—

"(A) IN GENERAL.—To the extent that an applicant whose application is approved under subsection (d) is unable to obtain sufficient credit from commercial or cooperative lenders to finance the operation described in the application at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is (or is to be) located, for loans for similar purposes and periods of time), the Secretary shall, subject to the availability of funds and to subsections (f) and (g) and consistent with sections 360 and 362, make a conditional commitment to the applicant for each of the years of the commitment period—

"(i) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of 90 percent of the loan principal and interest;

"(ii)(I) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of 90 percent of the loan principal and interest and an interest subsidy payment in the amount necessary to ensure that the applicant qualifies for such a loan but not more than the amount of interest assistance allowed by section 351; or

"(II) if during any of the first 4 years for which assistance is provided under this section the Secretary determines that the applicant will not qualify for a loan described in subclause (I), an interest subsidy payment sufficient to ensure that the effective rate of interest payable by the applicant on the loan equals the rate of interest charged to low income, limited resource borrowers on insured operating loans made under this subtitle that are of comparable size and maturity; or

"(iii) to make an insured loan under this subtitle to the applicant, in the amount

specified in the plan contained in the application, at an interest rate that is no higher than the interest rate charged to regular borrowers and no lower than the interest rate charged to low income, limited resource borrowers under this subtitle.

"(3) LOANS OR GUARANTEES FOR NEW OR IMPROVED EQUIPMENT.—The Secretary shall make a commitment to any applicant whose application is approved under subsection (d) to provide the applicant with loans under this subtitle or loan guarantees under section 309(h) to finance the acquisition, improvement, or repair of equipment needed in the operation described in the application if the plan contained in the application provides for the commitment, to the extent that the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for such purposes at reasonable rates and terms (taking into consideration prevailing private and cooperative rates and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time).

"(4) PRIORITY IN PURCHASE OF INVENTORY EQUIPMENT; LOANS OR GUARANTEES FOR THE PURCHASES IN CERTAIN CASES.—During the commitment period, the Secretary shall—

"(A) accord the applicant whose application is approved under subsection (d) priority for the purchase of equipment in the inventory of the Farmers Home Administration necessary for the success of the operation described in the application; and

"(B) provide the applicant with loans under this subtitle or loan guarantees under section 309(h) to finance the purchases if the plan contained in the application provides for the assistance, to the extent that the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for such purpose at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time).

"(5) OTHER KINDS OF ASSISTANCE.—During the commitment period, the Farmers Home Administration, the Extension Service, the Soil Conservation Service, and the other entities of the Department of Agriculture shall provide the applicant with such other assistance and information as may be needed in developing and implementing the operation described in the application.

"(6) FEES.—

"(A) SECRETARY.—The Secretary shall not charge a fee to any person (including a lender) in connection with any loan guarantee provided in accordance with this section.

"(B) LENDER.—A lender may charge a loan origination and servicing fee in connection with a loan or loan guarantee provided in accordance with this section in an amount not to exceed 1 percent of the amount of the loan.

"(f) ANNUAL PLAN REVISIONS REQUIRED AS CONDITION OF CONTINUED ASSISTANCE.—The Secretary shall not provide assistance under this section for an operation for any particular year after the first year for which the assistance is provided, unless—

"(1) not later than 60 days before the assistance is to be first provided for the particular year, the plan describing the operation has been revised, pursuant to section 360, based on the experience of the year preceding the particular year, to provide the information required by subsection (b) for the 5-year period beginning with the particular year (or, if shorter, the period beginning with the particular year and ending with the year in which the plan projects the operation as becoming financially viable); and

"(2) the Secretary has approved the revised plan.

"(g) EFFECTS OF AVOIDABLE FAILURE TO ACHIEVE GOALS.—

"(1) TERMINATION OF COMMITMENTS.—The Secretary shall revoke commitment for assistance made to an applicant under this section if the operation of the applicant fails, for 2 consecutive years, to meet the goals specified in the plan, unless the failure has not materially reduced the likelihood of the operation becoming financially viable and is due to circumstances beyond the control of the applicant.

"(2) SUSPENSION OF ELIGIBILITY FOR ASSISTANCE.—During the 3-year period that begins with the date a commitment made to an applicant is revoked under paragraph (1), the applicant shall not be eligible for assistance under this section.".

**SEC. 9. GRADUATION OF BORROWERS WITH OPERATING LOANS OR GUARANTEES TO PRIVATE COMMERCIAL CREDIT.**

Subtitle B (7 U.S.C. 1941 et seq.) (as amended by section 8 of this Act) is further amended by adding at the end the following new section:

**"SEC. 319. GRADUATION OF BORROWERS WITH OPERATING LOANS OR GUARANTEES TO PRIVATE COMMERCIAL CREDIT.**

"(a) GRADUATION PLAN.—The Secretary shall establish a plan, in coordination with activities under sections 359, 360, 361, and 362, to encourage each borrower with an outstanding loan under this subtitle or with respect to whom there is an outstanding guarantee under this subtitle to graduate to private commercial or other sources of credit.

"(b) LIMITATION ON PERIOD FOR WHICH BORROWERS ARE ELIGIBLE FOR ASSISTANCE UNDER THIS SUBTITLE.—Notwithstanding any other provision of this subtitle:

"(1) GENERAL RULE.—Except as provided in paragraph (2), the Secretary shall not—

"(A) make a loan to a borrower under this subtitle for any year after the 10th year for which such a loan is made to the borrower; or

"(B) guarantee for any year a loan made to a borrower for a purpose specified in this subtitle, after the 15th year for which loans under this subtitle are made to, or such a guarantee is provided with respect to, the borrower.

"(2) TRANSITION RULE.—If, as of the date of enactment of this section, the Secretary has made a loan to a borrower under this subtitle for 5 or more years, or has provided a guarantee for 10 or more years with respect to one or more loans made to the borrower for a purpose specified in this subtitle, the Secretary shall not make a loan to the borrower under this subtitle, or provide such a guarantee with respect to a loan made to the borrower for a purpose specified in this subtitle, after the 5th year occurring after the date of enactment for which a loan is made under this subtitle to, or such a guarantee is provided with respect to, the borrower.".

**SEC. 10. CONSIDERATION OF BORROWERS FOR LOAN SERVICE PROGRAMS.**

The first sentence of section 331D(e) (7 U.S.C. 1981d(e)) is amended by inserting after "not later than 60 days after receipt of the notice required in this section" the following: "or, in extraordinary circumstances as determined by the applicable State director, after the 60-day period".

**SEC. 11. TIME PERIOD WITHIN WHICH COUNTY COMMITTEE IS REQUIRED TO MEET TO CONSIDER APPLICATIONS FOR FARM OWNERSHIP AND OPERATING LOANS AND GUARANTEES AND BEGINNING FARMER PLANS.**

Section 332 (7 U.S.C. 1982) is amended—

(1) in subsection (c), by striking "The committee" and inserting "Subject to subsection (e), the committee"; and

(2) by adding at the end the following new subsection:

"(e) The county committee shall meet to consider approval of an application received by the committee for a loan under this title, a guarantee under section 309(h), or a plan of farm operation under section 318, not later than—

"(1) 5 days after receipt of the application if at the time of the receipt there is at least one other such application or plan pending; or

"(2) 15 days after receipt of the application if at the time of the receipt there are no other such applications or plans pending.".

**SEC. 12. INCREASE IN PERIOD DURING WHICH COUNTY COMMITTEE LOAN ELIGIBILITY CERTIFICATION CONTINUES IN EFFECT.**

Section 333(2)(A)(iii) (7 U.S.C. 1983(2)(A)(iii)) is amended by striking "2 years" and inserting "5 years".

**SEC. 13. PROCESSING OF APPLICATIONS FOR FARM OPERATING LOANS.**

Section 333A(a)(2) (7 U.S.C. 1983a(a)(2)) is amended—

(1) by inserting "(A)" after "(2)";

(2) by inserting "(other than under subtitle B)" after "under this title"; and

(3) by adding at the end the following new subparagraph:

"(B)(i) Not later than 10 calendar days after the Secretary receives an application for an operating loan or loan guarantee under subtitle B, the Secretary shall notify the applicant of any information required before a decision may be made on the application. On receipt of an application, the Secretary shall request from other parties such information as may be needed in connection with the application.

"(ii) Not later than 15 calendar days after the date an agency of the Department of Agriculture receives a request for information made pursuant to clause (i), the agency shall provide the Secretary with the requested information.

"(iii) If, not later than 20 calendar days after the date a request is made pursuant to clause (i) with respect to an application, the Secretary has not received the information requested, the Secretary shall notify the applicant and the district office of the Farmers Home Administration, in writing, of the outstanding information.

"(iv) A county office shall notify the district office of the Farmers Home Administration of each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 days after receipt, and the reasons the application is pending.

"(v) A district office that receives a notice provided under clause (iv) with respect to an application shall immediately take steps to ensure that final action is taken on the application not later than 15 days after the date of the receipt of the notice.

"(vi) The district office shall report to the State office of the Farmers Home Administration on each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 days after receipt by the county committee, and the reasons the application is pending.

"(vii) Each month, the Secretary shall notify the Committee on Agriculture of the

House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, on a State-by-State basis, as to each application for an operating loan or loan guarantee under subtitle B on which final action had not been taken within 60 calendar days after receipt by the Secretary, and the reasons final action had not been taken.".

**SEC. 14. GRADUATION OF SEASONED DIRECT LOAN BORROWERS TO THE LOAN GUARANTEE PROGRAM.**

Section 333A (7 U.S.C. 1983a) is amended by adding at the end the following new subsection:

"(f)(1) As used in this subsection:

"(A) The term 'approved lender' means a lender approved prior to the date of enactment of this subsection by the Secretary under the approved lender program established by exhibit A to subpart B of part 1980 of title 7, Code of Federal Regulations (as in effect on January 1, 1991), or a lender certified under section 114.

"(B) The term 'seasoned direct loan borrower' means a borrower receiving a direct loan under this title who has been classified as 'commercial' or 'standard' under subpart W of part 2006 of the Instruction Manual (as in effect on January 1, 1991).

"(2) The Secretary, or a contracting third party, shall annually review under section 360 the loans of each seasoned loan borrower. If, based on the review, it is determined that a borrower would be able to obtain a loan, guaranteed by the Secretary, from a commercial or cooperative lender at reasonable rates and terms for loans for similar purposes and periods of time, the Secretary shall assist the borrower in applying for the commercial or cooperative loan.

"(3) In accordance with section 362, the Secretary shall prepare a prospectus on each seasoned direct loan borrower determined eligible to obtain a guaranteed loan. The prospectus shall contain a description of the amounts of loan guarantee and interest assistance that the Secretary will provide to the seasoned direct loan borrower to enable the seasoned direct loan borrower to carry out a financially viable farming plan if a guaranteed loan is made.

"(4) With the approval of the borrower, the Secretary shall provide the prospectus of the seasoned direct loan borrower to each approved lender whose lending area includes the location of the seasoned direct loan borrower. If the Secretary receives an offer from an approved lender to extend credit to the seasoned direct loan borrower under terms and conditions contained in the prospectus, the seasoned direct loan borrower shall not be eligible for an insured loan from the Secretary under subtitle A or B, except as otherwise provided in this subsection.

"(5) If the Secretary is unable to provide loan guarantees and, if necessary, interest assistance to the seasoned direct loan borrower under this subsection in amounts sufficient to enable the seasoned direct loan borrower to borrow from commercial sources the amount required to carry out a financially viable farming plan, or if the Secretary does not receive an offer from an approved lender to extend credit to a seasoned direct loan borrower under the terms and conditions contained in the prospectus, the Secretary shall make an insured loan to the seasoned direct loan borrower under subtitle A or B, whichever is applicable.

"(6) To the extent necessary for the borrower to obtain a loan, guaranteed by the Secretary, from a commercial or cooperative lender, the Secretary shall provide interest rate reductions as provided for under section 351.".

**SEC. 15. SIMPLIFIED APPLICATION FOR GUARANTEED LOANS OF $50,000 OR LESS.**

Section 333A (7 U.S.C. 1983a) (as amended by section 14 of this Act) is further amended by adding at the end the following new subsection:

"(g)(1) The Secretary shall provide to lenders a short, simplified application form for guarantees under this title of loans the principal amount of which is $50,000 or less.

"(2) In developing the application, the Secretary shall—

"(A) consult with commercial and cooperative lenders; and

"(B) ensure that—

"(i) the form can be completed manually or electronically, at the option of the lender;

"(ii) the form minimizes the documentation required to accompany the form;

"(iii) the cost of completing and processing the form is minimal; and

"(iv) the form can be completed and processed in an expeditious manner.".

**SEC. 16. INVENTORY LEASE OR LEASE WITH OPTION TO PURCHASE.**

The fourth sentence of section 335(c)(1) (7 U.S.C. 1985(c)(1)) is amended—

(1) by inserting "(A)" after "shall be"; and

(2) by inserting before the period at the end the following: "or (B) leased to persons eligible for assistance under the provisions of any law administered by the Farmers Home Administration or the Rural Development Administration under an annual lease or a lease with an option to purchase, with a preference for sale".

**SEC. 17. TRANSFER OF INDIAN LANDS PLEDGED AS COLLATERAL FOR FmHA LOANS.**

Section 335(e)(1) (7 U.S.C. 1985(e)(1)) is amended—

(1) in subparagraph (D)(i), by striking "If" and inserting "Except as provided in subparagraph (G), if"; and

(2) by adding at the end the following new subparagraph:

"(G)(i) If—

"(I) the real property described in subparagraph (A)(i) is located within an Indian reservation;

"(II) the borrower-owner is an Indian tribe that has jurisdiction over the reservation in which the real property is located or the borrower-owner is a member of an Indian tribe;

"(III) the borrower-owner has obtained a loan made, insured, or guaranteed under this title; and

"(IV) the borrower-owner and the Secretary have exhausted all of the procedures provided for in this title to permit a borrower-owner to retain title to the real property, such that it is necessary for the borrower-owner to relinquish title,

the Secretary shall dispose of or administer the property only as provided in subparagraph (D), as modified by this subparagraph.

"(ii) The Secretary shall provide the borrower-owner of real property that is described in clause (i) with written notice of—

"(I) the right of the borrower-owner to voluntarily convey the real property to the Secretary; and

"(II) the fact that real property so conveyed will be placed in the inventory of the Secretary.

"(iii) The Secretary shall provide the borrower-owner of the real property with written notice of the rights and protections provided under this title to the borrower-owner, and the Indian tribe that has jurisdiction over the reservation in which the real property is located, from foreclosure or liquidation of the real property, including written notice of—

"(I) the provisions of subparagraphs (C)(i), (C)(ii), and (D), this subparagraph, and subsection (g)(6);

"(II) if the borrower-owner does not voluntarily convey the real property to the Secretary, that—

"(aa) the Secretary may foreclose on the property;

"(bb) in the event of foreclosure, the property will be offered for sale;

"(cc) the Secretary must offer a bid for the property that is equal to the fair market value of the property or the outstanding principal and interest of the loan, whichever is higher;

"(dd) the property may be purchased by another party; and

"(ee) if the property is purchased by another party, the property will not be placed in the inventory of the Secretary and the borrower-owner will forfeit the rights and protections provided under this title; and

"(III) the opportunity of the borrower-owner to consult with the Indian tribe that has jurisdiction over the reservation in which the real property is located or counsel to determine if State or tribal law provides rights and protections that are more beneficial than those provided the borrower-owner under this title.

"(iv)(I) Except as provided in subclause (II), the Secretary shall accept the voluntary conveyance of real property described in clause (i).

"(II) If a hazardous substance (as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) is located on the property and the Secretary takes remedial action to protect human health or the environment if the property is taken into inventory, the Secretary shall accept the voluntary conveyance of the property only if the Secretary determines that it is in the best interests of the Federal Government.

"(v) If a borrower-owner does not voluntarily convey to the Secretary real property described in clause (i), at least 30 days before a foreclosure sale of the property, the Secretary shall provide written notice to the Indian tribe that has jurisdiction over the reservation in which the real property is located of—

"(I) the sale;

"(II) the fair market value of the property; and

"(III) the requirements of this subparagraph.

"(vi)(I) Except as provided in subclause (II), at a foreclosure sale of real property described in clause (i), the Secretary shall offer a bid for the property that is equal to the higher of—

"(aa) the fair market value of the property; or

"(bb) the outstanding principal and interest of the loan.

"(II) If a hazardous substance (as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) is located on the property and the Secretary takes remedial action to protect human health or the environment if the property is taken into inventory, subclause (I) shall apply only if the Secretary determines that it is in the best interests of the Federal Government.".

**SEC. 18. DEBT SERVICE MARGIN REQUIREMENTS; CERTIFIED LENDERS PROGRAM.**

Section 339 (7 U.S.C. 1989) is amended—

(1) by striking "SEC. 339. The" and inserting the following:

"SEC. 339. RULES AND REGULATIONS.

"(a) IN GENERAL.—The"; and

(2) by adding at the end the following new subsections:

"(b) DEBT SERVICE MARGIN REQUIREMENTS.—Notwithstanding subsection (a), in providing farmer program loan guarantees under this title, the Secretary shall consider the income of the borrower adequate if the income is equal to or greater than the income necessary—

"(1) to make principal and interest payments on all debt obligations of the borrower, in a timely manner;

"(2) to cover the necessary living expenses of the family of the borrower; and

"(3) to pay all other obligations and expenses of the borrower not financed through debt obligations referred to in paragraph (1), including expenses of replacing capital items (determined after taking into account depreciation of the items).

"(c) CERTIFIED LENDERS PROGRAM.—

"(1) IN GENERAL.—The Secretary shall establish a program under which the Secretary shall guarantee loans for any purpose specified in subtitle B that are made by lending institutions certified by the Secretary.

"(2) CERTIFICATION REQUIREMENTS.—The Secretary shall certify a lending institution that meets such criteria as the Secretary may prescribe in regulations, including the ability of the institution to properly make, service, and liquidate the loans of the institution.

"(3) CONDITION OF CERTIFICATION.—As a condition of the certification, the Secretary shall require the institution to undertake to service the loans guaranteed by the Secretary under this subsection, using standards that are not less stringent than generally accepted banking standards concerning loan servicing employed by prudent commercial or cooperative lenders. The Secretary shall, at least annually, monitor the performance of each certified lender to ensure that the conditions of the certification are being met.

"(4) EFFECT OF CERTIFICATION.—Notwithstanding any other provision of law:

"(A) The Secretary shall guarantee 80 percent of a loan made under this subsection by a certified lending institution as described in paragraph (1), subject to county committee certification that the borrower of the loan meets the eligibility requirements and such other criteria as may be applicable to loans guaranteed by the Secretary under other provisions of this title.

"(B) With respect to loans to be guaranteed by the Secretary under this subsection, the Secretary shall permit certified lending institutions to make appropriate certifications (as provided by regulations issued by the Secretary)—

"(i) relating to issues such as creditworthiness, repayment ability, adequacy of collateral, and feasibility of farm operation; and

"(ii) that the borrower is in compliance with all requirements of law, including regulations issued by the Secretary.

"(C) The Secretary shall approve or disapprove a guarantee not later than 14 calendar days after the date that the lending institution applied to the Secretary for the guarantee. If the Secretary rejects the loan application within the 14-day period, the Secretary shall state, in writing, all of the reasons the application was rejected.

"(5) RELATIONSHIP TO OTHER REQUIREMENTS.—This subsection shall not affect the responsibility of the Secretary to certify eligibility, review financial information, and otherwise assess an application.".

SEC. 19. DEFINITION OF QUALIFIED BEGINNING FARMER OR RANCHER.

Section 343(a) (7 U.S.C. 1991(a)) is amended—

(1) by striking "this title (1) the term" and all that follows through "fish farming," at the end of paragraph (1) and inserting "this title:

"(1) The term 'farmer' includes a person who is engaged in, or who, with assistance afforded under this title, intends to engage in, fish farming.";

(2) by indenting, and aligning the margins of, paragraphs (2) through (10) so as to align with paragraph (1) (as amended by paragraph (1));

(3) by striking "the" the first place it appears in each of such paragraphs and inserting "The";

(4) by striking the comma at the end of each of paragraphs (2) through (8) and inserting a period;

(5) by striking ", and" at the end of paragraph (9) and inserting a period; and

(6) by adding at the end the following new paragraph:

"(11) The term 'qualified beginning farmer or rancher' means an applicant—

"(A) who is eligible for assistance under this title;

"(B) who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years;

"(C) in the case of a cooperative, corporation, partnership, or joint operation, who has members, stockholders, partners, or joint operators who are all related to one another by blood or marriage;

"(D)(i) in the case of an owner and operator of a farm or ranch, who—

"(I) in the case of a loan made to an individual, individually or with the immediate family of the applicant—

"(aa) materially and substantially participates in the operation of the farm or ranch; and

"(bb) provides substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located; or

"(II)(aa) in the case of a loan made to a cooperative, corporation, partnership, or joint operation, has members, stockholders, partners, or joint operators, materially and substantially participate in the operation of the farm or ranch; and

"(bb) in the case of a loan made to a corporation, has stockholders, all of whom are qualified beginning farmers or ranchers; and

"(ii) in the case of an applicant seeking to own and operate a farm or ranch, who—

"(I) in the case of a loan made to an individual, individually or with the immediate family of the applicant, will—

"(aa) materially and substantially participate in the operation of the farm or ranch; and

"(bb) provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located; or

"(II)(aa) in the case of a loan made to a cooperative, corporation, partnership, or joint operation, will have members, stockholders, partners, or joint operators, materially and substantially participate in the operation of the farm or ranch; and

"(bb) in the case of a loan made to a corporation, has stockholders, all of whom are qualified beginning farmers or ranchers;

"(E) who agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require;

"(F) who does not own land or who, directly or through interests in family farm corporations, owns land, the aggregate acreage of which does not exceed 15 percent of the median acreage of the farms or ranches, as the case may be, in the county in which the farm or ranch operations of the applicant are located, as reported in the most recent census of agriculture taken under section 142 of title 13, United States Code; and

"(G) who demonstrates that the available resources of the applicant and spouse (if any) of the applicant are not sufficient to enable the applicant to continue farming or ranching on a viable scale.".

SEC. 20. TARGETING OF FUNDS.

(a) FARM OPERATING LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b) (7 U.S.C. 1994(b)) is amended by adding at the end the following new paragraph:

"(5)(A) In expending funds available for insured operating loans under subtitle B, including loans made under section 318—

"(i) during the first 6 months of fiscal year 1994, the Secretary shall reserve not less than 30 percent of the funds available for the fiscal year to make insured operating loans to qualified beginning farmers or ranchers;

"(ii) during the first 6 months of each of fiscal years 1995 and 1996, the Secretary shall reserve not less than 40 percent of the funds available for the fiscal year to make insured operating loans to qualified beginning farmers or ranchers; and

"(iii) during the first 6 months of each of fiscal years 1997 and thereafter, the Secretary may reserve not more than 50 percent of the funds available for the fiscal year to make insured operating loans to qualified beginning farmers or ranchers.

"(B) In each fiscal year described in subparagraph (A), with regard to the funds not reserved under subparagraph (A), a qualified beginning farmer or rancher may apply for insured operating loans, but shall not receive any preference as a result of status as a qualified beginning farmer or rancher.".

(b) PORTIONS OF FARM OWNERSHIP LOAN GUARANTEE FUNDS TARGETED TO BEGINNING FARMERS OR RANCHERS.—Section 346(b)(2) (7 U.S.C. 1994(b)(2)) is amended by adding at the end the following new sentence: "Not less than 25 percent of the amounts appropriated for guarantees of farm ownership loans for each of the fiscal years 1994, 1995, 1996, and 1997 shall be reserved by the Secretary during the first 6 months of the respective fiscal year for guarantees of farm ownership loans to beginning farmers or ranchers.".

(c) FARM OWNERSHIP LOANS.—

(1) PERCENTAGE OF INSURED FARM OWNERSHIP LOAN FUNDS RESERVED FOR BEGINNING FARMERS OR RANCHERS.—Section 346(b)(3) is amended by adding at the end the following new subparagraph:

"(D) To the extent that it is not inconsistent with an exercise of authority under section 355, in expending funds available for insured farm ownership loans—

"(i) during fiscal year 1994, the Secretary shall reserve not less than 55 percent of the funds available for the fiscal year to make insured farm ownership loans to qualified beginning farmers or ranchers;

"(ii) during fiscal year 1995, the Secretary shall reserve not more than 65 percent of the funds available for the fiscal year to make insured farm ownership loans to qualified beginning farmers or ranchers; and

"(iii) during each of fiscal years 1996 and thereafter, the Secretary may reserve not less than 65 percent and not more than 70

percent of the funds available for the fiscal year to make insured farm ownership loans to qualified beginning farmers or ranchers.".

(2) FUNDS RESERVED FOR DOWN PAYMENT LOAN PROGRAM.—Section 346(b)(3) (as amended by paragraph (1) of this subsection) is further amended by adding at the end the following new subparagraph:

"(E) To the extent that it is not inconsistent with an exercise of authority under section 355, the Secretary shall reserve not less than 60 percent of the amounts reserved for qualified beginning farmers or ranchers under subparagraph (D) for any fiscal year for down payment loans under section 310E.".

(3) CERTAIN UNOBLIGATED DOWN PAYMENT LOAN PROGRAM FUNDS AVAILABLE FOR ANY TYPE OF INSURED FARM OWNERSHIP LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b)(3) (as amended by paragraph (2) of this subsection) is further amended by adding at the end the following new subparagraph:

"(F) To the extent that it is not inconsistent with an exercise of authority under section 355, to the maximum extent practicable, any funds reserved for down payment loans under section 310E for a fiscal year by reason of subparagraph (E) that are not obligated by the end of the second quarter of the fiscal year shall be available during the third quarter of the fiscal year for any type of insured farm ownership loans to beginning farmers and ranchers.".

(d) INTEREST RATE ASSISTANCE PROGRAM.—Section 346(b)(3) (as amended by subsection (c)(3) of this section) is further amended by adding at the end the following new subparagraph:

"(G) Not less than 40 percent of the amounts available for the interest rate reduction program under section 351 shall be reserved for the first 6 months of each fiscal year for assistance to beginning farmers or ranchers.".

(e) DOWN PAYMENT LOAN PROGRAM.—Section 346(b) (as amended by subsection (a) of this section) is further amended by adding at the end the following new paragraph:

"(6) Notwithstanding any other provision of this title, at the end of the third quarter of each fiscal year, the Secretary shall transfer, and use to carry out section 310E, 75 percent of the amount that would otherwise be available for guaranteed operating loans.".

**SEC. 21. EQUAL ACCESS TO FmHA ASSISTANCE BY GENDER.**

(a) TARGET PARTICIPATION RATES.—Section 355(a) (7 U.S.C. 2003(a)) is amended—

(1) in paragraph (2), by striking "In establishing" and inserting "Except as provided in paragraph (3), in establishing"; and

(2) by adding at the end the following new paragraph:

"(3) GENDER.—With respect to gender, target participation rates shall take into consideration the number of current and potential socially disadvantaged farmers and ranchers in a State in proportion to the total number of farmers and ranchers in the State.".

(b) TARGETING OF LOANS TO MEMBERS OF GROUPS WHOSE MEMBERS HAVE BEEN SUBJECTED TO GENDER PREJUDICE.—Section 355(e)(1) (7 U.S.C. 2003(e)(1)) is amended by striking "or ethnic" and inserting ", ethnic, or gender".

(c) RECORDKEEPING OF LOANS BY BORROWER'S GENDER.—Subtitle D (7 U.S.C. 1981 et seq.) is amended by adding at the end the following new section:

**"SEC. 369. RECORDKEEPING OF LOANS BY BORROWER'S GENDER.**

"The Secretary shall classify, by gender, records of applicants for loans and loan guarantees under this title.".

**SEC. 22. STATE MEDIATION PROGRAMS.**

Section 502 of the Agricultural Credit Act of 1987 (7 U.S.C. 5102) is amended—

(1) in subsection (b)(1), by striking "50" and inserting "70"; and

(2) in subsection (c), by inserting "with respect to which the amount was paid" before the period.

**SEC. 23. REGULATIONS.**

(a) INTERIM REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall issue such interim regulations as are necessary to implement this Act and the amendments made by this Act.

(b) FINAL REGULATIONS.—Not later than October 1, 1993, the Secretary of Agriculture shall issue such final regulations as are necessary to implement this Act and the amendments made by this Act.

## BANKRUPTCY AMENDMENTS OF 1992

## HEFLIN AMENDMENT NO. 3431

Mr. FORD (for Mr. HEFLIN) proposed an amendment to the amendments of the House to the bill (S. 1985) to establish a commission to review the Bankruptcy Code, to amend the Bankruptcy Code in certain aspects of its application to cases involving commerce, credit, and individual debtors and add a temporary chapter to govern reorganization of small businesses, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "Bankruptcy Amendments of 1992".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.

TITLE I—IMPROVED BANKRUPTCY ADMINISTRATION

Sec. 101. Expedited hearing on automatic stay.
Sec. 102. Expedited filing of plans under chapter 11.
Sec. 103. Expedited filing of plans under chapter 12.
Sec. 104. Expedited procedure for reaffirmation of debts.
Sec. 105. Powers of bankruptcy courts.
Sec. 106. Participation by bankruptcy administrator at meetings of creditors and equity security holders.
Sec. 107. Definition relating to eligibility to serve on chapter 11 committees.
Sec. 108. Increased incentive compensation for trustees.
Sec. 109. Dollar adjustments.
Sec. 110. Bankruptcy fees.
Sec. 112. Premerger notification.
Sec. 113. Allowance of creditor committee expenses.

TITLE II—CONSUMER BANKRUPTCY ISSUES

Sec. 201. Period for curing default relating to principal residence.
Sec. 202. Preservation of home mortgage liens.
Sec. 203. Nondischargeability of fine under chapter 13.
Sec. 204. Protection of child support and alimony.

TITLE III—COMMERCIAL BANKRUPTCY ISSUES

Sec. 301. Limitation on liability of non-insider transferee for avoided transfer.
Sec. 302. Perfection of purchase-money security interest.
Sec. 303. Protection of security interest in post-petition rents.
Sec. 304. Return of goods.
Sec. 305. Meetings of creditors and equity security holders.
Sec. 306. Exception to discharge.
Sec. 307. Protection of assignees of executory contracts and unexpired leases approved by court order in cases reversed on appeal.
Sec. 308. Professional fees.
Sec. 309. Proceeds of money order agreements.
Sec. 310. Airport leases.
Sec. 311. Trustee duties.
Sec. 312. Aircraft equipment and vessels; rolling stock equipment.
Sec. 313. Payment under collective bargaining agreements and payment of insurance benefits to retired employees.
Sec. 314. Payments.
Sec. 315. Seller's right to reclaim goods.

TITLE IV—GOVERNMENTAL BANKRUPTCY ISSUES

Sec. 401. Municipal bankruptcy.

TITLE V—BANKRUPTCY REVIEW COMMISSION

Sec. 501. Short title.
Sec. 502. Establishment.
Sec. 503. Duties of the Commission.
Sec. 504. Membership.
Sec. 505. Compensation of the Commission.
Sec. 506. Staff of Commission; experts and consultants.
Sec. 507. Powers of the Commission.
Sec. 508. Report.
Sec. 509. Termination.
Sec. 510. Authorization of appropriations.

TITLE VI—TECHNICAL CORRECTIONS

Sec. 601. Amendments to bankruptcy definitions, necessitated by enactment of public law 101-647.
Sec. 602. Title 28, United States Code.

TITLE VII—SEVERABILITY; EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

Sec. 701. Severability.
Sec. 702. Effective date; application of amendments.

**TITLE I—IMPROVED BANKRUPTCY ADMINISTRATION**

**SEC. 101. EXPEDITED HEARING ON AUTOMATIC STAY.**

The last sentence of section 362(e) of title 11, United States Code, is amended—

(1) by striking "commenced" and inserting "concluded", and

(2) by inserting before the period at the end the following:

", unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances".

**SEC. 102. EXPEDITED FILING OF PLANS UNDER CHAPTER 11.**

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking "On" and inserting "(1) Subject to paragraph (2), on", and

(2) by adding at the end the following:

"(2) Under paragraph (1)—

"(A) such 120-day period may not be increased beyond the 1-year period beginning on the date of the order for relief under this chapter; and

"(B) such 180-day period may not be increased beyond the 425-day period beginning on the date of the order for relief under this chapter;

unless the need for such an increase is attributable to circumstances for which the debtor should not justly be held accountable.".

**SEC. 103. EXPEDITED FILING OF PLANS UNDER CHAPTER 12.**

(a) FILING OF PLAN.—Section 1221 of title 11, United States Code, is amended by striking "an extension is substantially justified" and inserting "the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable".

(b) DELAY OF REPEAL.—Section 302(f) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554; 100 Stat. 3124; 11 U.S.C. 1201 note) is amended by striking "October 1, 1993" and inserting "October 1, 1995".

**SEC. 104. EXPEDITED PROCEDURE FOR REAFFIRMATION OF DEBTS.**

(a) REAFFIRMATION.—Section 524(c) of title 11, United States Code, is amended—

(1) in paragraph (2)—

(A) by inserting "(A)" after "(2)",

(B) by adding "and" at the end, and

(C) by inserting after subparagraph (A), as so designated, the following:

"(B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection;", and

(2) in paragraph (3)—

(A) in the matter preceding subparagraph (A) by striking "such agreement" the last place it appears,

(B) in subparagraph (A)—

(i) by inserting "such agreement" after "(A)", and

(ii) by striking "and" at the end,

(C) in subparagraph (B)—

(i) by inserting "such agreement" after "(B)", and

(ii) by adding "and" at the end, and

(3) by adding at the end the following:

"(C) the attorney fully advised the debtor of the legal effect and consequences of—

"(i) an agreement of the kind specified in this subsection; and

"(ii) any default under such an agreement;".

(b) EFFECT OF DISCHARGE.—The third sentence of section 524(d) of title 11, United States Code, is amended in the matter preceding paragraph (1) by inserting "and was not represented by an attorney during the course of negotiating such agreement" after "this section".

**SEC. 105. POWERS OF BANKRUPTCY COURTS.**

(a) STATUS CONFERENCES.—Section 105 of title 11, United States Code, is amended by adding at the end the following:

"(d) The court, on its own motion or on the motion of any party in interest, may—

"(1) hold a status conference regarding any case or proceeding under this title after notice to the parties in interest; and

"(2) unless inconsistent with another provision of this title or with applicable Bankruptcy Rules, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

"(A) sets the date by which the debtor must accept or reject an executory contract or unexpired lease; or

"(B) in a case under chapter 11 of this title—

"(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

"(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

"(iii) sets the date by which a party in interest other than a debtor may file a plan;

"(iv) fixes the notice to be provided regarding the hearing on approval of the disclosure statement;

"(v) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan; or

"(vi) directs the use of standard-form disclosure statements, plans, or other forms that have been adopted by the court.".

(b) ABSTENTION.—Section 1334 of title 28, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e), and

(2) in the second sentence of subsection (c)(2)—

(A) by inserting "(other than a decision not to abstain in a proceeding described in subsection (c)(2))" after "subsection", and

(B) by striking "Any" and inserting the following:

"(d) Any".

(c) ESTABLISHMENT, OPERATION, AND TERMINATION OF BANKRUPTCY APPELLATE PANEL SERVICE.—Section 158(b) of title 28, United States Code, is amended—

(1) by striking paragraphs (3) and (4),

(2) by redesignating paragraph (2) as paragraph (4),

(3) by striking paragraph (1) and inserting the following:

"(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

"(A) there are insufficient judicial resources available in the circuit; or

"(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference a report containing the factual basis of such finding.

"(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

"(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraphs exists.

"(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraphs exists.

"(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

"(3) Bankruptcy judges appointed under paragraph (1) shall be appointed for a term of 2 years and may be reappointed under such paragraph.", and

(4) by inserting after paragraph (4), as so redesignated, the following:

"(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

"(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.".

(d) APPEALS TO BE HEARD BY BANKRUPTCY APPELLATE PANEL SERVICE.—Section 158 of title 28, United States Code, is amended—

(1) in subsection (c) by striking "(c)" and inserting "(2)", and

(2) by inserting after subsection (b) the following:

"(c)(1) Subject to subsection (b), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

"(A) the appellant elects at the time of filing the appeal; or

"(B) any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the district court.".

(e) RULES OF PROCEDURE AND EVIDENCE; METHOD OF PRESCRIBING.—Section 2073 of title 28, United States Code, is amended—

(1) in subsection (a)(2) by striking "section 2072" and inserting "sections 2072 and 2075", and

(2) in subsections (d) and (e) by inserting "or 2075" after "2072" each place it appears.

(f) EFFECTIVE DATE OF BANKRUPTCY RULES.—Section 2075 of title 28, United States Code, is amended by striking "ninety days" and inserting "180 days".

**SEC. 106. PARTICIPATION BY BANKRUPTCY ADMINISTRATOR AT MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.**

(a) PRESIDING OFFICER.—A bankruptcy administrator appointed under section 302(d)(3)(I) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554; 100 Stat. 3123), as amended by section 317(a) of the Federal Courts Study Committee Implementation Act of 1990 (Public Law 101-650; 104 Stat. 5115), or the bankruptcy administrator's designee may preside at the meeting of creditors convened under section 341(a) of title 11, United States Code. The bankruptcy administrator or the bankruptcy administrator's designee may preside at any meeting of equity security holders convened under section 341(b) of title 11, United States Code.

(b) EXAMINATION OF THE DEBTOR.—The bankruptcy administrator or the bankruptcy administrator's designee may examine the debtor at the meeting of creditors and may administer the oath required under section 343 of title 11, United States Code.

**SEC. 107. DEFINITION RELATING TO ELIGIBILITY TO SERVE ON CHAPTER 11 COMMITTEES.**

Section 101(41) of title 11, United States Code, is amended to read as follows:

"(41) 'person' includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

"(A) acquires an asset from a person—

"(i) as a result of the operation of a loan guarantee agreement; or

"(ii) as receiver or liquidating agent of a person;

"(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

"(C) is the legal or beneficial owner of an asset of—

"(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

"(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit;".

**SEC. 108. INCREASED INCENTIVE COMPENSATION FOR TRUSTEES.**

Section 326(a) of title 11, United States Code, is amended by striking "fifteen" and all that follows through "$3,000" the last place it appears, and inserting the following: "25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000".

**SEC. 109. DOLLAR ADJUSTMENTS.**

(a) WHO MAY BE A DEBTOR UNDER CHAPTER 13.—Section 109(e) of title 11, United States Code, is amended—

(1) by striking "unsecured debts of less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000" and inserting "debts of less than $1,000,000", and

(2) by striking "unsecured debts that aggregate less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000" and inserting "debts in the aggregate of less than $1,000,000".

(b) INVOLUNTARY CASES.—Section 303(b) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$5,000" and inserting "$10,000", and

(2) in paragraph (2) by striking "$5,000" and inserting "$10,000".

(c) PRIORITIES.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3)(B) by striking "$2,000" and inserting "$4,000",

(2) in paragraph (4)(B)(i) by striking "$2,000" and inserting "$4,000",

(3) in paragraph (5) by striking "$2,000" and inserting "$4,000", and

(4) in paragraph (6) by striking "$900" and inserting "$1,800".

(d) EXEMPTIONS.—Section 522(d) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$7,500" and inserting "$15,000",

(2) in paragraph (2) by striking "$1,200" and inserting "$2,400",

(3) in paragraph (3)—

(A) by striking "$200" and inserting "$400", and

(B) by striking "$4,000" and inserting "$8,000",

(4) in paragraph (4) by striking "$500" and inserting "$1,000",

(5) in paragraph (5)—

(A) by striking "$400" and inserting "$800", and

(B) by striking "$3,750" and inserting "$7,500",

(6) in paragraph (6) by striking "$750" and inserting "$1,500",

(7) in paragraph (8) by striking "$4,000" and inserting "$8,000", and

(8) in paragraph (11)(D) by striking "$7,500" and inserting "$15,000".

(e) APPOINTMENT OF EXAMINER IN CERTAIN CIRCUMSTANCES.—Section 1104(b)(2) of title 11, United States Code, is amended by striking "$5,000,000" and inserting "$10,000,000".

**SEC. 110. BANKRUPTCY FEES.**

(a) EFFECTIVE DATE OF BANKRUPTCY FEES PRESCRIBED BY THE JUDICIAL CONFERENCE.—Section 1930(b) of title 28, United States Code, is amended by adding at the end the following:

"Such fees shall not take effect until they have been reported to the Congress by the Judicial Conference and until the expiration of 180 days after they have been thus reported.".

(b) REPORT REGARDING ENACTMENT OF IN FORMA PAUPERIS PROCEDURE.—Not later than 1 year after the date of the enactment of this Act, the Judicial Conference shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate—

(1) estimating the loss of receipts to the United States and to trustees that would result from enacting a procedure authorizing the court to waive the payment of fees and costs in effect under section 1930 of title 28, United States Code, by an individual debtor who files a voluntary case under title 11 and makes affidavit that the debtor is unable to pay such fees and costs, and

(2) suggesting alternatives for offsetting such loss.

**SEC. 112. PREMERGER NOTIFICATION.**

Subparagraphs (A) and (B) of section 363(b)(2) of title 11, United States Code, are amended to read as follows:

"(A) notwithstanding subsection (a) of such section, the notification required to be given by the debtor shall be given by the trustee; and

"(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the tenth day after the date of receipt of the notification, unless the waiting period is extended—

"(i) pursuant to subsection (e)(2) or (g)(2) of such section; or

"(ii) by the court, after notice and a hearing.".

**SEC. 113. ALLOWANCE OF CREDITOR COMMITTEE EXPENSES.**

Section 503(b) of title 11, United States Code, is amended—

(1) by striking "and" at the end of paragraph (5),

(2) by striking the period at the end of paragraph (6) and inserting "; and", and

(3) by adding at the end the following new paragraph:

"(7) the actual, necessary expenses incurred by a member of a committee appointed under section 1102 in the performance of the duties of such committee, other than claims for compensation for services rendered as a member of such committee.".

## TITLE II—CONSUMER BANKRUPTCY ISSUES

**SEC. 201. PERIOD FOR CURING DEFAULT RELATING TO PRINCIPAL RESIDENCE.**

Section 1322 of title 11, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d), and

(2) by inserting after subsection (b) the following:

"(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

"(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold under such lien and in accordance with applicable nonbankruptcy law; and

"(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to 1325(a)(5).".

**SEC. 202. PRESERVATION OF HOME MORTGAGE LIENS.**

Section 1322(b)(2) of title 11, United States Code, is amended—

(1) by striking ", other than a claim secured only by a security interest in real property that is the debtor's principal residence,", and

(2) by striking the semicolon at the end and inserting the following:

", except that—

"(A) the rights of a holder of a claim secured only by a security interest in real property that is the debtor's principal residence may not be modified; and

"(B) notwithstanding section 506(a), the rights of the holder of the most senior security interest in real property that is the debtor's principal residence may not be modified to reduce the secured claim to a value that is less than the value of the allowed claim;".

**SEC. 203. NONDISCHARGEABILITY OF FINE UNDER CHAPTER 13.**

Section 1328(a)(3) of title 11, United States Code, is amended by inserting ", or a fine to the extent such fine exceeds $500, " after "restitution".

**SEC. 204. PROTECTION OF CHILD SUPPORT AND ALIMONY.**

(a) RELIEF FROM AUTOMATIC STAY.—Section 362(b)(2) of title 11, United States Code, is amended to read as follows:

"(2) under subsection (a) of this section—

"(A) of the commencement or continuation of an action or proceeding for—

"(i) the establishment of paternity; or

"(ii) the establishment or modification of an order for alimony, maintenance, or support; or

"(B) of the collection of alimony, maintenance, or support from property that is not property of the estate;".

(b) PRIORITY OF CLAIMS.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (8) by striking "(8) Eighth" and inserting "(9) Ninth",

(2) in paragraph (7) by striking "(7) Seventh" and inserting "(8) Eighth", and

(3) by inserting after paragraph (6) the following:

"(7) Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

"(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

"(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.".

(c) PROTECTION OF LIENS.—Section 522(f)(1) of title 11, United States Code, is amended by inserting after "lien" the following:

", other than a judicial a lien that secures a debt—

"(A) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

"(B) to the extent that such debt—

"(i) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

"(ii) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.".

(d) PROTECTION AGAINST TRUSTEE AVOIDANCE.—Section 547(c) of title 11, United States Code, is amended—

(1) in paragraph (6) by striking "or" at the end,

(2) by redesignating paragraph (7) as paragraph (8), and

(3) by inserting after paragraph (6) the following:

"(7) to the extent such transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

"(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

"(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.".

(e) APPEARANCE BEFORE COURT.—Child support creditors or their representatives shall be permitted to appear and intervene without charge, and without meeting any special local court rule requirement for attorney appearances, in any bankruptcy proceeding in any bankruptcy court or district court of the United States if such representatives file a form in such court that contains information detailing the child support debt, its status, and other characteristics.

(f) CONFORMING AMENDMENTS—Title 11 of the United States Code is amended—

(1) in section 502(i) by striking "507(a)(7)" and inserting "507(a)(8)",

(2) in section 503(b)(1)(B)(i) by striking "507(a)(7)" and inserting "507(a)(8)",

(3) in section 523(a)(1)(A) by striking "507(a)(7)" and inserting "507(a)(8)",

(4) in section 724(b)(2) by striking "or 507(a)(6)" and inserting "507(a)(6), or 507(a)(7)",

(5) in section 726(b) by striking "or (7)" and inserting ", (7), or (8)",

(6) in section 1123(a)(1) by striking "507(a)(7)" and inserting "507(a)(8)",

(7) in section 1129(a)(9)—

(i) in subparagraph (B) by striking "or 507(a)(6)" and inserting ", 507(a)(6), or 507(a)(7)", and

(ii) in subparagraph (C) by striking "507(a)(7)" and inserting "507(a)(8)".

## TITLE III—COMMERCIAL BANKRUPTCY ISSUES

**SEC. 301. LIMITATION ON LIABILITY OF NON-INSIDER TRANSFEREE FOR AVOIDED TRANSFER.**

Section 550 of title 11, United States Code, is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and

(2) by inserting after subsection (b) the following:

"(c) If a transfer made between ninety days and one year before the filing of the petition—

"(1) is avoided under section 547(b) of this title; and

"(2) was made for the benefit of a creditor that at the time of such transfer was an insider;

the trustee may not recover under subsection (a) from a transferee that is not an insider.".

**SEC. 302. PERFECTION OF PURCHASE-MONEY SECURITY INTEREST.**

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking "10" and inserting "20".

**SEC. 303. PROTECTION OF SECURITY INTEREST IN POST-PETITION RENTS.**

Section 552(b) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(b)",

(2) by striking "rents," each place it appears, and

(2) by adding at the end the following:

"(2)(A) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to rents of such property, then such security interest extends to such rents acquired by the estate after the commencement of the case to the extent provided in such security agreement, whether or not the security interest in such rents is perfected under applicable non-bankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

"(B) If such security interest extends under subparagraph (A) to rents acquired by the estate after the commencement of the case, then such security interest in such rents shall be deemed to be perfected for the purpose of section 544(a).".

**SEC. 304. RETURN OF GOODS.**

(a) LIMITATION ON AVOIDING POWERS.—Section 546 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(h) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines, after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor, may return goods shipped to the debtor by the creditor before the commencement of the case and the creditor may offset the value of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.".

(b) SETOFF.—Section 553(b)(1) is amended by inserting "546(h)," after "365(h)(2),".

**SEC. 305. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.**

Section 341 of title 11, United States Code, is amended by adding at the end the following:

"(d) Prior to the conclusion of the meeting of creditors or equity security holders, the United States trustee shall orally examine the debtor to ensure that the debtor is aware of—

"(1) the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history;

"(2) the debtor's ability to file a petition under a different chapter of this title;

"(3) the effect of receiving a discharge of debts under this title; and

"(4) the effect of reaffirming a debt, including the debtor's knowledge of the provisions of section 524(d).

**SEC. 306. EXCEPTION TO DISCHARGE.**

Section 523(a)(2) of title 11, United States Code, is amended by striking "forty" and inserting "60".

**SEC. 307. PROTECTION OF ASSIGNEES OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES APPROVED BY COURT ORDER IN CASES REVERSED ON APPEAL.**

Section 365 of title 11, United States Code, is amended by adding at the end the following:

"(p) If the assignment of an executory contract or unexpired lease under this section is approved by the court, the reversal or modification on appeal of such approval or of the assignment does not affect the validity of the assignment to an entity that obtained the assignment in good faith, whether or not the entity knew of the pendency of the appeal, unless the assignment was stayed pending appeal.".

**SEC. 308. PROFESSIONAL FEES.**

Section 330(a) of title 11, United States Code, is amended to read as follows:

"(a)(1) After notice to the parties in interest and the United States trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103, or the debtor's attorney in conformance with guidelines adopted by the Executive Office for United States Trustees pursuant to section 586(a)(3)(A) of title 28—

"(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

"(B) reimbursement for actual, necessary expenses.

"(2)(A) In determining an amount of reasonable compensation to be awarded under paragraph (1)(A), the court—

"(i) may, on its motion or on the motion of the United States trustee or any party in interest, award compensation that is less than the amount of compensation that is requested; and

"(ii) shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

"(I) the time spent on such services'

"(II) the rates charged for such services;

"(III) whether the services were necessary in the administration of or beneficial toward the completion of a case under this title; and

"(IV) the total value of the estate and the amount of funds or other property available for distribution to all creditors both secured and unsecured.

**SEC. 309. PROCEEDS OF MONEY ORDER AGREEMENTS.**

Section 541(b) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(4) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—

"(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

"(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor);

unless such issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition.".

**SEC. 310. AIRPORT LEASES.**

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365(d) of title 11, United States Code, is amended by adding at the end the following new paragraph:

"(5)(A) Notwithstanding paragraphs (1), (2), and (4), and subject to subparagraphs (B) and (C) of this paragraph, if the trustee in a case under any chapter of this title does not assume or reject an unexpired lease or executory contract with an airport operator under which the debtor has a right to the use or possession of an airport terminal, aircraft gate, or related facility within 270 days after the date of the order for relief, or within such additional time as the court sets under subparagraph (B) during such 270-day period, such lease or executory contract is deemed rejected, and the trustee shall immediately surrender the airport terminal, gate, or related facility to the airport operator.

**SEC. 311. TRUSTEE DUTIES.**

Section 586(a)(3)(A) of title 28, United States Code, is amended to read as follows:

"(A)(i) reviewing, in accordance with procedural and substantive guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States trustee except when circumstances warrant different treatment), applications filed for compensation and reimbursement under section 330 of title 11; and

"(ii) filing with the court comments with respect to each such an application and, if the United States Trustee considers it to be appropriate, objections to such application.

**SEC. 312. AIRCRAFT EQUIPMENT AND VESSELS; ROLLING STOCK EQUIPMENT.**

(a) AMENDMENT OF SECTION 1110.—Section 1110 of title 11, United States Code, is amended to read as follows:

**"§ 1110. Aircraft equipment and vessels**

"(a)(1) The right of a secured party with a security interest in equipment described in paragraph (2) or of a lessor or conditional vendor of such equipment to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract is not affected by section 362 or 363 or by any power of the court to enjoin the taking of possession unless—

"(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor that become due on or after the date of the order under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

"(i) that occurs before the date of the order is cured before the expiration of such 60-day period; and

"(ii) that occurs after the date of the order is cured before the later of—

"(I) the date that is 30 days after the date of the default; or

"(II) the expiration of such 60-day period.

"(2) Equipment is described in this paragraph if it is—

"(A) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 101 of the Federal Aviation Act of 1958) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a citizen of the United States (as defined in section 101 of the Federal Aviation Act of 1958) holding an operating certificate issued by the Secretary of Transportation pursuant to section 604 the Federal Aviation Act for aircraft capable of carrying 10 or more individuals; or

"(B) a documented vessel (as defined in section 30101(1) of title 46, United States Code) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission.

"(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

"(c) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term 'security interest' means a purchase-money equipment security interest.".

(b) AMENDMENT OF SECTION 1168.—Section 1168 of title 11, United States Code, is amended to read as follows:

**"§ 1168. Rolling stock equipment**

"(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract is not affected by section 362 or 363 or by any power of the court to enjoin the taking of possession, unless—

"(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor that become due on or after the date of commencement of the case under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind described in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

"(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period; and

"(ii) that occurs or becomes an event of default after the date of commencement of the case is cured before the later of—

"(I) the date that is 30 days after the date of the default or event of default; or

"(II) the expiration of such 60-day period.

"(2) Equipment is described in this paragraph if it is rolling stock equipment or accessories used on such equipment, including superstructures and racks, that is subject to a security interest granted by, leased to, or conditionally sold to the debtor.

"(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

"(c) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term 'security interest' means a purchase-money equipment security interest.

"(d) With respect to equipment first placed in service after the date of enactment of this subsection, for purposes of this section, the term 'rolling stock equipment' includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.".

**SEC. 313. PAYMENT UNDER COLLECTIVE BARGAINING AGREEMENTS AND PAYMENT OF INSURANCE BENEFITS TO RETIRED EMPLOYEES.**

Chapter 11 of title 11, United States Code, is amended by adding at the end the following:

**"§ 1115. Payment under collective bargaining agreements and payment of insurance benefits to retired employees**

"If there are not sufficient unencumbered assets available to make a timely payment under a collective bargaining agreement to which section 1113 of this title applies (including any modification of such agreement under such section) or to make a timely payment required by section 1114(e)(1) of this title, the court shall require in any order approving the use, sale, or lease of cash collateral, the obtaining of credit, or incurring of debt that the debtor use all or part of such cash collateral, credit, or incurring of debt to make such payment.".

**SEC. 314. PAYMENTS.**

Section 1326(a)(2) of title 11, United States Code, is amended in the second sentence by striking the period and inserting "as soon as practicable.".

**SEC. 315. SELLER'S RIGHT TO RECLAIM GOODS.**

Section 546(c)(1) of title 11, United States Code, is amended by striking "ten" and inserting "30".

## TITLE IV—GOVERNMENTAL BANKRUPTCY ISSUES

**SEC. 401. MUNICIPAL BANKRUPTCY.**

Section 109(c)(2) of title 11, United States Code, is amended by striking "generally authorized" and inserting "specifically authorized, in its capacity as a municipality or by name,".

## TITLE V—BANKRUPTCY REVIEW COMMISSION

**SEC. 501. SHORT TITLE.**

This title may be cited as the "National Bankruptcy Review Commission Act".

**SEC. 502. ESTABLISHMENT.**

There is established the National Bankruptcy Review Commission (referred to as the "Commission").

**SEC. 503. DUTIES OF THE COMMISSION.**

The duties of the Commission are—

(1) to investigate and study issues and problems relating to title 11, United States Code (commonly known as the "Bankruptcy Code");

(2) to evaluate the advisability of proposals and current arrangements with respect to such issues and problems;

(3) to prepare and submit to the Congress, the Chief Justice, and the President a report in accordance with section 508; and

(4) to solicit divergent views of all parties concerned with the operation of the bankruptcy system.

**SEC. 504. MEMBERSHIP.**

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 9 members as follows:

(1) Three members appointed by the President, 1 of whom shall be designated as chairman by the President.

(2) One member shall be appointed by the President pro tempore of the Senate.

(3) One member shall be appointed by the Minority Leader of the Senate.

(4) One member shall be appointed by the Speaker of the House of Representatives.

(5) One member shall be appointed by the Minority Leader of the House of Representatives.

(6) Two members appointed by the Chief Justice.

(b) TERM.—Members of the Commission shall be appointed for the life of the Commission.

(c) QUORUM.—Five members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

(d) APPOINTMENT DEADLINE.—The first appointments made under subsection (a) shall be made within 60 days after the date of enactment of this Act.

(e) FIRST MEETING.—The first meeting of the Commission shall be called by the chairman and shall be held within 90 days after the date of enactment of this Act.

(f) VACANCY.—A vacancy on the Commission resulting from the death or resignation of a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(g) CONTINUATION OF MEMBERSHIP.—If any member of the Commission who was appointed to the Commission as a member of Congress or as an officer or employee of a government leaves that office, or if any member of the Commission who was not appointed in such a capacity becomes an officer or employee of a government, the member may continue as a member of the Commission for not longer than the 90-day period beginning on the date the member leaves that office or becomes such an officer or employee, as the case may be.

(h) CONSULTATION PRIOR TO APPOINTMENT.—Prior to the appointment of members of the Commission, the President, the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Chief Justice shall consult with each other to ensure fair and equitable representation of various points of view in the Commission and its staff.

**SEC. 505. COMPENSATION OF THE COMMISSION.**

(a) PAY.—

(1) NONGOVERNMENT EMPLOYEES.—Each member of the Commission who is not otherwise employed by the United States Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for Level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which he or she is engaged in the actual performance of duties as a member of the Commission.

(2) GOVERNMENT EMPLOYEES.—A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation.

(b) TRAVEL.—Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

**SEC. 506. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.**

(a) STAFF.—

(1) APPOINTMENT.—The chairman of the Commission may, without regard to the civil service laws and regulations, appoint, and terminate an executive director and such other personnel as are necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter II of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(b) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

**SEC. 507. POWERS OF THE COMMISSION.**

(a) HEARINGS AND MEETINGS.—The Commission or, on authorization of the Commission, a member of the Commission, may hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission or a member of the Commission may administer oaths or affirmations to witnesses appearing before it.

(b) OFFICIAL DATA.—The Commission may secure directly from any Federal department, agency, or court information necessary to enable it to carry out this title. Upon request of the chairman of the Commission, the head of a Federal department or agency or chief judge of a Federal court shall furnish such information, consistent with law, to the Commission.

(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. Upon request of the Commission, the head of a Federal department or agency may make any of the facilities or services of the agency available to the Commission to assist the Commission in carrying out its duties under this title.

(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or member considers appropriate for the purposes of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in appropriation Acts.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal departments and agencies of the United States.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

**SEC. 508. REPORT.**

The Commission shall submit to the Congress, the Chief Justice, and the President a report not later than 2 years after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.

**SEC. 509. TERMINATION.**

The Commission shall cease to exist on the date that is 30 days after the date on which it submits its report under section 508.

**SEC. 510. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated $1,500,000 to carry out this title.

## TITLE VI—TECHNICAL CORRECTIONS

**SEC. 601. AMENDMENTS TO BANKRUPTCY DEFINITIONS, NECESSITATED BY ENACTMENT OF PUBLIC LAW 101-647.**

(a) ALPHABETIZING AND REDESIGNATING DEFINITIONS.—Section 101 of title 11 of the United States Code is amended—

(1) by redesignating paragraph (3) as paragraph (21),

(2) by redesignating paragraph (4) and subsequent paragraphs through paragraph (21) as paragraphs (3) through (20), respectively,

(3) by transferring paragraph (21), as so redesignated by paragraph (1), so as to insert such paragraph after paragraph (20),

(4) by redesignating paragraphs (54) through (57), as in effect immediately before the enactment of Public Law 101-647, as paragraphs (60), (61), (36), and (40), respectively,

(5) in paragraph (60), as so redesignated by paragraph (4), by inserting "and" after the semicolon at the end,

(6) in paragraph (61), as so redesignated by paragraph (4), by striking the semicolon at the end and inserting a period,

(7) in paragraph (36), as so redesignated by paragraph (4), by striking "and" at the end,

(8) in paragraph (40), as so redesignated by paragraph (4), by striking the period at the end and inserting a semicolon,

(9) by redesignating paragraphs (52) through (57), as so redesignated by section 2522(e) of Public Law 101-647, as paragraphs (54) through (59), respectively,

(10) by transferring paragraph (39) so as to insert such paragraph before paragraph (54), as so redesignated by paragraph (9) of this subsection,

(11) by redesignating paragraph (39) as paragraph (53),

(12) by redesignating successively numbered paragraphs (40) through (51) as paragraphs (41) through (52), respectively,

(13) by transferring paragraph (40), as so redesignated by paragraph (4) of this subsection, so as to insert such paragraph before paragraph (41), as so redesignated by paragraph (12) this subsection,

(14) by redesignating paragraph (36) and subsequent paragraphs through paragraph (38) as paragraphs (37) through (39), respectively, and

(15) by transferring paragraph (36), as so redesignated by paragraph (4) of this subsection, so as to insert such paragraph after paragraph (35).

(b) CONFORMING AND RELATED AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE, BASED ON REDESIGNATED DEFINITIONS.—(1)

Section 101 of title 11 of the United States Code is amended—

(A) in paragraph (5), as so redesignated by subsection (a), by striking "section 761(9)" and inserting "section 761",

(B) in paragraph (22) by striking "section 741(7)" and inserting "section 741",

(C) in paragraph (35)(B) by striking "paragraphs (3)" and inserting "paragraphs (21)",

(D) in paragraph (50)(B)(ii), as so redesignated by subsection (a), by striking "section 761(13)" and inserting "section 761", and

(E) in paragraph (56)(A), as so redesignated by subsection (a), by striking "section 741(2)" and inserting "section 741".

(2) Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (6)—

(i) by striking "section 761(4)" and inserting "section 761",

(ii) by striking "section 741(7)" and inserting "section 741",

(iii) by striking "section 101(34), 741(5), or 761(15)" and inserting "section 101, 741, or 761", and

(iv) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and

(B) in paragraph (7)—

(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and

(ii) by striking "section 741(8)" and inserting "section 741".

(3) Section 507(a)(5) of title 11, United States Code, is amended—

(A) by striking "section 557(b)(1)" and inserting "section 557(b)", and

(B) by striking "section 557(b)(2)" and inserting "section 557(b)".

(4) Section 546 of title 11, United States Code, is amended—

(A) in subsection (e)—

(i) by striking "section 101(34), 741(5), or 761(15)" and inserting "section 101, 741, or 761", and

(ii) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and

(B) in subsection (f)—

(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and

(ii) by striking "section 741(8)" and inserting "section 741".

(5) Section 548(d)(2) of title 11, United States Code, is amended—

(A) in subparagraph (B)—

(i) by striking "section 101(34), 741(5) or 761(15)" and inserting "section 101, 741, or 761", and

(ii) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and

(B) in subparagraph (C)—

(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and

(ii) by striking "section 741(8)" and inserting "section 741".

(6) Section 555 of title 11, United States Code, is amended by striking "section 741(7)" and inserting "section 741 of this title".

(7) Section 556 of title 11, United States Code, is amended by striking "section 761(4)" and inserting "section 761 of this title".

(c) CONFORMING AMENDMENTS TO OTHER LAWS BASED ON REDESIGNATED DEFINITIONS.—(1) Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended—

(A) in clause (ii)(I) by striking "section 741(7)" and inserting "section 741",

(B) in clause (iii) by striking "section 101(24)" and inserting "section 101",

(C) in clause (iv)(I) by striking "section 101(41)" and inserting "section 101", and

(D) in clause (v) by striking "section 101(50)" and inserting "section 101".

(2) Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(A) in clause (ii)(I) by striking "section 741(7)" and inserting "section 741",

(B) in clause (iii) by striking "section 761(4)" and inserting "section 761",

(C) in clause (iv) by striking "section 101(24)" and inserting "section 101",

(D) in clause (v)(I) by striking "section 101(41)" and inserting "section 101", and

(E) in clause (viii) by striking "section 101(50)" and inserting "section 101".

(d) OTHER TECHNICAL AMENDMENTS.—Title 11 of the United States Code is amended—

(1) in section 101—

(A) in paragraph (33)—

(i) in subparagraph (A) by striking "(12 U.S.C. 1813(u))", and

(ii) in subparagraph (B) by striking "(12 U.S.C. 1786(r))",

(B) in paragraph (34) by striking "(12 U.S.C. 1752(7))",

(C) in paragraph (35)(A) by striking "(12 U.S.C. 1813(c)(2))",

(D) in paragraph (49), as so redesignated by subsection (a)—

(i) by striking "(15 U.S.C. 78q-1)", and

(ii) by striking "(15 U.S.C. 78c(12))",

(E) in paragraph (50), as so redesignated by subsection (a)—

(i) in subparagraph (A)(xii)—

(I) by striking "(15 U.S.C. 77a et seq.)", and

(II) by striking "(15 U.S.C. 77c(b))", and

(ii) in subparagraph (B)(vi) by striking "(15 U.S.C. 77c(b))", and

(F) in paragraph (59), as so redesignated by subsection (a), by striking the period at the end and inserting a semicolon,

(2) in section 109(b)(2) by striking "(12 U.S.C. 1813(h))",

(3) in section 322(a) by striking "1302, or 1202" and inserting "1202, or 1302",

(4) in section 346—

(A) in subsection (a) by striking "Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)" and inserting "Internal Revenue Code of 1986", and

(B) in subsection (g)(1)(C) by striking "Internal Revenue Code of 1954 (26 U.S.C. 371)" and inserting "Internal Revenue Code of 1986",

(5) in section 348—

(A) in subsection (b) by striking "1301(a), 1305(a), 1201(a), 1221, and 1228(a)" and inserting "1201(a), 1221, 1228(a), 1301(a), and 1305(a)", and

(B) in subsections (b), (c), (d), and (e) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307",

(6) in section 349(a) by striking "109(f)" and inserting "109(g)",

(7) in section 362—

(A) in subsection (a) by striking "(15 U.S.C. 78eee(a)(3))", and

(B) in subsection (b)—

(i) by striking "(15 U.S.C. 78eee(a)(3))",

(ii) in paragraph (10) by striking "or" at the end,

(iii) in paragraph (12)—

(I) by striking "the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.)" and inserting "section 31325 of title 46, United States Code",

(I) by striking "(46 App. U.S.C. 911 et seq.)", and

(II) by striking "(46 App. U.S.C. 1117 and 1271 et seq., respectively)",

(iv) in paragraph (13)—

(I) by striking "the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.)" each place it appears and inserting "section 31325 of title 46, United States Code".

(II) by striking "(46 App. U.S.C. 1117 and 1271 et seq., respectively)",

(III) by striking "or" at the end,

(v) in paragraph (15), as added by Public Law 101-508, by striking "or" at the end,

(vi) in paragraph (16), as added by Public Law 101-508, by striking the period at the end and inserting a semicolon, and

(vii) in paragraph (14), as added by Public Law 101-311—

(I) by striking the period at the end and inserting "; or",

(II) by redesignating such paragraph as paragraph (17), and

(III) by transferring such paragraph so as to insert such paragraph after paragraph (16),

(8) in section 363—

(A) in subsection (b)(2) by striking "(15 U.S.C. 18a)", and

(B) in subsection (c)(1) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304",

(9) in section 364—

(A) in subsection (a) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304", and

(B) in subsection (f)—

(i) by striking "(15 U.S.C. 77e)", and

(ii) by striking "(15 U.S.C. 77aaa et seq.)",

(10) in section 365—

(A) in subsection (d)(6)(C) by striking "(49 App. U.S.C. 1301)",

(B) in subparagraphs (A) and (B) of subsection (g)(2) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307",

(C) in subsection (n)(1)(B) by striking "to to" and inserting "to", and

(D) in subsection (o) by striking "the Federal" the first place it appears and all that follows through "successors,", and inserting "a Federal depository institutions regulatory agency (or predecessor to such agency)",

(11) in section 507—

(A) in subsection (a)(8) by striking "the Federal" the first place it appears and all that follows through "successors,", and inserting "a Federal depository institutions regulatory agency (or predecessor to such agency)", and

(B) in subsection (d) by striking "or (a)(6)" and inserting "(a)(6), (a)(7), (a)(8), or (a)(9)",

(12) in section 522(d)(10)(E)(iii)—

(A) by striking "408, or 409" the first place it appears and inserting "or 408", and

(B) by striking "Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409)" and inserting "Internal Revenue Code of 1986",

(13) in section 523—

(A) in subsection (a)—

(i) by striking "1141,," and inserting "1141,",

(ii) in paragraph (2)(C) by striking "(15 U.S.C. 1601 et seq.)", and

(iii) in paragraph (12) by striking the semicolon at the end and inserting a period,

(B) in subsection (b)—

(i) by striking "(20 U.S.C. 1087-3)", and

(ii) by striking "(42 U.S.C. 294f)", and

(C) in subsection (e) by striking "depository institution or insured credit union" and inserting "insured depository institution",

(14) in section 524—

(A) in subsection (a)(3) by striking "or 1328(c)(1)" and inserting ", 1228(a)(1), or 1328(a)(1)",

(B) in subsection (c)(4) by striking "recission" and inserting "rescission", and

(C) in subsection (d)(1)(B)(ii) by adding "and" at the end,

(15) in section 525(a)—

(A) by striking "(7 U.S.C. 499a-499s)",

(B) by striking "(7 U.S.C. 181-229)", and

(C) by striking "(57 Stat. 422; 7 U.S.C. 204)",

(16) in section 542(e) by striking "to to" and inserting "to",

(17) in section 546(a)(1) by striking "1302, or 1202" and inserting "1202, or 1302",

(18) in section 549(b) inserting "the trustee may not avoid under subsection (a) of this section" after "involuntary case,",

(19) in section 553—

(A) in subsection (a)(1) by striking "other than under section 502(b)(3) of this title", and

(B) in subsection (b)(1) by striking "362(b)(14),," and inserting "362(b)(14),",

(20) in section 555 by striking "(15 U.S.C. 78aaa et seq.)",

(21) in section 559 by striking "(15 U.S.C. 78aaa et seq.)",

(22) in section 706(a) by striking "1307, or 1208" and inserting "1208, or 1307",

(23) in section 724(d) by striking "Internal Revenue Code of 1954 (26 U.S.C. 6323)" and inserting "Internal Revenue Code of 1986",

(24) in section 726(b)—

(A) inserting a comma after "section 1112", and

(B) by inserting "1009," after "chapter under section",

(25) in section 741(4)(A)(iii) by striking "(15 U.S.C. 78a et seq.)",

(26) in section 742 by striking "(15 U.S.C. 78aaa et seq.)",

(27) in section 743 by striking "342(a)" and inserting "342",

(28) in section 745(c) by striking "Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)" and inserting "Internal Revenue Code of 1986",

(29) in section 761—

(A) in paragraph (1) by striking "(7 U.S.C. 1 et seq.)",

(B) in paragraph (5) by striking "(7 U.S.C. 6c(b))", and

(C) in paragraph (13) by striking "(7 U.S.C. 23)",

(30) in section 1104(c) inserting a comma after "interest",

(31) in section 1110(a) by striking "(49 U.S.C. 1301)",

(32) in section 1123(a)(1) inserting a comma after "title" the last place it appears,

(33) in section 1129—

(A) in subsection (a)—

(i) in paragraph (4) by striking the semicolon at the end and inserting a period, and

(ii) in paragraph (12) inserting "of title 28" after "section 1930", and

(B) in subsection (d) by striking "(15 U.S.C. 77e)",

(34) in section 1145—

(A) in subsection (a)—

(i) by striking "does" and inserting "do",

(ii) by striking "(15 U.S.C. 77e)", and

(iii) in paragraph (3)(B)(i) by striking "(15 U.S.C. 78m or 78o(d))",

(B) in subsection (b)(1) by striking "(15 U.S.C. 77b(11))", and

(C) in subsection (d) by striking "(15 U.S.C. 77aaa et seq.)",

(35) in section 1166(2) by striking "(45 U.S.C. 791(b))",

(36) in section 1167—

(A) by striking "(45 U.S.C. 151 et seq.)", and

(B) by striking "(45 U.S.C. 156)",

(37) in section 1226(b)(2)—

(A) by striking "1202(d)" and inserting "1202(c)", and

(B) by striking "1202(e)" and inserting "1202(d)",

(38) in section 1302(b)(3) by striking "and" at the end, and

(39) in section 1328(a)—

(A) in paragraph (2) by striking "(5) or (8)" and inserting "(5), (8), or (9)", and

(B) by striking the last paragraph (3), and

(40) in section 543(d)(1) by striking "of equity" and inserting "if equity",

(41) in the table of chapters by striking the item relating to chapter 15.

**SEC. 602. TITLE 28, UNITED STATES CODE.**

Section 586(a)(3) of title 28, United States Code, is amended in the matter preceding subparagraph (A) by inserting "12," after "11,".

**TITLE VII—SEVERABILITY; EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

**SEC. 701. SEVERABILITY.**

If any provision of this Act or amendment made by this Act or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by this Act and the application of such other provisions and amendments to any person or circumstance shall not be affected thereby.

**SEC. 702. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—(1) Except as provided in paragraph (2), the amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

(2) Section 1110 of title 11, United States Code, as amended by section 312 of this Act, shall apply with respect to any lease, as defined in such section 1110(c) as so amended, entered into in connection with a settlement of any litigation in any case pending under title 11 of the United States Code on the date of the enactment of this Act.

## RELEASE OF RESTRICTIONS ON CERTAIN LANDS

### BUMPERS AMENDMENT NO. 3432

Mr. FORD (for Mr. BUMPERS) proposed an amendment to the amendment of the House to the bill (S. 1183) to reduce the restrictions on the lands conveyed by deed to the city of Kaysville, UT, and for other purposes, as follows:

Strike all after the enacting clause and insert the following:

TITLE I—KAYSVILLE, UTAH COMMUNICATION FACILITIES.

**SEC. 101. AMENDMENT.**

Section 2 of the Act of June 8, 1926 (ch. 498; 44 Stat. 708), is amended by striking "States." at the end of the first sentence and inserting in lieu thereof the following: "States, except that these restrictions on conveyances and uses shall not apply to those lands upon which communications facilities were located as of November 1, 1991, or prevent reasonable ingress and egress for the repair, maintenance, or improvement of such facilities, nor shall these restrictions on conveyances and uses prohibit the use of the lands described in the first section of this Act for recreational purposes so long as such recreational use is consistent both with the protection of the watershed and water supply system of the city and with the management objectives for adjacent National Forest System lands. Any improvements of the lands described in the first section of this Act for recreational purposes shall be undertaken only in consultation with and the approval of the Secretary of Agriculture.".

TITLE II—AUTHORIZATION OF BUREAU OF LAND MANAGEMENT.

**SEC. 201. AUTHORIZATION.**

There are hereby authorized to be appropriated such sums as may be necessary for programs, functions, and activities of the Bureau of Land Management, Department of the Interior (including amounts necessary for increases in salary, pay, retirements, and other employee benefits authorized by law, and for other nondiscretionary costs), during fiscal years beginning on October 1, 1992, and ending September 30, 1996.

TITLE III—TARGHEE AND KANIKSU NATIONAL FORESTS.

**SEC. 301. SHORT TITLE.**

This title may be cited as the 'Targhee and Kaniksu Land Exchange Act of 1992'.

**SEC. 302. TARGHEE NATIONAL FOREST BOUNDARY ADJUSTMENT.**

(a) IN GENERAL.—The boundaries of the Targhee National Forest are adjusted as generally depicted on the map entitled 'Targhee National Forest Proposed Boundary Changes' and dated March 1, 1991.

(b) MAP AND LEGAL DESCRIPTION.—

(1) PUBLIC ACCESS.—The map described in subsection (a) and a legal description of the lands depicted on the map shall be on file and available for public inspection in the Regional Office of the Intermountain Region of the Forest Service.

(2) TECHNICAL CORRECTIONS.—The map and legal description shall have the same force and effect as if included in this title, except that the Secretary of Agriculture (referred to in this title as the "Secretary") may correct clerical and typographical errors.

(c) RULE OF CONSTRUCTION.—For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of the Targhee National Forest, as adjusted by this title, shall be considered to be the boundaries of the Forest as of January 1, 1965.

**SEC. 303. CLARK FORK LAND EXCHANGE.**

(a) FINDINGS.—Congress finds that, over the past 10 years—

(1) the University of Idaho has utilized the Clark Fork Ranger Station within the Kaniksu National Forest as the Clark Fork Field Campus, under a Granger-Thye permit; and

(2) the University of Idaho has made substantial improvements in order to maintain and utilize the buildings as a campus facility.

(b) LAND EXCHANGE.—

(1) CONVEYANCE BY THE SECRETARY.—

(A) IN GENERAL.—In exchange for the conveyance described in paragraph (2) and subject to easements that are considered necessary by the Secretary for public and administrative access and to valid existing rights, the Secretary shall convey to the Regents of the University of Idaho all right, title, and interest of the United States to Parcel A.

(B) PARCEL A.—As used in this section, the term "Parcel A" means the approximately 35.27 acres comprising the Clark Fork Ranger Station within the Kaniksu National Forest, as depicted on the map entitled "Clark Fork Land Exchange—Parcel A" and dated July 1, 1991.

(2) CONVEYANCE BY THE REGENTS OF THE UNIVERSITY OF IDAHO.—

(A) IN GENERAL.—In exchange for the conveyance described in paragraph (1) and subject to valid existing rights of record accept-

able to the Secretary, the Regents of the University of Idaho shall convey to the Secretary, by general warranty deed in accordance with Department of Justice title standards, all right, title, and interest to Parcel B.

(B) PARCEL B.—As used in this section, the term "Parcel B" means the approximately 40 acres depicted on the map entitled "Clark Fork Land Exchange—Parcel B" and dated July 1, 1991.

(3) MAPS AND LEGAL DESCRIPTIONS.—

(A) PUBLIC ACCESS.—The maps described in paragraphs (1)(B) and (2)(B) and the legal descriptions of the lands depicted on the maps shall be on file and available for public inspection in the Regional Office of the Northern Region of the Forest Service.

(B) TECHNICAL CORRECTIONS.—The maps and legal descriptions shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors.

(c) LAND VALUATION.—

(1) IN GENERAL.—Subject to paragraph (2), if the lands exchanged between the United States and the Regents of the University of Idaho, as authorized by subsection (b), are not of equal value, the values shall be equalized in accordance with section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

(4) By the Act of July 6, 1960 (74 Stat. 334), Congress established a procedure to compensate persons affected by the Acts cited in paragraphs (1) and (2) who had not received appropriate relief under prior legislation. However, no payments of such compensation were made under that Act.

(5) Section 4 of the Act of July 6, 1960, further provided that lands with respect to which compensation under that Act were or could have been made, and not previously disposed of by the United States, shall be a part of any national forest, national park, or other area withdrawn from the public domain wherein they are located.

(6) Absent further legislation, lengthy and expensive litigation will be required to resolve existing questions about the title to lands covered by section 4 of the 1960 Act.

(b) PURPOSE.—The purpose of this title is to resolve the status of the title to base lands affected by the past legislation cited in subsection (a).

**SEC. 502. IDENTIFICATION AND QUITCLAIM OF FEDERAL INTEREST IN BASE LANDS.**

(a) QUITCLAIM.—Except as otherwise provided by this Act, and subject to valid existing rights, but notwithstanding any other provision of law, the United States hereby quitclaims to the listed owner or entryman, his heirs, devisees, successors, and assigns, all right, title, and interest of the United States in and to the base lands described on a final list published pursuant to subsection (d)(1), effective on the date of publication of such list.

(b) PREPARATION OF INITIAL LISTS.—(1) Not later than 6 months after the date of enactment of this Act, the Secretary of the Interior, with respect to lands under Secretary's jurisdiction, and the Secretary of Agriculture with respect to National Forest System lands, shall each prepare an initial list of all parcels of base lands that were relinquished to the United States pursuant to the Act of June 4, 1897 (as amended), and for which selection or other rights under that act or supplemental legislation were not realized or exercised.

(2) The initial lists prepared under paragraph (1) shall be based on information in the actual possession of the Secretaries of the Interior and Agriculture on the date of enactment of this Act, including information submitted to Congress pursuant to the directive contained in Senate Report No. 98-578, issued for the Fiscal Year 1985 Interior and Related Agencies Appropriation, as revised and updated. The initial lists shall be published and distributed for public review in accordance with procedures adopted by the Secretary concerned.

(3) For a period of 180 days after publication of a list pursuant to paragraph (2), persons asserting that particular parcels omitted from such a list should have been included may request the Secretary concerned to add such parcels to the appropriate list. The Secretary concerned shall add to the list any such parcels which the Secretary determines meet the conditions specified in paragraph (1).

(c) NATIONALLY SIGNIFICANT LANDS.—(1) During preparation or revision of an initial list under subsection (b), the Secretary concerned shall identify those listed lands which are located wholly or partially within any consideration system unit and all other listed lands which Congress has designated for specific management or which the Secretary concerned decides, in the concerned Secretary's discretion, should be retained in order to meet public, resource protection, or administrative needs. For purposes of this paragraph, the term 'conservation system unit' means any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, or National Wilderness Preservation System, a national forest monument, or a national conservation area, a national recreation area, or any lands being studied for possible designation as part of such a system or unit.

(2) The provisions of subsection (a) shall not apply to any land identified by the Secretary concerned pursuant to paragraph (1). The Secretary concerned shall not include any such lands on any list prepared pursuant to subsection (d). Subject to valid existing rights arising from factors other than those described in subsection (b)(1), any right, title, and interest in and to lands identified pursuant to paragraph (1) and not previously vested in the United States is hereby vested and confirmed in the United States.

(3) In the same manner as the initial list was published and distributed pursuant to subsection (b)(2), the Secretary concerned shall publish and distribute an identification of all lands in which right, title, and interest is vested and confirmed in the United States by paragraph (2).

(d) FINAL LISTS.—(1) As soon as possible after considering any requests made pursuant to subsection (b)(3) and the identification of lands pursuant to subsection (c), the Secretary of the Interior and the Secretary of Agriculture shall each publish a final list, consisting of lands included on each Secretary's initial list not identified pursuant to subsection (c)(1). Unless a Secretary has published a final list on or before the date 18 months after the date of publication, pursuant to subsection (b)(2), of such Secretary's initial list, the initial list prepared by such Secretary shall be deemed on such date to be the final list required to be published by such Secretary, and thereafter no lands included on such initial list shall be excluded from operation of subsection (a).

(2) If a court makes a final decision that a parcel of land was arbitrarily and capriciously excluded from operation of subsection (a), such parcel shall be deemed to have been included on a final list published pursuant to paragraph (1), unless such parcel is located wholly or partially inside a conservation system unit or any other area which Congress has designated for specific management, in which case such parcel shall be subject to the provisions of subsection (c)(2).

(e) ISSUANCE OF INSTRUMENTS.—(1) Except as otherwise provided in this title, no later than 6 months after the date on which the Secretary concerned publishes a final list of lands pursuant to subsection (d), the Secretary concerned shall issue deeds confirming the quitclaim made by subsection (a) of this section of all right, title, and interest of the United States in and to the lands included on such final list, subject to valid existing rights arising from factors other than a relinquishment to the United States of the type described in subsection (b). Each such confirmatory deed shall operate to estop the United States from making any claim of right, title, or interest of the United States in and to the base lands described in the deed, shall be made in the name of the listed owner or entryman, his heirs, devisees, successors, and assigns, and shall be in a form suitable for recordation and shall be filed and recorded by the United States with the recorder of deeds or other like official of the county or counties within which the lands covered by such confirmatory deed are located so that the title to such lands may be determined in accordance with applicable State law.

(2) The United States shall not adjudicate and, notwithstanding any provision of law to the contrary, does not consent to be sued in any suit instituted to adjudicate the ownership of, or to quiet title to, any base land included in a final list and described in a confirmatory deed.

(3) Neither the Secretary of the Interior nor the Secretary of Agriculture shall be required to inspect any lands included on a final list nor to inform any member of the public regarding the condition of such lands prior to the issuance of the confirmatory deeds required by this subsection, and nothing in this Act shall be construed as affecting any valid rights with respect to lands covered by a confirmatory deed issued pursuant to this subsection that were in existence on the date of issuance of such confirmatory deed.

(f) Waiver of Certain Claims Against the United States.—Any person or entity accepting the benefits of this title or failing to act to seek such benefits within the time allotted by this title with respect to any base or other lands shall be deemed to

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Section 103(c) of the Wildfire Disaster Recovery Act of 1989 (16 U.S.C. 551 note) is amended in the first sentence by striking out '1991' and inserting in lieu thereof '1992'.

**SEC. . BEAR RIVER EXCHANGE.**

(a) IN GENERAL.—If, within 5 years after the date of enactment of this Act, the State of Utah transfers to the Secretary of the Interior all right, title, and interest of the State of Utah in and to the State lands in exchange for Federal lands, the Secretary of the Interior, within 18 months after such transfer, shall transfer to the State of Utah all right, title, and interest in and to so much of the Federal lands as the Secretary determines to be equal in fair market value to the State lands.

(b) STATE LANDS.—As used in this section, the term "State lands" means approximately 700.70 acres of land located in the State of Utah, as generally depicted as State lands on the map entitled "Bear River Mi-

gratory Bird Refuge", map numbered 1, and more particularly described as:

The South half of the Northwest Quarter and Lots 5, 6, 7, and 8, all in Section 4, and also, Lots 7 and 8, Section 5, township 8 North, Range 2 West, Salt Lake Base and Meridian.

All property below the surveyed meander line and North of the Bear River Bird Refuge North Boundary in Sections 4 and 9 and in the East one-half of Sections 5 and 8, Township 8 North, Range 2 West, Salt Lake Base and Meridian.

(c) FEDERAL LANDS.—As used in this section, the term "Federal lands" means approximately 1,365.14 acres of land located in the State of Utah, as generally depicted as Federal lands on the map entitled "Fingerpoint", map numbered 2, and the map entitled "Rozel Point", map numbered 3, and more particularly described as:

Township 7 North, Range 10 West, Salt Lake Base & Meridian

Section 5: Lots 1–6, W½SW¼

Section 6: Lots 1–7, W½SE¼

Section 7: Lots 1–6

Section 8: Lots 1–4, W½

Section 17: Lots 1–5

Section 18: Lots 1–3

Township 8 North, Range 7 West, Salt Lake Base & Meridan

Section 8: Lots 1–12, E½NE¼

(d) ADMINISTRATION.—The lands transferred to the United States under this section shall be added to and administrated as part of the Bear River Migratory Bird Refuge.

## SNAKE RIVER BIRDS OF PREY NATIONAL CONSERVATION AREA

### CRAIG AMENDMENT NO. 3433

Mr. CRAIG proposed an amendment to the bill (H.R. 2141) to establish the Snake River Birds of Prey National Conservation Area in the State of Idaho, and for other purposes; as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

**SEC. 1. FINDINGS.**

The Congress finds the following:

(1) The public lands managed by the Bureau of Land Management in the State of Idaho within the Snake River Birds of Prey Area contain one of the densest known nesting populations of eagles, falcons, owls, hawks, and other birds of prey (raptors) in North America.

(2) These public lands constitute a valuable national biological and educational resource since birds of prey are important components of the ecosystem.

(3) These public lands also contain important historic and cultural resources as well as other resources and values, all of which should be protected and appropriately managed.

(4) A military training area within the Snake River Birds of Prey Area, known as the Orchard Training Area, has been used since 1953 by reserve components of the Armed Forces. Military use of this area is currently governed by a Memorandum of Understanding between the Bureau of Land Management and the State of Idaho Military Division, dated May 1985. Operating under this Memorandum of Understanding, the Idaho National Guard has provided valuable assistance to the Bureau of Land Management with respect to fire control and other aspects of management of the Orchard Training Area and the other lands in the Snake River Birds of Prey Area. Military use of the lands within the Orchard Training Area should continue in accordance with such Memorandum of Understanding (or extension or renewal thereof), to the extent consistent with section 4(e) of this Act, because this would be in the best interest of training of the reserve components (an important aspect of national security) and of the local economy.

(5) Protection of the conservation area as a home for raptors can best and should be accomplished by the Secretary of the Interior, acting through the Bureau of Land Management, under a management plan that—

(A) emphasizes management, protection, and rehabilitation of habitat for these raptors and of other resources and values of the area;

(B) provides for continued military use, consistent with the requirements of section 4(e) of this Act, of the Orchard Training Area by reserve components of the Armed Forces;

(C) addresses the need for public educational and interpretive opportunities;

(D) allows for diverse appropriate uses of lands in the area to the extent consistent with the maintenance and enhancement of raptor populations and habitats and protection and sound management of other resources and values of the area; and

(E) demonstrates management practices and techniques that may be useful to other areas of the public lands and elsewhere.

(6) There exists near the conservation area a facility, the World Center for Birds of Prey operated by The Peregrine Fund, Inc., where research, public education, recovery, and reestablishment operations exist for endangered raptor species. There also exists at Boise State University a raptor study program which attracts national and international graduate and undergraduate students.

(7) The Bureau of Land Management and Boise State University, together with other State, Federal, and private entities, have formed the Raptor Research and Technical Assistance Center to be housed at Boise State University, which provides a unique adjunct to the conservation area for raptor management, recovery, research, and public visitation, interpretation, and education.

(8) Consistent with requirements of sections 202 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712 and 1732), the Secretary has developed a comprehensive management plan and, based on such plan, has implemented a management program for the public lands included in the conservation area established by this Act.

(9) Additional authority and guidance must be provided to assure that essential raptor habitat remains in public ownership, to facilitate sound and effective planning and management, to provide for effective public interpretation and education, to ensure continued study of the relationship of humans and these raptors, to preserve the unique and irreplaceable habitat of the conservation area, and to conserve and properly manage the other natural resources of the area in concert with maintenance of this habitat.

(10) An ongoing research program funded by the Bureau of Land Management and the National Guard is intended to provide information to be used in connection with future descisionmaking concerning management of all uses, including continued military use, of public lands within the Snake River Birds of Prey Area.

(11) The public lands in the Snake River Birds of Prey Conservation area have been used for domestic livestock grazing for more than a century. Appropriate protection and sound management of raptor habitat and the other resource values of this land would not preclude continuation of this use which has provided major economic contributions and stability to the local and State economies.

(12) Hydroelectric facilities for the generation and transmission of electricity exist within the Snake River Birds of Prey Area pursuant to a license(s) issued by the Federal Energy Regulatory Commission, or its predecessor, the Federal Power Commission.

**SECTION. 2. DEFINITIONS**

As used in this Act:

(1) The term "Secretary" mans the Secretary of the Interior.

(2) The term "conservation area" means the Snake River Birds of Prey National Conservation Area established by section 3.

(3) The term "raptor" or "raptors" means individuals or populations of eagles, falcons, owls, hawks, and other birds of prey.

(4) The term "raptor habitat" includes the habitat of the raptor prey base as well as the nesting and hunting habitat of raptors within the conservation area.

(5) The term "Memorandum of Understanding" means the Memorandum of Understanding #ID–237, dated May 1985, between the State of Idaho Military Division and the Bureau of Land Management.

(6) The term "Orchard Training Area" means that area generally so depicted on the map referred to in section 3(b), and as described in the Memorandum of Understanding as well as the air space over the same.

(7) The term "Impact Area" means that area which was used for the firing of live artillery projectiles and is used for live fire ranges of all types and, therefore, poses a danger to public safety and which is generally so depicted on the map referred to in section 3(b).

(8) The term "Artillery Impact Area" means that area within the Impact Area into which live projectiles are fired, which is generally described as that area labeled as such on the map referred to in section 3(b).

(9) The term "the plan" means the comprehensive management plan developed for the conservation area, dated August 30, 1985, together with such revisions thereto as may be required in order to implement this Act.

(10) The term "hydroelectric facilities" means all facilities related to the generation, transmission, and distribution of hydroelectric power and which are subject to, and authorized by, a license(s), and any and all amendments thereto, issued by the Federal Energy Regulatory Commission.

**SEC. 3. ESTABLISHMENT OF NATIONAL CONSERVATION AREA.**

(a) ESTABLISHMENT AND PURPOSES.—(1) There is hereby established the Snake River Birds of Prey National Conservation Area, hereafter referred to as the "conservation area".

(2) The purposes for which the conservation area is established are: to provide for the conservation, protection, and enhancement of raptor populations and habitats, and the natural and environmental resources and values associated therewith, and of the scientific, cultural, and educational resources and values of the public lands in the conservation area; and, to the extent compatible with the foregoing purposes, to allow continuation of existing uses of the public lands in the conservation area, subject to the provisions of this Act.

(b) AREA INCLUDED.—The conservation area shall consist of approximately 482,457 acres of federally owned lands and interests there-

in managed by the Bureau of Land Management as generally depicted on the map entitled "Snake River Birds of Prey National Conservation Area", dated November 1991.

(c) MAP AND LEGAL DESCRIPTION.—As soon as is practicable after enactment of this Act, the map referred to in subsection (b) and a legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Each such map shall have the same force and effect as if included in this title; except that the Secretary may correct clerical and typographical errors in such map and legal description. Each such map shall be on file and available for public inspection in the office of the Director and the Idaho State Director of the Bureau of Land Management of the Department of the Interior.

(d) WITHDRAWALS.—Subject to valid existing rights, the Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal (except as provided in paragraph (3)) under the public land laws; and from entry, application, and selection under the Act of March 3, 1877 (Ch. 107, 19 Stat. 377, 43 U.S.C. 321 et seq.; commonly referred to as the "Desert Lands Act"), section 4 of the Act of August 18, 1894 (Ch. 301, 28 Stat. 422; 43 U.S.C. 641; commonly referred to as the "Carey Act"), the Act of July 3, 1890 (Ch. 656, 26 Stat. 215; commonly referred to as the "State of Idaho Admissions Act"), section 2275 of the Revised Statutes, as amended (43 U.S.C. 851), and section 2276 of the Revised Statutes, as amended (43 U.S.C. 852). The Secretary shall return to the applicants any such applications pending on the date of enactment of this Act, without further action. Subject to valid existing rights, as of the date of enactment of this Act, lands within the conservation area are withdrawn from location under the general mining laws, the operation of the mineral and geothermal leasing laws, and the mineral material disposal laws.

**SEC. 4. MANAGEMENT AND USE.**

(a) IN GENERAL.—(1)(A) Within 1 year after the date of enactment of this Act, the Secretary shall finalize a management plan that is in conformance with the requirements of this Act.

(B) Thereafter, the Secretary shall review the plan at least once every 4 years and shall make such revisions as may be necessary or appropriate.

(C) In reviewing and revising the plan, the Secretary shall provide for appropriate public participation.

(2) Except as otherwise specifically provided in subsections (d), (e), and (f) of this section, the Secretary shall allow only such uses of lands in the conservation area as the Secretary determines will further the purposes for which the conservation area is established.

(b) MANAGEMENT GUIDANCE.—After each review pursuant to subsection (a), the Secretary shall make such revisions as may be needed so that the plan and management program to implement the plan include, in addition to any other necessary or appropriate provisions, provisions for—

(1) protection for the raptor populations and habitats and the scientific, cultural, and educational resources and values of the public lands in the conservation area;

(2) identifying levels of continued military use of the Orchard Training Area compatible with paragraph (1) of this subsection;

(3) public use of the conservation area consistent with the purposes of this Act;

(4) interpretive and educational opportunities for the public;

(5) a program for continued scientific investigation and study to provide information to support sound management in accordance with this Act, to advance knowledge of raptor species and the resources and values of the conservation area, and to provide a process for transferring to other areas of the public lands and elsewhere this knowledge and management experience;

(6) such vegetative enhancement and other measures as may be necessary to restore or enhance prey habitat;

(7) the identification of levels, types, timing, and terms and conditions for the allowable non-military uses of lands within the conservation area that will be compatible with the protection, maintenance, and enhancement of raptor populations and habitats and the other purposes for which the conservation area is established; and

(8) assessing the desirability of imposing appropriate fees for public uses (including, but not limited to, recreational use) of lands in the conservation area, which are not now subject to fees, to be used to further the purposes for which the conservation area is established.

(c) VISITORS CENTER.—The Secretary, acting through the Director of the Bureau of Land Management, is authorized to establish, in cooperation with other public or private entities as the Secretary may deem appropriate, a visitors center designed to interpret the history and the geological, ecological, natural, cultural, and other resources of the conservation area and the biology of the raptors and their relationships to man.

(d) VISITORS USE OF AREA.—In addition to the Visitors Center, the Secretary may provide for visitor use of the public lands in the conservation area to such extent and in such manner as the Secretary considers consistent with the protection of raptors and raptor habitat, public safety, and the purposes for which the conservation area is established. To the extent practicable, the Secretary shall make available to visitors and other members of the public a map of the conservation area and such other educational and interpretive materials as may be appropriate.

(e) NATIONAL GUARD USE OF THE AREA.—(1) Pending completion of the ongoing research concerning military use of lands in the conservation area, or until the date 5 years after the date of enactment of this Act, whichever is the shorter period, the Secretary shall permit continued military use of those portions of the conservation area known as the Orchard Training Area in accordance with the Memorandum of Understanding, to the extent consistent with the use levels identified pursuant to subsection (b)(2) of this section.

(2) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall review the management plan and make such additional revisions therein as may be required to assure that it meets the requirements of this Act.

(3) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall submit to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report of the results of such research.

(4) Nothing in this Act shall preclude minor adjustment of the boundaries of the Orchard Training Area in accordance with provisions of the Memorandum of Understanding.

(5) After completion of the ongoing research concerning military use of lands in the Orchard Training Area or after the date 5 years after the date of enactment of this Act, whichever first occurs, the Secretary shall continue to permit military use of such lands, unless the Secretary, on the basis of such research, determines such use is not compatible with the purposes set forth in section 3(a)(2). Any such use thereafter shall be permitted in accordance with the Memorandum of Understanding, which may be extended or renewed by the Secretary so long as such use continues to meet the requirements of subsection (b)(2) of this section.

(6) In accordance with the Memorandum of Understanding, the Secretary shall require the State of Idaho Military Division to ensure that military units involved maintain a program of decontamination.

(7) Nothing in this Act shall be construed as by itself precluding the extension or renewal of the Memorandum of Understanding, or the construction of any improvements or buildings in the Orchard Training Area so long as the requirements of this subsection are met.

(f) LIVESTOCK GRAZING.—Notwithstanding section 4(a)(2) of this Act, if the Secretary determines domestic livestock grazing is compatible with the purposes for which the conservation area is established, such grazing will occur on public lands within the conservation area to the extent the Secretary determines such use of such lands is compatible with the purposes for which the conservation area is established. Any such grazing, and activities the Secretary determines necessary to carry out proper and practical grazing management programs (such as animal damage control activities) shall be managed in accordance with the Act of June 28, 1934 (43 U.S.C. 315 et seq.; commonly referred to as the "Taylor Grazing Act"), section 402 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752), other laws applicable to such use and programs on the public lands, and the management plan for the conservation area.

(g) COOPERATIVE AGREEMENTS.—The Secretary is authorized to provide technical assistance to, and to enter into such cooperative agreements and contracts with, the State of Idaho and with local governments and private entities as the Secretary deems necessary or desirable to carry out the purposes and policies of this Act.

(h) AGRICULTURAL PRACTICES.—Nothing in this Act shall be construed as constituting a grant of authority to the Secretary to restrict recognized agricultural practices or other activities on private land adjacent to or with in the conservation area boundary.

(i) HYDROELECTRIC FACILITIES.—Notwithstanding any provision of this Act, or regulations and management plans undertaken pursuant to its provisions, the Federal Energy Regulatory Commission shall retain its current jurisdiction concerning all aspects of the continued and future operation of hydroelectric facilities, licensed or relicensed under the Federal Power Act (16 U.S.C. 791a et seq.), located within the boundaries of the conservation area.

**SEC. 5. ADDITIONS.**

(a) ACQUISITIONS.—(1) The Secretary is authorized to acquire lands and interests therein within the boundaries of the conservation area by donation, purchase with donated or appropriated funds, exchange, or transfer from another Federal agency, except that such lands or interests owned by the State of Idaho or a political subdivision thereof may be acquired only by donation or exchange.

(2) Any lands located within the boundaries of the conservation area that are acquired by the United States on or after the date of enactment of this Act shall become a part of the conservation area and shall be subject to this Act.

(b) PURCHASE OF LANDS.—In addition to the authority in section 318(d) of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1748) and notwithstanding section 7(a) of the Land and Water Conservation Fund Act of 1964 (16 U.S.C. 4601-9(a), monies appropriated from the Land and Water Conservation Fund may be used as authorized in section 5(b) of the Endangered Species Act of 1973 (16 U.S.C. 1534(b)), for the purposes of acquiring lands or interests therein within the conservation area for administration as public lands as a part of the conservation area.

(c) LAND EXCHANGES.—The Secretary shall within 4 years of enactment, study, identify, and initiate voluntary land exchanges which would resolve ownership related land use conflicts within the conservation area.

**SEC. 6. OTHER LAWS AND ADMINISTRATIVE PROVISIONS.**

(a) OTHER LAWS.—(1) Nothing in the Act shall be construed to supersede, limit, or otherwise affect administration and enforcement of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or to limit the applicability of the National Trails System Act to any lands within the conservation area.

(2) Except as otherwise specifically provided in this title, nothing in this title shall be construed as limiting the applicability to lands in the conservation area of laws applicable to public lands generally, including but not limited to the National Historic Preservation Act, the Archaeological Resources Protection Act of 1979, or the Native American Graves Protection and Repatriation Act.

(3) Nothing in this Act shall be construed as by itself altering the status of any lands that on the date of enactment of this Act were not managed by the Bureau of Land Management.

(4) Nothing in this Act shall be construed as prohibiting the Secretary from engaging qualified persons to use public lands within the conservation area for the propagation of plants (including seeds) to be used for vegetative enhancement of the conservation area in accordance with the plan and in furtherance of the purposes for which the conservation area is established.

(b) RELEASE.—The Congress finds and directs that the public lands within the Snake River Birds of Prey Natural Area established as a natural area in October 1971 by Public Land Order 5133 have been adequately studied and found unsuitable for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act of 1976. Such lands are hereby released from further management pursuant to section 603(c) of such an Act and shall be managed in accordance with other applicable provisions of law, including this Act.

(c) EXISTING ADMINISTRATIVE WITHDRAWAL TERMINATED.—Public Land Orders 5133 dated October 12, 1971, and 5777 dated November 21, 1980, issued by the Secretary are hereby terminated.

(d) WATER.—(1) The Congress finds that the United States is currently a party in an adjudication of rights to waters of the Snake River, including water rights claimed by the United States on the basis of the reservation of lands for purposes of conservation of fish and wildlife and that consequently there is no need for this Act to effect a reservation by the United States of rights with respect to such waters in order to fulfill the purposes for which the conservation area is established.

(2) Nothing in this Act or any action taken pursuant thereto shall constitute either an expressed or implied reservation of water or water rights for any purpose.

(3) Nothing in this Act shall be construed as effecting a relinquishment or reduction of any of the water rights held or claimed by the United States within the State of Idaho or elsewhere on or before the date of enactment of this Act.

(4) The Secretary and all other officers of the United States shall take steps necessary to protect all water rights claimed by the United States in the Snake River adjudication now pending in the district court of the State of Idaho in which the United States is joined under the McCarran Amendment (section 208 of the Act of July 10, 1952; 66 Stat. 560; 43 U.S.C. 666).

(e) ENFORCEMENT.—Any person who violates any regulation promulgated by the Secretary to implement the provisions of this Act shall be subject to a fine in accordance with applicable provisions of title 18, United States Code, imprisonment of not more than 1 year, or both.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

## ADDITIONAL STATEMENTS

### HUMAN RIGHTS VIOLATIONS AGAINST KASHMIRIS IN INDIA

• Mr. BREAUX. Mr. President, I rise today on behalf of Louisiana citizens of Kashmiri descent to draw attention to continued human rights violations being committed against Kashmiris living in India.

Kashmir is an enclave spanning the northern borders of India and Pakistan. Two of three wars fought between India and Pakistan have been over a border dispute involving Kashmir. While Pakistan has held its portion of Kashmir in trust for over 40 years, India appears to have basically annexed her portion and currently has thousands of troops in the area. Despite two U.N. resolutions to the contrary, Kashmir remains in a volatile, political limbo.

The plight of the Kashmiri people is not limited to political oppression however; it also includes serious human rights abuses. In the past 2 years, the Indian Government has tried to suppress the Kashmiri movement for self-determination often by brutally forceful means. According to Amnesty International, the Indian military and paramilitary forces in Kashmir have engaged in extrajudicial killings, detention without trial, rape, arson, and torture. All this fueling an already volatile militant movement in the region.

Mr. President, I acknowledge that the Government of India now appears to be making some progress in the area of human rights. The Government's recent decision to allow Amnesty International access to Kashmir as well as the Government's apparent intent to establish a human rights commission are steps in the right direction. While these steps seem to indicate that India has at least recognized its human rights problem, it is also clear, however, that much remains to be done.

The tension and problems in this region of the subcontinent will persist until the three parties involved, India, Pakistan, and Kashmir come to some form of negotiated settlement. I urge the U.S. Government to assist these parties in the peaceful resolution of this underlying dispute.•

(At the request of Mr. MACK, the following statement was ordered to be printed in the RECORD at this point:)

### TRIBUTE TO MARVA MCCANTS

• Mr. KASTEN. Mr. President, I would like to take this opportunity to honor the outstanding efforts of Marva McCants and her successful business, Marva Sew, Inc.

Marva Sew is a booming custom design manufacturer located in the Milwaukee Enterprise Center [MEC]. The MEC, a small business incubator, located in the inner city, provides opportunities for historically underutilized businesses and gives them the startup assistance needed to succeed. Since moving to the MEC, Marva Sew has doubled its employment to 13—which includes her daughter Sondra.

Ms. McCants, the company president and daughter of a seamstress, started her business in 1983, in her home. During the same period, Marva obtained her teaching certification and joined the Milwaukee Area Technical College as an industrial sewing instructor.

As her clientele and credibility grew so did the demand on her business. Due to her overwhelming success, Marva ventured from the basement of her own home into the business arena. In March 1989, she opened the doors to her new boutique—Simply Marva Fashion Design. Fortunately her accomplishments did not cease there.

In light of her achievements, and the demand for increased manufacturing space, Marva expanded Simply Marva Sew at its present location. Ms. McCants designs and makes elegant clothes for her own shop and boutiques. And she also does large order cut-and-sew jobs like Marlboro auto racing jumpsuits, T-shirts, sweatshirts and banners.

In addition to being a successful small business owner, Marva is active in the promotion of minority-owned businesses. In October 1991, Marva testified at my small business field hearing that I held at the MEC. She advocated the need for minority capital access. In her words she explained that:

> The less frustration and the less discouragement you have the better you are in trying to get your business up and going.

Marva McCants is a model for all minority business men and women to follow. Her accomplishments as an entrepreneur are just the kind of medicine our inner cities need to get our economy back on track.

I am pleased to see that Marva overcame this frustration and made her childhood dream come true.

I ask my colleagues to please join me in saluting Marva McCants and all her employees at Marva Sew for the terrific job they are doing and to congratulate them on their second anniversary as a MEC tenant.•

## PUNITIVE DAMAGES REFORM ACT OF 1992

• Mr. DANFORTH, Mr. President, yesterday, I introduced the Punitive Damages Reform Act of 1992. The American Institute of Certified Public Accountants is not only concerned about the issue, but it has published a paper in which it makes certain suggestions about reform. My legislation does not contain all of the proposed reforms in the paper, but this organization's input was very helpful in helping me put my legislation together.

I recommend their essay, entitled "Punitive Damages Without Limit: Fundamentally Unfair," to all who are interested in this issue.

I ask unanimous consent that a copy of the essay and a copy of a Wall Street Journal article on the threat of tort litigation to our Nation's accounting firms be printed immediately following my remarks.

The material follows:

[From the Wall Street Journal, May 22, 1992]

### BLACK DAYS FOR ACCOUNTING FIRMS

(By Philip R. Lochner, Jr.)

This week's decision by an Arizona jury to order the accounting firm Price Waterhouse to pay $338 million to Standard Chartered Bank has wide-ranging implications. Whether the jury decided correctly when it concluded that Price Waterhouse was negligent in proving auditing services is unclear. What *is* clear is that this civil judgment raises troublesome questions about what we can expect from accounting firms and whether they can continue to provide the services that our financial markets find essential. The decision forces accounting firms—and, by extension, all professional partnerships—to reconsider their roles.

The Price Waterhouse decision will certainly be appealed. But it is important to understand the degree to which accountants are already suffering from tort litigation. Almost all major accounting firms are facing vastly increased litigation claims, and last year two substantial accounting firms collapsed—Laventhol & Horwath, which press reports said faced about $2 billion in liability claims, and the smaller Spicer & Oppenheim.

#### WHAT HAPPENED IN ARIZONA

The profession probably faces an additional $15 billion in liability claims now, with more to come. Yet it is difficult for the accounting business to manage this risk because all national accounting firms are partnerships, and nearly all jurisdictions in this country make it difficult or impossible for them to take a corporate form. Strong firms can survive—but are increasingly at risk.

To understand such cases, it may help to review what happened in Arizona. Until 1985, Arizona law prohibited out-of-state financial institutions from buying local commercial banks. When that law changed, bankers from around the country and the world converged on cities such as Phoenix and Tucson. Prospects in the fast-growing state looked bright.

So bright, in fact, that Arizona caught the attention of Standard Chartered, a British giant whose assets in 1987 were valued at about $50 billion. Standard Chartered chose its target: United Bank of Arizona, whose auditor in 1985 and 1986 was Price Waterhouse. Through a California subsidiary, London-based Standard Chartered bought United Bank of Arizona for $335 million, or more than 15 times United's earnings when the deal was signed in 1985. At signing, United was the state's fourth largest bank, with assets of some $2.2 billion and a net worth of about $130 million.

Standard Chartered was so eager to get in on the ground floor that it moved decisively. So decisively that even though the bank had plenty of time before completing the acquisition, Standard Chartered apparently conducted a very limited survey of United's loan portfolio. That shouldn't necessarily be surprising: At the time, it appears, Standard Chartered thought it was buying a franchise, rather than a package of individually valuable assets. After the deal closed, some United real estate loans turned out to be something other than gold-plated.

And Standard had other troubles. By 1988, its Third World loan portfolio was in enough trouble that U.K. regulators were pressing Standard to improve its capital base. As a result, it sold United Bank for a whopping loss. For many, that would have been the end of the story: an unlucky, or perhaps bad, business decision resulting in a big write-off. Any number of foreign banks have made mistakes in the U.S. market in recent times—NatWest, Midland, Lloyds and Barclays, to name a few. Several out-of-state buyers of Arizona banks didn't do terribly well either.

But Standard, unlike the others, sued to make up its losses. United Bank's original shareholders were a difficult target, dispersed as they were across the country. So Standard sought recovery from the only convenient deep pocket left—the auditor, Price Waterhouse.

Standard claimed that Price Waterhouse's audits of 1985 and 1986 (the two years before the deal became final) were negligently performed by insufficiently trained and supervised personnel. It also claimed that the accounting firm should have discovered that United Bank's actual net worth was only half of what United Bank said it was, and that United Bank's internal controls were inadequate.

Standard's lawyers managed to convince the jury that Standard's damages were not just the lost value of sour loans it believes should have been discovered, nor the mere difference between United Bank's actual value and the price Standard Chartered paid. They convinced the jury that Standard deserved an amount in excess of the full purchase price. Not surprisingly, Price Waterhouse contended that this calculation of damages was an exercise in lunacy, particularly since Price Waterhouse earned less than $300,000 for the audits in question.

The jury verdict should have turned on the resolution of a number of issues, many of them numbingly tedious and obscure. Were Price Waterhouse's 1985 and 1986 audits negligently performed? What did professional accounting standards require in those audits? What is appropriate due diligence by a buyer in a bank acquisition, and did Standard Chartered do it? Does it matter that Standard didn't wait for the 1986 audit results before closing, though it arguably could have done so?

It is difficult to believe that the eight men and women who decided this case actually understood any of these matters very well. Indeed, SEC commissioners, who are at least nominally in charge of setting accounting policy in the U.S., have been known to be deeply divided over such questions as what accounting standards should require. Doubtless, the Arizona jurors were intelligent people. But this was a trial where counsel felt they had to tell the jurors what the initials "SEC" and "CEO" stood for. The result was that Price Waterhouse partners may end up paying $338 million out of their own pockets. This despite the fact that United Banks' problems had not lost United's depositors or taxpayers a single nickel.

For the accounting profession, and indeed all professional partnerships, the news of the jury award strengthens what is already a profound re-examination of their work. A century ago many auditing firms were simple, one-man shops. Since that time, the firms have grown enormously and expectations about what auditors would be responsible for have risen dramatically.

Congress, for its part, seems intent on adding to auditor responsibility. Rep. Ron Wyden (D., Ore.) has frequently proposed legislation placing greater demands on auditors. Banking and securities regulators have insisted that accountants conform to higher standards and assume heavier burdens as well.

What really happens in an audit? The larger the institution being audited, the greater the likelihood that auditors will be required to rely heavily on work performed by those being audited. Management, not auditors, prepares the financial statements. Auditors typically sample and test internally generated numbers. Even when audits are done correctly, audits cannot guarantee accuracy or the detection of fraud; they are not insurance policies. Nonetheless legal liability seems to rise.

Insurance is not much of an answer to accountants' liability problems. Insurers are already reluctant to cover high-risk propositions like big accounting firms. Premiums are prohibitive. Deductibles of up to $20 million are becoming the norm for large accounting firms, and coverage is increasingly harder to find beyond the $100 million level. One recent report claimed that auditor insurance premiums have increased tenfold in the past seven years. Without sufficient insurance, individual partners are personally at risk. In the Standard Chartered-Price Waterhouse case, that liability comes to more than $350,000 per partner.

#### TORT REFORM

In theory, one answer to these partnership problems could be to return the accounting profession to a world of individual practitioners. But it is pretty hard to imagine an individual practitioner performing an adequate audit of AT&T or Citibank. If we carry on as we have, more national accounting firms may collapse. The financial markets that depend on them will surely not be better off.

The best answer here may be tort reform. Another step in the right direction would be to let accounting firms incorporate. There is

no reason why partners in accounting firms should be any more at risk for the negligence of their fellow partners than one broker at Merrill Lynch is for the negligence of another Merrill Lynch broker. States need to change their rules.

Permitting incorporation would hardly solve all their (or our) liability problems. But at least accountants would not have to risk their shirts when they go to work every day.

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PUNITIVE DAMAGES WITHOUT LIMIT: FUNDAMENTALLY UNFAIR

"There is a point beyond which even justice becomes unjust."

Sophocles' observation may be over two thousand years old, but it is equally applicable today. This country's approach to awarding punitive damages is now clearly out of control. Nowhere is this more apparent than in recent verdicts against accounting firms in which plaintiffs have collected windfall awards far beyond their actual losses. Punitive damage awards have become so excessive that they threaten not only individual accounting firms, but the very basis on which the CPA profession can continue performing audits. Given the critical role the CPA profession plays in the country's financial reporting system, it is fair to say that anything that threatens the CPA profession's ability to conduct audits—except on the most highly selective basis to avoid risk of liability through association—threatens the smooth operation of the capital markets and the economy in general.

UNREASONABLE PUNISHMENT

At the heart of the problem is the unsettling reality that harsh punitive damage awards are being made in cases in which only compensatory damages are truly appropriate according to traditional concepts of law and justice. The purpose of punitive damages needs to be more clearly understood by juries and courts—and if necessary, specific statutes need to be enacted to ensure that the system operates to promote systematic justice rather than random and capricious attacks on professionals who happen to have attractively "deep pockets."

Punitive damages must be distinguished from compensatory damages in order to understand the basic issue. The purpose of compensatory damages is to make the injured parties whole again. Both out-of-pocket losses and economic losses may be taken into account in an attempt to put parties in the same position they were in, or would have been in, before the damage was done. Punitive damages, on the other hand, are designed to punish, not to compensate. Traditionally, punitive damages are reserved for situations in which a party's behavior was intentional or reckless, and so grossly bad that basic human sensibilities are outraged and extra punishment is truly required.

Once rare, punitive damage awards are now becoming quite common. The Institute for Civil Justice studied 24,000 punitive damage cases and found that from 1965–69 the average sum awarded was $43,000. But in 1980–84, the inflation-adjusted amounts averaged $729,000—a jump of 1,500 percent. The result of this staggering increase is a never-ending spiral. The prospect of winning the "litigation lottery" and obtaining high punitive damage awards creates an attractive incentive for parties who'd like to try their luck at bringing suit, no matter how flimsy their grounds.

The widely publicized Miniscribe case illustrates how the mechanism of punitive damages can be misused. The case stemmed from the actions of O.T. Wiles, the former chairman of Miniscribe, Inc., a manufacturer of computer disk drives. Wiles was accused of falsifying corporate records to inflate the company's net worth. Investors, who bought approximately $18 million in bonds sold by Miniscribe based on the falsified records, filed a successful lawsuit against Wiles, his investment bankers and the accounting firm of Coopers & Lybrand. Compensatory damages were found by the jury to be in the amount of $20 million, but punitive damages were set at an incredible $530 million.

Coopers & Lybrand was found by the jury to have conducted faulty audits, and to have signed off on a prospectus that contained fraudulent financial statements. The share of the damages attributed to Coopers & Lybrand was $4 million in compensatory damages and $250 million in punitive damages. Coopers & Lybrand contested the allegations against them, and claimed they did not have direct knowledge of Wiles' fraud. The trial judge later set aside the verdict as "contrary to the great weight of the evidence," and the case was eventually settled out of court for an undisclosed sum. Nevertheless, the magnitude of the jury award undoubtedly exerted great influence on the eventual size of the settlement.

THE CONSEQUENCES OF UNRESTRAINED VENGEANCE

The Miniscribe case raises serious questions. It is hard to imagine any kind of conduct in a business situation that would be sufficiently repugnant to human sensibilities as to justify a judgment for punitive damages in excess of 50 times compensatory damages. Why should accountants and other professionals be singled out for a level of punishment that would normally be reserved for the most outrageous human behavior in an ordinary non-business case—except for the fact that professionals are perceived as having the ability to pay?

When the law of punitive damages is stretched beyond its traditional limits to encompass ordinary negligence of professionals—instead of grossly reckless or intentionally bad misbehavior—three major problems arise. The first is that the liability exposure of accountants and other professionals become extremely difficult to predict and very difficult to withstand. Faced with the real possibility that an unfavorable court decision could force them to pay damages of unpredictable magnitude, far in excess of the actual injury, many firms cannot afford the risk of fighting even the most obviously capricious lawsuits. The unlimited potential for excessive punitive damages dictates that a professional firm submit quickly to a more limited settlement—however unjustified, however unfair.

The second problem is the impact large settlements will have on a firm's financial health. Insurance costs will most likely skyrocket, placing additional pressure on the firm's bottom line. Unreasonable monetary awards against some firms severely hamper all firms' ability to grow. If the current situation is left unchecked, the cost of litigation will quickly filter through to the economy in the form steeper fees and, in the professional sector, fewer jobs.

The third problem is the implications excessive punitive damage awards against professionals have for the smooth operations of the business and financial sectors. Will liability have a chilling effect on how accounting and other professional firms perform their technical functions and how they select the clients for whom they will perform certain work? If so, what will these clients do without the services they need?

WORKING FOR A SOLUTION

The accounting profession has identified excessive punitive damages as a major threat to the current and future health of the accounting profession. The profession's national representative body, the American Institute of Certified Public Accountants (AICPA), has worked with the American Tort Reform Association (ATRA) in Washington, D.C, to create model legislation for states to adopt or use as a model in controlling the application of punitive damages in civil cases.

This effort is guided by the recent U.S. Supreme Court decision in *Pacific Mutual Life Insurance Company* v. *Haslip*, in which the Court held that the due process clause of the Fourteenth Amendment requires the states to set reasonable limits on the jury's discretion in awarding punitive damages. In the Court's written opinion, it was recognized that in most states, juries are given little or no guidance by the courts in determining the basis on which punitive damages can be awarded, and the limits on the amount of such awards.

The model legislation proposed by the ATRA includes the following provisions:

Before punitive damages can be awarded, a claimant must establish by clear and convincing evidence that the claimant's harm was the result of intentional or malicious misconduct involving a conscious intent to cause injury.

There should be bifurcation of trials, such that a separate proceeding is required to determine the appropriateness of punitive damages after compensatory damages have been determined.

Punitive damages should be limited to $200,000, or an amount equal to the compensatory award, whichever is greater.

There should be a mandatory court review of punitive damages to assure that they are reasonable in light of the facts in the case. Various specific factors are given for the court to consider in making this determination.

In addition, the AICPA has created its own model legislation, which includes additional provisions designed to reduce the extreme vulnerability of accounting firms to excessive punitive damage awards. For example, in some jurisdictions, juries may impose punitive damages on an accounting firm based on the actions of an employee who may have been acting without the knowledge of the firm or any of its partners. To address this problem, the AICPA's model legislation would limit punitive damages against the firm to situations in which the firm's governing body had expressly authorized the employee's misconduct, or had subsequent knowledge and acquiesced or ratified the employee's behavior.

The AICPA's version of the model legislation also recommends dollar limits on the size of punitive awards. The standard proposal limits punitive damages to twice the amount of the firm's actual or expected gain from the situation—for example, twice the amount of the audit fee. This departure from the ATRA recommendation is due to the potential for disaster stemming from the structure of accounting firms. In a professional partnership, all the personal assets of each of the partners is at risk to satisfy judgments against the partnership—including punitive damage awards—even if all of the partners were totally unaware of acts committed by isolated individuals.

The states themselves are not oblivious to the serious problem of excessive punitive damage awards. Over the past six years, 25

states have enacted some type of punitive damage reform, ranging from outright abolition of punitive damages to stricter definitions of the kinds of conduct that will allow such awards and higher standards of proof relating to such conduct.

The explosion of litigation and outrageous judgments against professionals will immediately impact the professions, but will ultimately impose tremendous burdens on society at large. Our courts and juries are charged with the duty of dispensing justice. Adoption of the model legislation currently proposed by the ATRA, the AICPA, and other concerned organizations would be a major step towards ensuring that justice will be dispensed—not on the basis of "deep pockets," but within the limits of due process for all.•

## TRIBUTE TO CUMMINS ENGINE CO.

• Mr. LUGAR. Mr. President, I rise today to recognize Cummins Engine Co.'s. 50th anniversary as a distinguished supplier of diesel power to the U.S. military.

At the outset of World War II, Cummins Engine, based in Columbus, IN, delivered 5,000 H-160 engines to power heavy logistics trucks used by the Army Quartermaster Corps.

Known as the Red Ball Express, many of these trucks were used by Gen. George Patton as Allied forces stormed across France and Germany. The reliable performance did much to establish diesel as the preferred power source for both military and commercial cargo transport.

The reputation of the engine was already well established. A year earlier, in 1943, Cummins received the Army/Navy "E" Award for excellence in the production of war materials.

Today, the spectrum of Cummins technology spans from supply of truck engines to continuous, active participation in the military market worldwide for all equipment applications where diesel power is specified. In fact, Cummins is the leading supplier of heavy-duty diesels for defense and other purposes in the Western world.

As the company prepared to celebrate its 50th anniversary as a supplier, Cummins delivered its 150,000th engine to the U.S. Department of Defense—a VTA903-T600 designated for installation in a Bradley M2 fighting vehicle.

Cummins Engine Co. is to be commended for its distinguished history as a supplier to our military—both in terms of its heritage as a technological leader and a provider of jobs for thousands of people in Indiana and worldwide.•

## THE RETIREMENT OF REPRESENTATIVE JIM OLIN AND REPRESENTATIVE GEORGE ALLEN

• Mr. WARNER. Mr. President, I rise today to pay tribute to two distinguished members of the Virginia delegation—JIM OLIN of the Sixth Congressional District and GEORGE ALLEN of the Seventh Congressional District.

Congressman JIM OLIN, of Roanoke, VA, was first elected to the U.S. House of Representatives in 1982 upon the retirement of another outstanding Virginian, M. Caldwell Butler. Since that time and through four subsequent elections, Mr. OLIN has proven himself as a capable and dedicated legislator who understands the needs of the people he represents. Our strong friendship always placed the needs of our constituents above any partisan divisions.

Throughout his distinguished public service career, JIM OLIN played an integral role in shaping important legislation which affects many Americans. He served on the House Agriculture Committee and the Small Business Committee where he served as the chairman of the Subcommittee on Environment and Employment.

I was privileged to work with JIM OLIN on three legislative achievements for which he will long be remembered:

The Virginia Wilderness Act which provides permanent protection to 81,000 acres of unique Virginia forests and streams.

The Buena Vista flood control project which, when completed, will protect this small community from the devastating floods it has endured time after time. The Congress accepted the delegation's recommendation that the project bear JIM OLIN's name in recognition of his long public service.

The development of the Roanoke River Parkway to provide visitor access from the Blue Ridge Parkway to the Roanoke Valley and the explore project.

Although I may not have agreed with my friend JIM OLIN on each issue or each vote, this Senator will certainly miss his friendship, his counsel, and his participation in the Virginia congressional delegation. He worked hard for his constituents and voted his conscience to do what he felt was best for our State and our Nation.

It has indeed been a privilege to serve with JIM OLIN over the past 10 years. I wish Congressman OLIN well in his retirement and extend my best wishes to him and his lovely wife, Phyllis, and their five children and eight grandchildren. May they enjoy all the blessings of long life and find much pleasure in their time together in the years ahead.

Congressman GEORGE ALLEN, of Earlysville, VA, was elected just 11 months ago in a special election to fill the vacancy created by the retirement of my good friend and former Representative from the Seventh District, D. French Slaughter. It was indeed my great pleasure to be by GEORGE ALLEN's side as he campaigned for this office. He was faced with a changing political scene, not of his making, leaving him little opportunity to continue in the House of Representatives.

GEORGE ALLEN came to Capitol Hill, together with a lovely wife and children, with a mandate from his constituents to reform Congress and to restore fiscal responsibility to the Federal Government. He never wavered from these commitments. Congressman ALLEN has fought hard to achieve these goals of a balanced budget amendment to the Constitution that included spending limitations, taxpayer protection, and a line-item veto for the President.

Before coming to the U.S. Congress, GEORGE ALLEN served 9 years in the Virginia House of Delegates where he made a strong reputation for fiscal conservatism. In his capacity as both a State and Federal legislator, GEORGE ALLEN has served his constituents with honor and distinction, and his services will certainly be missed.

GEORGE ALLEN is well regarded in Virginia as a man of considerable talents. He represents the emerging generation of strong Virginia Republican leaders and will certainly be a valuable electable candidate for future public office.

Because of circumstances beyond his control, GEORGE ALLEN was only here in Washington for a short time, but he made the most of his stay by expressing his views and fighting for what he believed in—boots and all. I wish GEORGE, his wife Susan, and their two children nothing but the best of luck in all their future endeavors. GEORGE ALLEN has proven to be an effective leader, and on behalf of our party, our State, and our Nation, I thank him for his commitment to public service.•

## HEALTH CARE ACCESS AND AFFORDABILITY ACT OF 1992

• Mr. HATCH. Mr. President, on Monday, I introduced the Health Care Access and Affordability Act. I have received numerous requests for copies of this legislation. To facilitate making the bill available to all interested parties, I ask that the text of S. 3348, the Health Care Access and Affordability Act of 1992, be included in the RECORD.

The bill text follows:

*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 "Health Care Access and Affordability Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title.

TITLE I—SOCIAL SECURITY ACT PROVISIONS

Subtitle A—Small Employer Insurance Reform

PART I—TAX DEDUCTIBLE HEALTH INSURANCE COSTS

Sec. 101. Permanent increase in deductible health insurance costs for self-employed individuals.

PART II—STANDARDS AND REQUIREMENTS OF SMALL EMPLOYER HEALTH INSURANCE REFORM
Sec. 111. Standards and requirements of small employer health insurance.
PART III—TAX PENALTY ON NONCOMPLYING INSURERS
Sec. 121. Excise tax on premiums received on health insurance policies which do not meet certain requirements.
Subtitle B—Medicare and Medicaid Provisions
PART I—MEDICARE
Sec. 131. Experimental program offering certain medicare beneficiaries a choice among different types of benefit options.
Sec. 132. Combined annual accounting of medicare part A and B trust funds.
Sec. 133. Establishment of advisory council on hospital reimbursement procedures.
Sec. 134. Medicare centers of excellence demonstration projects.
Sec. 135. Establishment of medical directive registry and proxy designation form.
PART II—MEDICAID
Sec. 141. Demonstration projects for improving access to medicaid services in medically underserved areas.
Sec. 142. Demonstration projects providing medical assistance to certain uninsured individuals.
Sec. 143. Demonstration projects providing outreach activities to individuals who may be eligible for certain medical assistance.
Sec. 144. Demonstration projects to reduce infant mortality.
TITLE II—PUBLIC HEALTH SERVICE ACT PROVISIONS
Sec. 201. Disease prevention educational program.
Sec. 202. Increasing access to primary care.
Sec. 203. Research to foster independent living.
Sec. 204. Medical treatment outcomes.
TITLE III—PERMANENT HEALTH CARE REFORM
Sec. 301. Short title.
Sec. 302. Purpose.
Subtitle A—Tax Treatment of Health Care Expenses
Sec. 311. Refundable health care expenses tax credit.
Sec. 312. Deduction for employer-provided health insurance premiums.
Sec. 313. Limitation on business deduction of premiums.
Sec. 314. Medical savings accounts.
Subtitle B—Health Insurance Requirements
Sec. 321. General requirements of employers.
Sec. 322. Requirements with respect to conversion of non-self-insured plans.
Sec. 323. Requirements with respect to existing self-insured plans.
Sec. 324. Enforcement.
Sec. 325. Continuation of employer-provided health coverage required for maximum of 60 months.
Subtitle C—State Plan Requirements
Sec. 331. State plan requirements.
Subtitle D—Federal Preemption
Sec. 341. Federal preemption of certain state laws.
Subtitle E—Medicaid Reform
Sec. 351. New Federal-State role under medicaid.
TITLE VI—ANTITRUST PROVISIONS
Subtitle A—Modification of the Operation of the Antitrust Laws to Hospitals
Sec. 401. Purpose.
Sec. 402. Exemptions from the operation of the antitrust laws.
Sec. 403. Reports.
Sec. 404. Definitions.
Subtitle B—Encouraging Enforcement Activities of Medical Self-Regulatory Entities
Sec. 411. Antitrust exemption for medical self-regulatory entities.
Sec. 412. Consultation with medical self-regulatory entities respecting medical professional standards.
Sec. 413. Definitions.
Subtitle C—Interagency Committee
Sec. 421. Interagency Committee on Health Care Reform and Antitrust Policy.
TITLE V—MEDICAL MALPRACTICE REFORM
Subtitle A—General Provisions
Sec. 501. Findings and purpose.
Sec. 502. Definitions.
Subtitle B—Grant Programs
PART I—IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION SYSTEMS
Sec. 511. Incentive grants.
Sec. 512. Alternative dispute resolution systems described.
PART II—OTHER GRANT PROGRAMS
Sec. 521. Research grants.
Sec. 522. Disciplinary and educational grants.
PART III—ADMINISTRATIVE PROVISIONS
Sec. 531. Administrative provisions.
Sec. 532. Reports on grant programs.
Sec. 533. Authorization of appropriations.
Subtitle B—Health Care Malpractice Dispute Reform
Sec. 541. Federal reform of civil actions.
Sec. 542. State mandates for risk management and professional discipline.
Sec. 543. Community and migrant health centers risk retention group.
Sec. 544. Reports to Congress.
TITLE VI—MISCELLANEOUS PROVISIONS
Sec. 601. President's Council on Senior Fitness.
Sec. 602. Programs to encourage health lifestyles.

## TITLE I—SOCIAL SECURITY ACT PROVISIONS

### Subtitle A—Small Employer Insurance Reform

### PART I—TAX DEDUCTIBLE HEALTH INSURANCE COSTS

**SEC. 101. PERMANENT INCREASE IN DEDUCTIBLE HEALTH INSURANCE COSTS FOR SELF-EMPLOYED INDIVIDUALS.**

(a) IN GENERAL.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "25 percent of".

(b) PERMANENT DEDUCTION.—Section 162(l) of such Code is amended by striking paragraph (6).

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

### PART II—STANDARDS AND REQUIREMENTS OF SMALL EMPLOYER HEALTH INSURANCE REFORM

**SEC. 111. STANDARDS AND REQUIREMENTS OF SMALL EMPLOYER HEALTH INSURANCE.**

The Social Security Act is amended by adding at the end the following new title:

"TITLE XXI—STANDARDS FOR SMALL EMPLOYER HEALTH INSURANCE AND CERTIFICATION OF MANAGED CARE PLANS

"PART A—GENERAL STANDARDS; DEFINITIONS

"APPLICATION OF REQUIREMENTS TO SMALL EMPLOYER HEALTH INSURANCE PLANS

"SEC. 2101. (a) PLAN UNDER STATE REGULATORY PROGRAM OR CERTIFIED BY THE SECRETARY.—An insurer offering a health insurance plan to a small employer in a State on or after the effective date applicable to the State under subsection (b) shall be treated as meeting the requirements of this title if—

"(1) the Secretary determines that the State has established a regulatory program that provides for the application and enforcement of standards meeting the requirements under section 2102 to meet the requirements of part B of this title; and

"(2) if the State has not established such a program or if the program has been decertified by the Secretary under section 2102(b), the health insurance plan has been certified by the Secretary (in accordance with such procedures as the Secretary establishes) as meeting the requirements of part B of this title.

"(b) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as specified in paragraph (2) and provided in paragraph (3), the standards established under section 2102 to meet the requirements of part B of this title shall apply to health insurance plans offered, issued, or renewed to a small employer in a State on or after January 1, 1994.

"(2) EXCEPTION FOR LEGISLATION.—In the case of a State which the Secretary identifies, in consultation with the NAIC, as—

"(A) requiring State legislation (other than legislation appropriating funds) in order for insurers and health insurance plans offered to small employers to meet the standards under the program established under subsection (a), and

"(B) having a legislature which does not meet in 1993 in a legislative session in which such legislation may be considered,

the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first regular legislative session of the State legislature that begins on or after January 1, 1994. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular legislative session of the State legislature.

"(3) REQUIREMENTS APPLIED TO EXISTING POLICIES.—In the case of a health insurance plan in effect before the applicable effective date specified in paragraph (1) or (2), the requirements referred to in subsections (a) and (b) of section 2112 shall not apply to any such plan, or any renewal of such plan, before the date which is 2 years after such effective date.

"(c) REPORTING REQUIREMENTS OF STATES.—Each State shall submit to the Secretary, at intervals established by the Secretary, a report on the implementation and enforcement of the standards under the program established under subsection (a)(1) with respect to health insurance plans offered to small employers.

"(d) MORE STRINGENT STATE STANDARDS PERMITTED.—Except as provided in subsections (b)(8) and (c)(4) of section 2113, a State may implement standards that are more stringent than the standards established to meet the requirements of part B of this title.

"ESTABLISHMENT OF STANDARDS

"SEC. 2102. (a) ESTABLISHMENT OF STANDARDS.—

"(1) ROLE OF THE NAIC.—The Secretary shall request that the NAIC—

"(A) develop specific standards, in the form of a model Act and model regulations, to implement the requirements of part B of this title; and

"(B) report to the Secretary on such standards,

by not later than September 30, 1992. If the NAIC develops such standards within such period and the Secretary finds that such standards implement the requirements of part B of this title, such standards shall be the standards applied under section 2101.

"(2) ROLE OF THE SECRETARY.—If the NAIC fails to develop and report on the standards described in paragraph (1) by the date specified in such paragraph or the Secretary finds that such standards do not implement the requirements under part B of this title, the Secretary shall develop and publish such standards, by not later than December 31, 1992. Such standards shall then be the standards applied under section 2101.

"(3) STANDARDS ON GUARANTEED AVAILABILITY.—The standards developed under paragraphs (1) and (2) shall provide alternative standards for guaranteeing availability of health insurance plans for all small employers in a State as provided in section 2111(c).

"(b) PERIODIC SECRETARIAL REVIEW OF STATE REGULATORY PROGRAM.—The Secretary periodically shall review State regulatory programs to determine if they continue to meet and enforce the standards referred to in subsection (a). If the Secretary initially determines that a State regulatory program no longer meets and enforces such standards, the Secretary shall provide the State an opportunity to adopt a plan of correction that would bring such program into compliance with such standards. If the Secretary makes a final determination that the State regulatory program fails to meet and enforce such standards and requirements after such an opportunity, the Secretary shall decertify such program and assume responsibility under section 2101(a)(2) with respect to plans in the State.

"(c) GAO AUDITS.—The Comptroller General of the United States shall conduct periodic reviews on a sample of State regulatory programs to determine their compliance with the standards and requirements of this title. The Comptroller General of the United States shall report to the Secretary and Congress on the findings of such reviews.

"DEFINITIONS

"SEC. 2103. (a) HEALTH INSURANCE PLAN.—As used in this title, the term 'health insurance plan' means any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization group contract and, in States which have distinct licensure requirements, a multiple employer welfare arrangement, but does not include—

"(1) a self-insured health insurance plan; or

"(2) any of the following offered by an insurer—

"(A) accident only, dental only, disability only insurance, or long-term care only insurance,

"(B) coverage issued as a supplement to liability insurance,

"(C) workmen's compensation or similar insurance, or

"(D) automobile medical-payment insurance.

"(b) INSURER AND HEALTH MAINTENANCE ORGANIZATION.—As used in this title:

"(1) INSURER.—The term 'insurer' means any person that offers a health insurance plan to a small employer.

"(2) HEALTH MAINTENANCE ORGANIZATION.—The term 'health maintenance organization' has the meaning given the term 'eligible organization' in section 1876(b) of this Act.

"(c) GENERAL DEFINITIONS.—As used in this title:

"(1) APPLICABLE REGULATORY AUTHORITY.—The term 'applicable regulatory authority' means—

"(A) in the case of a health insurance plan offered in a State with a program meeting the requirements of part B of this title, the State commissioner or superintendent of insurance or other State authority responsible for regulation of health insurance; or

"(B) in the case of a health insurance plan certified by the Secretary under section 2101(a)(2), the Secretary.

"(2) SMALL EMPLOYER.—The term 'small employer' means, with respect to a calendar year, an employer that normally employs more than 1 but less than 51 eligible employees on a typical business day. For the purposes of this paragraph, the term 'employee' includes a self-employed individual.

"(3) ELIGIBLE EMPLOYEE.—The term 'eligible employee' means, with respect to an employer, an employee who normally performs on a monthly basis at least 30 hours of service per week for that employer.

"(4) NAIC.—The term 'NAIC' means the National Association of Insurance Commissioners.

"PART B—SMALL EMPLOYER HEALTH INSURANCE REFORM

"GENERAL REQUIREMENTS FOR HEALTH INSURANCE PLANS ISSUED TO SMALL EMPLOYERS

"SEC. 2111. (a) REGISTRATION WITH APPLICABLE REGULATORY AUTHORITY.—Each insurer shall register with the applicable regulatory authority for each State in which it issues or offers a health insurance plan to small employers.

"(b) GUARANTEED ELIGIBILITY.—

"(1) IN GENERAL.—No insurer may exclude from coverage any eligible employee, or the spouse or any dependent child of the eligible employee, to whom coverage is made available by a small employer.

"(2) WAITING PERIODS.—Paragraph (1) shall not apply to any period an eligible employee is excluded from coverage under the health insurance plan solely by reason of a requirement applicable to all employees that a minimum period of service with the small employer is required before the employee is eligible for such coverage.

"(c) GUARANTEED AVAILABILITY.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, an insurer that offers a health insurance plan to small employers located in a State must meet the standards adopted by the State described in paragraph (2).

"(2) STANDARDS ON GUARANTEED AVAILABILITY.—

"(A) IN GENERAL.—In order to implement the requirements of this title, the standards developed under paragraphs (1) and (2) of section 2102(a) shall—

"(i) require that a State adopt a mechanism for guaranteeing the availability of health insurance plans for all small employers in the State, and

"(ii) specify alternative mechanisms, including at least the alternative mechanisms described in subparagraph (B), that a State may adopt.

"(B) ALTERNATIVE MECHANISMS.—The alternative mechanisms described in this subparagraph are:

"(i) A mechanism under which the State—

"(I) requires that any insurer offering a health insurance plan to a small employer in the State shall offer the same plan to all other small employers in the State, and

"(II) requires the participation of all such insurers in a small employer reinsurance program established by the State.

"(ii) A mechanism under which the State—

"(I) requires that any insurer offering a health insurance plan to a small employer in the State shall offer the same plan to all other small employers in the State, and

"(II) permits any such insurer to participate in a small employer reinsurance program established by the State.

"(iii) A mechanism under which the State requires that any insurer offering a health insurance plan to a small employer in the State shall participate in a program for assigning high-risk groups among all such insurers.

"(iv) A mechanism under which the State requires that any insurer that—

"(I) offers a health insurance plan to a small employer in the State, and

"(II) does not agree to offer the same plan to all other small employers in the State,

shall participate in a program for assigning high-risk groups among all such insurers.

"(C) STATE ADOPTION OF CERTAIN STANDARDS.—A regulatory program adopted by the State under section 2101 must provide—

"(i) for the adoption of one of the mechanisms described in clauses (i) through (iv) of subparagraph (B), or

"(ii) for such other program that guarantees availability of health insurance to all small employers in the State and is approved by the Secretary.

"(D) STANDARDS FOR NONCOMPLYING STATES.—The Secretary, in consultation with the Secretary of the Treasury, shall develop requirements with respect to guaranteed availability to apply with respect to insurers located in a State that has not adopted the standards under section 2102 and who wish to apply for certification under section 2101(a)(2).

"(3) GROUNDS FOR REFUSAL TO RENEW.—

"(A) IN GENERAL.—An insurer may refuse to renew, or may terminate, a health insurance plan under this part only for—

"(i) nonpayment of premiums;

"(ii) fraud or misrepresentation; or

"(iii) failure to maintain minimum participation rates (consistent with subparagraph (B)).

"(B) MINIMUM PARTICIPATION RATES.—An insurer may require, with respect to a health insurance plan issued to a small employer, that a minimum percentage of eligible employees who do not otherwise have health insurance are enrolled in such plan if such percentage is applied uniformly to all plans offered to employers of comparable size.

"(d) GUARANTEED RENEWABILITY.—

"(1) IN GENERAL.—An insurer shall ensure that a health insurance plan issued to a small employer be renewed, at the option of the small employer, unless the plan is terminated for a reason specified in paragraph (2) or in subsection (c)(3)(A).

"(2) TERMINATION OF SMALL EMPLOYER BUSINESS.—An insurer is not required to renew a health insurance plan with respect to a small employer if the insurer—

"(A) elects not to renew all of its health insurance plans issued to small employers in a State; and

"(B) provides notice to the applicable regulatory authority in the State and to each small employer covered under a plan of such termination at least 180 days before the date of expiration of the plan.

In the case of such a termination, the insurer may not provide for issuance of any health insurance plan to a small employer in the State during the 5-year period beginning on the date of termination of the last plan not so renewed.

"(e) NO DISCRIMINATION BASED ON HEALTH STATUS FOR CERTAIN SERVICES.—

"(1) IN GENERAL.—Except as provided under paragraph (2), a health insurance plan offered to a small employer by an insurer may not deny, limit, or condition the coverage under (or benefits of) the plan based on the health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability, of an individual.

"(2) TREATMENT OF PREEXISTING CONDITION EXCLUSIONS FOR ALL SERVICES.—

"(A) IN GENERAL.—Subject to the succeeding provisions of this paragraph, a health insurance plan offered to a small employer by an insurer may exclude coverage with respect to services related to treatment of a preexisting condition, but the period of such exclusion may not exceed 6 months. The exclusion of coverage shall not apply to services furnished to newborns.

"(B) CREDITING OF PREVIOUS COVERAGE.—

"(i) IN GENERAL.—A health insurance plan issued to a small employer by an insurer shall provide that if an individual under such plan is in a period of continuous coverage (as defined in clause (ii)(I)) with respect to particular services as of the date of initial coverage under such plan, any period of exclusion of coverage with respect to a preexisting condition for such services or type of services shall be reduced by 1 month for each month in the period of continuous coverage.

"(ii) DEFINITIONS.—As used in this subparagraph:

"(I) PERIOD OF CONTINUOUS COVERAGE.—The term 'period of continuous coverage' means, with respect to particular services, the period beginning on the date an individual is enrolled under a health insurance plan, title XVIII, title XIX, or other health benefit arrangement including a self-insured plan which provides benefits with respect to such services and ends on the date the individual is not so enrolled for a continuous period of more than 3 months.

"(II) PREEXISTING CONDITION.—The term 'preexisting condition' means, with respect to coverage under a health insurance plan issued to a small employer by an insurer, a condition which has been diagnosed or treated during the 3-month period ending on the day before the first date of such coverage (without regard to any waiting period).

"REQUIREMENTS RELATED TO RESTRICTIONS ON RATING PRACTICES

"SEC. 2112. (a) LIMIT ON VARIATION OF PREMIUMS BETWEEN BLOCKS OF BUSINESS.—

"(1) IN GENERAL.—The base premium rate for any block of business of an insurer (as defined in section 2103(b)(1)) may not exceed the base premium rate for any other block of business by more than 20 percent.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to a block of business if the applicable regulatory authority determines that—

"(A) the block is one for which the insurer does not reject, and never has rejected, small employers included within the definition of employers eligible for the block of business or otherwise eligible employees and dependents who enroll on a timely basis, based upon their claims experience, health status, industry, or occupation,

"(B) the insurer does not transfer, and never has transferred, a health insurance plan involuntarily into or out of the block of business, and

"(C) health insurance plans offered under the block of business are currently available for purchase by small employers at the time an exception to paragraph (1) is sought by the insurer.

"(b) LIMIT ON VARIATION IN PREMIUM RATES WITHIN A BLOCK OF BUSINESS.—For a block of business of an insurer, the highest premium rates charged during a rating period to small employers with similar demographic characteristics (including age, sex, and geography and not relating to claims experience, health status, industry, occupation, or duration of coverage since issue) for the same or similar coverage, or the highest rates which could be charged to such employers under the rating system for that block of business, shall not exceed an amount that is 1.5 times the base premium rate for the block of business for a rating period (or portion thereof) that occurs in the first 3 years in which this section is in effect, and 1.35 times the base premium rate thereafter.

"(c) CONSISTENT APPLICATION OF RATING FACTORS.—In establishing premium rates for health insurance plans offered to small employers—

"(1) an insurer making adjustments with respect to age, sex, or geography must apply such adjustments consistently across small employers, and 37

"(2) no insurer may use a geographic area that is smaller than a county or smaller than an area that includes all areas in which the first three digits of the zip code are identical, whichever is smaller.

"(d) LIMIT ON TRANSFER OF EMPLOYERS AMONG BLOCKS OF BUSINESS.—

"(1) IN GENERAL.—An insurer may not transfer a small employer from one block of business to another without the consent of the employer.

"(2) OFFERS TO TRANSFER.—An insurer may not offer to transfer a small employer from one block of business to another unless—

"(A) the offer is made without regard to age, sex, geography, claims experience, health status, industry, occupation or the date on which the policy was issued, and

"(B) the same offer is made to all other small employers in the same block of business.

"(e) LIMITS ON VARIATION IN PREMIUM INCREASES.—The percentage increase in the premium rate charged to a small employer for a new rating period (determined on an annual basis) may not exceed the sum of the percentage change in the base premium rate plus 5 percentage points.

"(f) DEFINITIONS.—In this section:

"(1) BASE PREMIUM RATE.—The term 'base premium rate' means, for each block of business for each rating period, the lowest premium rate which could have been charged under a rating system for that block of business by the insurer to small employers with similar demographic or other relevant characteristics (including age, sex, and geography and not relating to claims experience, health status, industry, occupation or duration of coverage since issue) for health insurance plans with the same or similar coverage.

"(2) BLOCK OF BUSINESS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'block of business' means, with respect to an insurer, all of the small employers with a health insurance plan issued by the insurer (as shown on the records of the insurer).

"(B) DISTINCT GROUPS.—

"(i) IN GENERAL.—Subject to clause (ii), a distinct group of small employers with health insurance plans issued by an insurer may be treated as a block of business by such insurer if all of the plans in such group—

"(I) are marketed and sold through individuals and organizations that do not participate in the marketing or sale of other distinct groups by the insurer,

"(II) have been acquired from another insurer as a distinct group, or

"(III) are provided through an association with membership of not less than 25 small employers that has been formed for purposes other than obtaining health insurance.

"(ii) EXCEPTION ALLOWED.—Except as provided in subparagraph (C), an insurer may not establish more than one distinct group of small employers for each category specified in clause (i).

"(C) SPECIAL RULE.—An insurer may establish up to 2 groups under each category in subparagraph (A) or (B) to account for differences in characteristics (other than differences in plan benefits) of health insurance plans that are expected to produce substantial variation in health care costs.

"(f) FULL DISCLOSURE OF RATING PRACTICES.—

"(1) IN GENERAL.—At the time an insurer offers a health insurance plan to a small employer, the insurer shall fully disclose to the employer all of the following:

"(A) Rating practices for small employer health insurance plans, including rating practices for different populations and benefit designs.

"(B) The extent to which premium rates for the small employer are established or adjusted based upon the actual or expected variation in claims costs or health condition of the employees of such small employer and their dependents.

"(C) The provisions concerning the insurer's right to change premium rates, the extent to which premiums can be modified, and the factors which affect changes in premium rates.

"(2) NOTICE ON EXPIRATION.—An insurer providing health insurance plans to small employers shall provide for notice, at least 60 days before the date of expiration of the health insurance plan, of the terms for renewal of the plan. Such notice shall include an explanation of the extent to which any increase in premiums is due to actual or expected claims experience of the individuals covered under the small employer's health insurance plan contract.

"(g) ACTUARIAL CERTIFICATION.—Each insurer shall file annually with the applicable regulatory authority a written statement by a member of the American Academy of Actuaries (or other individual acceptable to such authority) that, based upon an examination by the individual which includes a review of the appropriate records and of the actuarial assumptions of the insurer and methods used by the insurer in establishing premium rates for small employer health insurance plans—

"(1) the insurer is in compliance with the applicable provisions of this section, and

"(2) the rating methods are actuarially sound.

Each insurer shall retain a copy of such statement for examination at its principal place of business.

"REQUIREMENTS FOR SMALL EMPLOYER HEALTH INSURANCE BENEFIT PACKAGE OFFERINGS

"SEC. 2113. (a) BASIC AND STANDARD BENEFIT PACKAGES.—

"(1) IN GENERAL.—If an insurer offers any health insurance plan to small employers in a State, the insurer shall also offer a health insurance plan providing for the standard benefit package defined in subsection (b) and a health insurance plan providing for the basic benefit package defined in subsection (c).

"(2) MANAGED CARE OPTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if an insurer offers a managed care plan in a State or a geographic area within a State to employers that are not small employers, the insurer must offer such managed care plan to small employers in the State or geographic area.

"(B) SIZE LIMITS.—An insurer may cease enrolling new small employer groups in a managed care plan if it ceases to enroll any new employer groups in such plan.

"(b) STANDARD BENEFIT PACKAGE.—

"(1) IN GENERAL.—Except as otherwise provided in this section, a health insurance plan providing for a standard benefit package shall be limited to payment for—

"(A) inpatient and outpatient hospital care, except that treatment for a mental disorder is subject to the special limitations described in subparagraph (E)(i);

"(B) inpatient and outpatient physicians' services, except that psychotherapy or counseling for a mental disorder is subject to the special limitations described in subparagraph (E)(ii);

"(C) diagnostic tests;

"(D) preventive services limited to—

"(i) prenatal care and well-baby care provided to children who are 1 year of age or younger;

"(ii) well child care;

"(iii) Pap smears;

"(iv) mammograms; and

"(v) colorectal screening services; and

"(E)(i) inpatient hospital care for a mental disorder for not less than 45 days per year, except that days of partial hospitalization or residential care may be substituted for days of inpatient care; and

"(ii) outpatient psychotherapy and counseling for a mental disorder for not less than 20 visits per year provided by a provider who is acting within the scope of State law and who—

"(I) is a physician; or

"(II) is a duly licensed or certified clinical psychologist or a duly licensed or certified clinical social worker, a duly licensed or certified equivalent mental health professional, or a clinic or center providing duly licensed or certified mental health services.

"(2) AMOUNT, SCOPE, AND DURATION OF CERTAIN BENEFITS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B) and in paragraph (3), a health insurance plan providing for a standard benefit package shall place no limits on the amount, scope, or duration of benefits described in subparagraphs (A) through (C) of paragraph (1).

"(B) PREVENTIVE SERVICES.—A health insurance plan providing for a standard benefit package may limit the amount, scope, and duration of preventive services described in subparagraph (D) of paragraph (1) provided that the amount, scope, and duration of such services are reasonably consistent with recommendations and periodicity schedules developed by appropriate medical experts.

"(3) EXCEPTIONS.—Paragraph (1) shall not be construed as requiring a plan to include payment for—

"(A) items and services that are not medically necessary;

"(B) routine physical examinations or preventive care (other than care and services described in subparagraph (D) of paragraph (1)); or

"(C) experimental services and procedures.

"(4) LIMITATION ON PREMIUMS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an insurer issuing a health insurance plan providing for a standard benefit package shall not require an employee to pay a monthly premium which exceeds 20 percent of the total monthly premium.

"(B) PART-TIME EMPLOYEE EXCEPTED.—In the case of a part-time employee, an insurer issuing a health insurance plan providing for a standard benefit package may require that such an employee pay a monthly premium that does not exceed 50 percent of the total monthly premium.

"(5) LIMITATION ON DEDUCTIBLES.—

"(A) IN GENERAL.—Except as permitted under subparagraph (B), a health insurance plan providing for a standard benefit package shall not provide a deductible amount for benefits provided in any plan year that exceeds—

"(i) with respect to benefits payable for items and services furnished to any employee with no family member enrolled under the plan, for a plan year beginning in—

"(I) a calendar year prior to 1993, $400; or

"(II) for a subsequent calendar year, the limitation specified in this clause for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year; and

"(ii) with respect to benefits payable for items and services furnished to any employee with a family member enrolled under the standard benefit package plan, for a plan year beginning in—

"(I) a calendar year prior to 1993, $400 per family member and $700 per family; or

"(II) for a subsequent calendar year, the limitation specified in this clause for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year. If the limitation computed under clause (i)(II) or (ii)(II) is not a multiple of $10, it shall be rounded to the next highest multiple of $10.

"(B) WAGE-RELATED DEDUCTIBLE.—A health insurance plan may provide for any other deductible amount instead of the limitations under—

"(i) subparagraph (A)(i), if such amount does not exceed (on an annualized basis) 1 percent of the total wages paid to the employee in the plan year; or

"(ii) subparagraph (A)(ii), if such amount does not exceed (on an annualized basis) 1 percent per family member or 2 percent per family of the total wages paid to the employee in the plan year.

"(6) LIMITATION ON COPAYMENTS AND COINSURANCE.—

"(A) IN GENERAL.—Subject to subparagraphs (B) through (D), a health insurance plan providing for a standard health benefit package may not require the payment of any copayment or coinsurance for an item or service for which coverage is required under this section—

"(i) in an amount that exceeds 20 percent of the amount payable for the item or service under the plan; or

"(ii) after an employee and family covered under the plan have incurred out-of-pocket expenses under the plan that are equal to the out-of-pocket limit (as defined in subparagraph (E)(ii)) for a plan year.

"(B) EXCEPTION FOR MANAGED CARE PLANS.—A health insurance plan that is a managed care plan may require payments in excess of the amount permitted under subparagraph (A) in the case of items and services furnished by nonparticipating providers.

"(C) EXCEPTION FOR IMPROPER UTILIZATION.—A health insurance plan may provide for copayment or coinsurance in excess of the amount permitted under subparagraph (A) for any item or service that an individual obtains without complying with procedures established by a managed care plan or under a utilization program to ensure the efficient and appropriate utilization of covered services.

"(D) EXCEPTIONS FOR MENTAL HEALTH CARE.—In the case of care described in paragraph (1)(E)(ii), a health insurance plan shall not require payment of any copayment or coinsurance for an item or service for which coverage is required by this part in an amount that exceeds 50 percent of the amount payable for the item or service.

"(7) LIMIT ON OUT-OF-POCKET EXPENSES.—

"(A) OUT-OF-POCKET EXPENSES DEFINED.—As used in this section, the term 'out-of-pocket expenses' means, with respect to an employee in a plan year, amounts payable under the plan as deductibles and coinsurance with respect to items and services provided under the plan and furnished in the plan year on behalf of the employee and family covered under the plan.

"(B) OUT-OF-POCKET LIMIT DEFINED.—As used in this section and except as provided in subparagraph (C), the term 'out-of-pocket limit' means for a plan year beginning in—

"(i) a calendar year prior to 1993, $3,000; or

"(ii) for a subsequent calendar year, the limit specified in this subparagraph for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year. If the limit computed under clause (ii) is not a multiple of $10, it shall be rounded to the next highest multiple of $10.

"(C) ALTERNATIVE OUT-OF-POCKET LIMIT.—A health insurance plan may provide for an out-of-pocket limit other than that defined in subparagraph (B) if, for a plan year with respect to an employee and the family of the employee, the limit does not exceed (on an annualized basis) 10 percent of the total wages paid to the employee in the plan year.

"(8) LIMITED PREEMPTION OF STATE MANDATED BENEFITS.—No State law or regulation in effect in a State that requires health insurance plans offered to small employers in the State to include specified items and services other than those specified by this subsection shall apply with respect to a health insurance plan providing for a standard benefit package offered by an insurer to a small employer.

"(c) BASIC BENEFITS PACKAGE.—

"(1) IN GENERAL.—A health insurance plan providing for a basic benefit package shall be limited to payment for—

"(A) inpatient and outpatient hospital care, including emergency services;

"(B) inpatient and outpatient physicians' services;

"(C) diagnostic tests;

"(D) preventive services (which may include one or more of the following services)—

"(i) prenatal care and well-baby care provided to children who are 1 year of age or younger;

"(ii) well-child care;

"(iii) Pap smears;

"(iv) mammograms; and

"(v) colorectal screening services.

"(2) COST-SHARING.—Each health insurance plan providing for the basic benefit package issued to a small employer by an insurer may impose premiums, deductibles, copayments, or other cost-sharing on enrollees of such plan.

"(3) OUT-OF-POCKET LIMIT.—Each health insurance plan providing for a basic benefit package shall provide for a limit on out-of-pocket expenses.

"(4) LIMITED PREEMPTION OF STATE MANDATED BENEFITS.—No State law or regulation in effect in a State that requires health insurance plans offered to small employers in the State to include specified items and services other than those described in this subsection shall apply with respect to a health insurance plan providing for a basic benefit package offered by an insurer to a small employer.".

## PART III—TAX PENALTY ON NONCOMPLYING INSURERS

**SEC. 121. EXCISE TAX ON PREMIUMS RECEIVED ON HEALTH INSURANCE POLICIES WHICH DO NOT MEET CERTAIN REQUIREMENTS.**

(a) IN GENERAL.—Chapter 47 of the Internal Revenue Code of 1986 (relating to taxes on group health plans) is amended by adding at the end thereof the following new section:

**"SEC. 5000A. FAILURE TO SATISFY CERTAIN STANDARDS FOR HEALTH INSURANCE.**

"(a) GENERAL RULE.—In the case of any person issuing a health insurance plan to a small employer, there is hereby imposed a tax on the failure of such person to meet at any time during any taxable year the applicable requirements of title XXI of the Social Security Act. The Secretary of Health and Human Services shall determine whether any person meets the requirements of such title.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of tax imposed by subsection (a) by reason of 1 or more failures during a taxable year shall be equal to 25 percent of the gross premiums received during such taxable year with respect to all health insurance plans issued to a small employer by the person on whom such tax is imposed.

"(2) GROSS PREMIUMS.—For purposes of paragraph (1), gross premiums shall include any consideration received with respect to any accident and health insurance contract.

"(3) CONTROLLED GROUPS.—For purposes of paragraph (1)—

"(A) CONTROLLED GROUP OF CORPORATIONS.—All corporations which are members of the same controlled group of corporations shall be treated as 1 person. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

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

"(c) LIMITATION ON TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) with respect to any failure for which it is established to the satisfaction of the Secretary that the person on whom the tax is imposed did not know, and exercising reasonable diligence would not have known, that such failure existed.

"(2) TAX NOT TO APPLY WHERE FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) with respect to any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date any of the persons on whom the tax is imposed knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

"(d) DEFINITIONS.—For purposes of this section:

"(1) HEALTH INSURANCE PLAN.—The term 'health insurance plan' means any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization group contract, and in States which have distinct licensure requirements, a multiple employer welfare arrangement, but does not include—

"(A) a self-insured health insurance plan; or

"(B) any of the following:

"(i) accident only, dental only, disability only, or long-term care only insurance,

"(ii) coverage issued as a supplement to liability insurance,

"(iii) workmen's compensation or similar insurance, or

"(iv) automobile medical-payment insurance.

"(2) SMALL EMPLOYER.—The term 'small employer' means, with respect to a calendar year, an employer that normally employs more than 1 but less than 51 eligible employees on a typical business day. For the purposes of this paragraph, the term 'employee' includes a self-employed individual.

"(3) ELIGIBLE EMPLOYEE.—The term 'eligible employee' means, with respect to an employer, an employee who normally performs on a monthly basis at least 30 hours of service per week for that employer.

"(4) PERSON.—The term 'person' means any person that offers a health insurance plan to a small employer, including a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, or in States which have distinct insurance licensure requirements, a multiple employer welfare arrangement.".

(b) NONDEDUCTIBILITY OF TAX.—Paragraph (6) of section 275(a) of such Code (relating to nondeductibility of certain taxes) is amended by inserting "47," after "46,".

(c) CLERICAL AMENDMENTS.—The table of sections for such chapter 47 is amended by adding at the end thereof the following new item:

"Sec. 5000A. Failure to satisfy certain standards for health insurance.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall take effect on the date of the enactment of this Act.

(2) NONDEDUCTIBILITY OF TAX.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1991.

## Subtitle B—Medicare and Medicaid Provisions

## PART I—MEDICARE

**SEC. 131. EXPERIMENTAL PROGRAM OFFERING CERTAIN MEDICARE BENEFICIARIES A CHOICE AMONG DIFFERENT TYPES OF BENEFIT OPTIONS.**

(a) IN GENERAL.—Part C of title XVIII of the Social Security Act (42 U.S.C. 1395x et seq.) is amended by adding at the end the following new section:

"EXPERIMENTAL PROGRAM OFFERING BENEFICIARIES A CHOICE AMONG DIFFERENT TYPES OF BENEFIT OPTIONS

"SEC. 1893. (a) IN GENERAL.—The Secretary shall establish an experimental program under which the benefit options described in subsection (b) are offered in lieu of benefits otherwise provided under this title to a group of beneficiaries of such size and character as the Secretary shall determine.

"(b) BENEFIT OPTIONS DESCRIBED.—The benefit options described in this subsection are as follows:

"(1) MODIFIED STANDARD BENEFIT OPTION.—A benefit option composed of—

"(A) the benefits provided under this title, and

"(B) for each year in which a beneficiary does not file a claim under part B of this title, a benefit consisting of—

"(i) a 10 percent rebate of any premium paid under such part, or

"(ii) a $50 voucher,

for preventative health care services not covered under such part, which shall be payable to such beneficiary at the end of such year.

"(2) LOW-TECH AND LONG-TERM CARE OPTION.—A benefit option under which any beneficiary under this title may elect to receive long-term care rather than nonconventional procedures and drugs beginning from the date of such election.

"(3) EARLY BUY-IN OPTION.—A benefit option under which any beneficiary under this title may irrevocably elect during the year in which such beneficiary attains age 55 to receive the benefits provided under this title or the benefits provided under the comprehensive coverage program described in subsection (c).

"(c) COMPREHENSIVE COVERAGE PROGRAM.—

"(1) IN GENERAL.—The comprehensive coverage program described in this subsection shall provide to a beneficiary under this title electing such coverage the following benefits:

"(A) Benefits for medical expenses incurred for acute care, otherwise provided under this title, which exceed $30,000 per year.

"(B) Dental, vision, and hearing benefits.

"(C) Long-term care benefits.

"(2) $30,000 DEDUCTIBLE FOR ACUTE CARE.—For purposes of paragraph (1)(A), a beneficiary under this title electing the comprehensive coverage program shall be responsible (through self-insurance or private insurance) for medical expenses incurred for acute care up to $30,000 per year.

"(d) DEFINITIONS.—For purposes of this section—

"(1) ACUTE CARE.—The term 'acute care' means _____.

"(2) LONG-TERM CARE.—The term 'long-term care' means _____.

"(3) NONCONVENTIONAL PROCEDURES AND DRUGS.—The term 'nonconventional procedures and drugs' means _____.

"(e) REPORTS.—The Secretary shall evaluate the experimental program established under this section and submit to the Congress on an annual basis a report concerning the effectiveness of such program.".

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective _____.

**SEC. 132. COMBINED ANNUAL ACCOUNTING OF MEDICARE PART A AND B TRUST FUNDS.**

(a) IN GENERAL.—Section 1817(b) of the Social Security Act (42 U.S.C. 1395i(b)) is amended by adding at the end of the matter following paragraph (4) the following new sentence: "The report provided for in paragraph (2) shall also include a statement of the combined assets of, and the combined disbursements made from, the Trust Fund and the Federal Supplementary Medical Insurance Trust Fund under part B of this title during the preceding fiscal year.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to reports made beginning on or after April 1, 1993.

**SEC. 133. ESTABLISHMENT OF ADVISORY COUNCIL ON HOSPITAL REIMBURSEMENT PROCEDURES.**

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall provide for the establishment of an Advisory Council on Hospital Reimbursement Procedures (hereafter in this section referred to as the "Council"). The Council shall consist of 15 members appointed by the Secretary, including representatives of—

(1) the American Hospital Association;

(2) the American Medical Association;

(3) the Health Insurance Association of America;

(4) hospitals and health care insurers; and

(5) the Health Care Financing Administration.

At least 5 of the members appointed by the Secretary to the Council shall be individuals employed as hospital administrators.

(b) DUTIES OF THE COUNCIL.—The Council shall within 2 years of the appointment of a majority of its members, submit a recommendation to the Secretary providing for a uniform hospital reimbursement form (as described in subsection (c)), which if adopted by the Secretary, would be the sole form to be utilized by the Health Care Financing Administration in processing claims submitted for payment to hospitals for in-patient services under title XVIII of the Social Security Act.

(c) CONTENTS OF UNIFORM REIMBURSEMENT FORM.—The uniform reimbursement form recommended by the Council under subsection (b) shall include the following data:

(1) A diagnosis of patients based on a uniform clinical data set.

(2) A uniform coding system of medical procedures used to treat patients.

(3) The amount and types of reimbursement requested for each procedure employed with respect to a patient including hospital services, physician's services, x-rays, diagnostic tests, rehabilitative services, and such other services as may be required to ensure that the form is comprehensive.

(d) COUNCIL REPORT OF COMPUTERIZATION OF BILLING.—The Council

(1) a survey of the current state of electronic billing;

(2) an analysis of the current and future impediments to the more extensive use of electronic billing;

(3) an analysis of the probable costs of increasing the volume and standardization of electronic billing in relation to the anticipated savings under title XVIII of the Social Security Act of instituting such a system of billing; and

(4) the Council's recommendations for further action that would facilitate the further use of electronic billing.

(e) DEVELOPMENT OF FORM BY HEALTH CARE FINANCING ADMINISTRATION IN ABSENCE OF COUNCIL ACTION.—If the Council fails within 2 years of the appointment of the majority of its members to recommend a uniform hospital reimbursement form under this section, the Secretary shall no later than 6 months after the date of such failure develop and promulgate such a form to be utilized for purposes of reimbursing providers under title XVIII of the Social Security Act.

**SEC. 134. MEDICARE CENTERS OF EXCELLENCE DEMONSTRATION PROJECTS.**

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall provide for 5 demonstration projects meeting the requirements of this section to be conducted in States submitting applications under this section. The demonstration projects conducted under this section shall provide for the designation of certain medical procedures which will only be reimbursed in a State under the medicare program under title XVIII of the Social Security Act if performed at a medicare center of excellence (hereafter in this section referred to as a "qualified center") located within the State with an application approved under this section.

(b) PROCEDURES DESIGNATED.—In order to be designated by the Secretary as a procedure, the performance of which will be reimbursed under the medicare program under title XVIII of the Social Security Act, the procedure must first be assessed by the Office of Health Technology Assessment of the Public Health Service and found to be—

(1) safe;

(2) effective;

(3) necessary to alleviate a life-threatening or seriously disabling condition; and

(4) a relatively low-volume procedure requiring a major case management effort.

(c) SELECTION OF CENTERS.—In order to be selected as a qualified center under this section a facility must be located in a State selected to be the site of one of the demonstration projects conducted under this section and the facility must demonstrate that it meets the following criteria:

(1) It must have written patient selection criteria to be utilized in determining suitable candidates for the procedure and the criteria must be based upon a patient's critical need for the procedure and a maximum likelihood of successful clinical outcome.

(2) It must have patient management plans and protocols that include the following:

(A) Therapeutic and valuative procedures for the acute and long-term management of a patient, including commonly encountered complications.

(B) Patient management and evaluation during the waiting and immediate post-discharge period, as well as in-hospital phases of the program for performing the procedure.

(C) Long-term management and evaluation, including education of the patient, liaison with the patient's attending physician, and the maintenance of active patient records for at least 5 years.

(3) It must commit a sufficient amount of resources and planning for performing a designated procedure, including at least the following:

(A) A proven expertise in medical, surgical, and other relevant areas to the procedure, including an identifiable medical team for performing the procedure, the members of which are board certified or otherwise approved by the Secretary.

(B) Component teams integrated into a comprehensive team with clearly defined leadership and corresponding responsibility.

(C) The facility must identify an anesthesia service team which will be available at all times to assist in performing the designated procedure.

(D) An infectious disease service with both the professional skills and laboratory resources to discover, identify, and manage the complications from a whole range of organisms, many of which are uncommonly encountered.

(E) Nursing teams identified as being trained in the special problems of managing patients who undergo the designated procedure.

(F) Pathology resources must be available for studying and reporting promptly any pathological responses to the procedure.

(G) Social service resources must be available.

(H) If the procedure involves organ transplantation, adequate plans must exist for organ procurement meeting legal and ethical criteria, as well as yielding viable transplantable organs in reasonable numbers.

(4) The facility must have overall facility plans and resources for a program that will provide a concentrated level of experience adequate to perform the procedure at a minimum level as specified by the Secretary.

(5) The facility must demonstrate survival rates with respect to the procedure at levels established by the Secretary.

(6) The facility must agree to maintain, and when requested, periodically submit data to the Secretary, in standard format, about patients selected, protocols used, and short-term and long-term outcomes on all patients who undergo the procedure in the facility.

(7) The facility must make available, directly or under arrangements, laboratory services (including blood banking) to meet the needs of patients receiving the procedure.

(d) REIMBURSEMENT OF A BENEFICIARY FOR TRAVEL.—In addition to the usual specified payment under title XVIII of the Social Security Act for a designated procedure the Secretary may provide, an individual entitled to benefits under title XVIII of such Act, reimbursement for travel to and from a qualified center if the individual resides more than 50 miles from such a center.

(e) APPROVAL OF APPLICATIONS.—The Secretary shall provide for the approval of applications submitted by States under this section to carry out demonstration projects by no later than 90 days after the receipt of such applications. If an application of a State to conduct a demonstration project under this section is not approved, the Secretary shall notify the State in writing of such disapproval and how the application may be amended to meet the requirements for approval.

(f) DURATION OF PROJECTS.—The Secretary shall provide that demonstration projects conducted in a State under this section shall

be conducted for a period not to exceed 3 years.

(g) REPORT.—The Secretary shall by no later than 3 months after the date of expiration of the last demonstration project to be conducted under this section submit a report to Congress analyzing the results of the demonstration projects including recommendations for any permanent changes in the medicare program under title XVIII of the Social Security Act to incorporate methods and procedures tested under such projects.

**SEC. 135. ESTABLISHMENT OF MEDICAL DIRECTIVE REGISTRY AND PROXY DESIGNATION FORM.**

Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by inserting after section 1889 the following new section:

"MEDICAL DIRECTIVE REGISTRY

"SEC. 1890. (a) ESTABLISHMENT OF REGISTRY.—The Secretary shall provide for the establishment within the Department of Health and Human Services of a registry for the purpose of developing and disseminating a Medical Directive and Proxy Designation form, registering an official copy of each executed form, and providing certified copies of the form to appropriate physicians and other health care providers.

"(b) DEVELOPMENT OF FORM.—The Secretary shall by no later than January 1, 1993, after consultation with interested individuals and organizations, develop a Medical Directive and Proxy Designation form to be disseminated to individuals eligible for benefits under this title requesting such form or to health care providers requesting such form.

"(c) NOTIFICATION OF PROVIDERS AND INDIVIDUALS.—The Secretary shall, after the development of the form under subsection (b), take the necessary steps—

"(1) to inform both participating and nonparticipating primary care physicians of the availability of the form, who may execute it, and the responsibility of the physicians toward a patient who elects to execute such form; and

"(2) to inform individuals eligible for benefits under this title, of the availability and nature of the form and how it may be executed.

"(d) REGISTRY FEE.—The Secretary may charge a nominal fee to file a form with the Registry in such an amount as to cover the administrative costs incurred in operating the registry.".

## PART II—MEDICAID

**SEC. 141. DEMONSTRATION PROJECTS FOR IMPROVING ACCESS TO MEDICAID SERVICES IN MEDICALLY UNDERSERVED AREAS.**

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall make grants to not more than _____ States submitting applications approved under this section for the purpose of conducting demonstration projects to improve access to health care services for individuals receiving medical assistance under title XIX of the Social Security Act in such States.

(b) DEMONSTRATION PROJECTS DESCRIBED.—

(1) AREAS WHERE DEMONSTRATION PROJECTS WILL BE CONDUCTED.—

(A) IN GENERAL.—The demonstration projects under this section shall be conducted—

(i) in areas which do not have adequate numbers of providers who will accept patients receiving medical assistance under title XIX of the Social Security Act, as demonstrated by the State, and

(ii) in areas in which a State can demonstrate that individuals receiving medical assistance under title XIX of the Social Security Act are overutilizing emergency room and similar services.

(B) NUMBER OF DEMONSTRATION PROJECTS IN PARTICULAR AREAS..—

(i) RURAL AREAS.—At least one-half of the demonstration projects conducted in areas described in subparagraph (A)(i) shall be conducted in rural areas.

(ii) URBAN AREAS.—At least one-half of the demonstration projects conducted in areas described in subparagraph (A)(ii) shall be conducted in urban areas.

(2) DESIGN OF DEMONSTRATION PROJECTS.—

(A) AREAS WITHOUT ADEQUATE PROVIDERS.—The demonstration projects to be conducted in areas described in paragraph (1)(A)(i) shall be designed to provide data and experience on—

(i) whether increasing the reimbursement rate available to providers serving individuals receiving medical assistance under title XIX of the Social Security Act—

(I) will induce health care providers in urban areas to set up full or part-time offices or clinics in rural areas; and

(II) will induce health care providers to provide services to individuals receiving medical assistance under title XIX of the Social Security Act; and

(ii) such other matters as the Secretary may request.

(B) AREAS WITH OVERUTILIZATION OF EMERGENCY ROOMS.—The demonstration projects to be conducted in areas described in paragraph (1)(A)(ii) shall be designed to provide data and experience on—

(i) whether increasing the reimbursement rate available to providers serving individuals receiving medical assistance under title XIX of the Social Security Act—

(I) will induce health care providers to provide services to individuals receiving medical assistance under title XIX of the Social Security Act; and

(II) will result in a decrease in the use of emergency room and similar services; and

(ii) such other matters as the Secretary may request.

(c) INCREASE IN REIMBURSEMENT RATES.—

(1) IN GENERAL.—Each State conducting a demonstration project under this section may increase reimbursement rates for health care providers up to the greater of—

(A) 150 percent of the reimbursement rates provided by such State, or

(B) 125 percent of usual and customary fees charged for services provided by such health care providers,

as in effect before the demonstration project.

(2) FEDERAL MATCH.—With respect to expenditures made by a State to increase reimbursement rates under paragraph (1), the Secretary shall pay to such State 90 percent of such expenditures.

(d) APPLICATIONS.—

(1) IN GENERAL.—An application for grants under this section shall be submitted by the Governor of a State and shall—

(A) contain a description of the proposed demonstration project;

(B) contain a statement that the proposed demonstration project will satisfy the requirements of subsection (b);

(C) contain an agreement by such State to expend the amounts required to increase reimbursement rates under subsection (c)(1) that are not paid by the Secretary under subsection (c)(2);

(D) contain an agreement by such State to participate in an evaluation of any demonstration project conducted by such State by an independent contractor selected by the Secretary in accordance with subsection (e)(1);

(E) contain an agreement by such State that the health care providers participating in the demonstration project will comply with certain quality standards specified by the Secretary; and

(F) contain such other information as the Secretary may require by regulation.

(2) CONSIDERATION AND PRIORITY OF APPLICATIONS.—The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this section and shall approve not more than _____ applications which appear likely to contribute significantly to the achievement of the purpose of this section. In selecting States to conduct demonstration projects under this section, the Secretary shall consider the geographic dispersion and variation in population of the applicants.

(e) EVALUATION AND REPORTS.—

(1) BY INDEPENDENT CONTRACTOR.—The Secretary shall select an independent contractor to monitor and evaluate each demonstration project conducted by a State under this section and such independent contractor shall submit a report to the Secretary concerning the results of the evaluation within 90 days of the termination of each such demonstration project.

(2) BY THE SECRETARY.—The Secretary shall, within 180 days of the termination of the last of the last of the demonstration projects under this section, conduct an evaluation of such demonstration projects and submit a report to the Congress concerning the effectiveness of such demonstration projects. Such report shall analyze the reports received by the Secretary under paragraph (1).

(f) DURATION.—A demonstration project provided under this section shall be conducted for a period not to exceed _____ years after the date of the enactment of this Act. The Secretary may terminate a project if the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the application approved by the Secretary under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $_____ to carry out the purposes of this Act.

**SEC. 142. DEMONSTRATION PROJECTS PROVIDING MEDICAL ASSISTANCE TO CERTAIN UNINSURED INDIVIDUALS.**

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall make grants to not more than 2 States submitting applications approved under this section for the purpose of conducting demonstration projects providing medical assistance under title XIX of the Social Security Act to certain individuals who have no health insurance coverage.

(b) DEMONSTRATION PROJECTS DESCRIBED.—

(1) IN GENERAL.—Each State conducting a demonstration project under this section shall reduce the nonessential health care services provided to certain individuals receiving medical assistance under title XIX of the Social Security Act and apply the cost savings resulting from such reduction in services to provide essential health care services to certain uninsured individuals who are currently ineligible for medical assistance under such Act.

(2) DETERMINATIONS BY THE SECRETARY.—The Secretary, in consultation with each State conducting a demonstration project under this section, shall determine—

(A) which services currently provided to individuals under title XIX of the Social Security Act are nonessential health care services subject to reduction by a State conducting a demonstration project under this section;

(B) which services currently provided to individuals under title XIX of such Act are essential health care services which will be made available to certain uninsured individuals by States conducting a demonstration project under this section; and

(C) eligibility criteria for uninsured individuals who are currently ineligible for medical assistance under title XIX of such Act to receive the essential health care services provided by a State conducting a demonstration project under this section.

(c) FEDERAL FUNDS.—With respect to expenditures made by a State conducting a demonstration project under this section to provide medical assistance under title XIX of the Social Security Act to uninsured individuals who are currently ineligible for medical assistance under title XIX such Act for essential health care services, the Secretary shall pay to such State 75 percent of such expenditures.

(d) APPLICATIONS.—

(1) IN GENERAL.—An application for grants under this section shall be submitted by the Governor of a State and shall—

(A) contain a description of the proposed demonstration project;

(B) contain an agreement by such State to participate in an evaluation of any demonstration project conducted by such State by an independent contractor selected by the Secretary in accordance with subsection (e)(1);

(C) contain an agreement by such State that the health care providers participating in the demonstration project will comply with certain quality standards specified by the Secretary;

(D) contain an agreement that such State will accept any outlay limitations negotiated as part of the application process; and

(E) contain such other information as the Secretary may require by regulation.

(2) CONSIDERATION AND PRIORITY OF APPLICATIONS.—The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this section and shall approve not more than 2 applications which appear likely to contribute significantly to the achievement of the purpose of this section. In selecting States to conduct demonstration projects under this section, the Secretary shall consider the geographic dispersion and variation in population of the applicants.

(e) EVALUATION AND REPORTS.—

(1) BY INDEPENDENT CONTRACTOR.—

(A) IN GENERAL.—The Secretary shall select an independent contractor to monitor and evaluate each demonstration project conducted by a State under this section and such independent contractor shall submit a report to the Secretary concerning the results of the evaluation within 90 days of the termination of each such demonstration project.

(B) CONTENTS OF REPORT.—The report submitted under subparagraph (A) shall contain—

(i) an evaluation of the effects of the demonstration projects conducted under this section on individuals who experienced a decrease in the nonessential health care services provided to such individuals, and

(ii) such other information as the Secretary shall require.

(2) BY THE SECRETARY.—The Secretary shall, within 180 days of the termination of the last of the last of the demonstration projects conducted under this section, conduct an evaluation of such demonstration projects and submit a report to the Congress concerning the effectiveness of such demonstration projects. Such report shall analyze the reports received by the Secretary under paragraph (1).

(f) DURATION.—A demonstration project provided under this section shall be conducted for a period not to exceed _____ years after the date of the enactment of this Act. The Secretary may terminate a project if the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the application approved by the Secretary under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $_____ to carry out the purposes of this Act.

**SEC. 143. DEMONSTRATION PROJECTS PROVIDING OUTREACH ACTIVITIES TO INDIVIDUALS WHO MAY BE ELIGIBLE FOR CERTAIN MEDICAL ASSISTANCE.**

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall make grants to not more than _____ States submitting applications approved under this section for the purpose of conducting demonstration projects providing outreach activities to individuals who may be eligible for medical assistance under title XIX of the Social Security Act, for health care services provided by migrant health centers (as defined in section 329 of the Public Health Service Act), or for health care services provided by community health centers (as defined in section 330 of the Public Health Service Act).

(b) DEMONSTRATION PROJECTS DESCRIBED.—

(1) TYPES OF OUTREACH ACTIVITIES.—Each State conducting a demonstration project under this section shall employ a variety of outreach activities designed to encourage eligible persons to receive needed health care services, including the following:

(A) media based outreach programs;

(B) outreach through local nonprofit organizations; and

(C) personal canvassing activities.

(2) TARGET GROUPS.—Each State conducting a demonstration project under this section may employ outreach activities that target particular groups in need of health care services.

(c) FEDERAL MATCHING FUNDS.—With respect to expenditures made by a State to provide medical assistance under title XIX of the Social Security Act, health care services through migrant health centers, or health care services through community health centers to an individual identified as eligible for such medical assistance or health care services through outreach activities conducted by such State under a demonstration project under this section, the Secretary shall pay to such State 90 percent of such expenditures incurred during the two year period commencing on the date such individual was determined eligible for such medical assistance or health care services.

(d) APPLICATIONS.—

(1) IN GENERAL.—An application for grants under this section shall be submitted by the Governor of a State and shall—

(A) contain a description of the proposed demonstration project;

(B) contain a statement that the proposed demonstration project will satisfy the requirements of subsection (b);

(C) contain an agreement by such State to expend the amounts required to provide medical assistance and health care services that are not paid by the Secretary under subsection (c);

(D) contain an agreement by such State to participate in an evaluation of any demonstration project conducted by such State by an independent contractor selected by the Secretary in accordance with subsection (e)(1);

(E) contain an agreement by such State that the health care providers participating in the demonstration project will comply with certain quality standards specified by the Secretary;

(F) contain an agreement that such State will accept any outlay limitations negotiated as part of the application process; and

(G) contain such other information as the Secretary may require by regulation.

(2) CONSIDERATION AND PRIORITY OF APPLICATIONS.—The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this section and shall approve not more than _____ applications which appear likely to contribute significantly to the achievement of the purpose of this section. In selecting States to conduct demonstration projects under this section, the Secretary shall consider the geographic dispersion and variation in population of the applicants.

(e) EVALUATION AND REPORTS.—

(1) BY INDEPENDENT CONTRACTOR.—

(A) IN GENERAL.—The Secretary shall select an independent contractor to monitor and evaluate each demonstration project conducted by a State under this section and such independent contractor shall submit a report to the Secretary concerning the results of the evaluation within 90 days of the termination of each such demonstration project.

(B) CONTENTS OF REPORT.—The report submitted under subparagraph (A) shall contain—

(i) an estimate of the number of individuals that could be reached under a nationwide program which employed the same outreach activities employed by each State,

(ii) an estimate of the cost of such a program, and

(iii) such other information as the Secretary shall require.

(2) BY THE SECRETARY.—The Secretary shall, within 180 days of the termination of the last of the last of the demonstration projects conducted under this section, conduct an evaluation of such demonstration projects and submit a report to the Congress concerning the effectiveness of such demonstration projects. Such report shall analyze the reports received by the Secretary under paragraph (1).

(f) DURATION.—A demonstration project provided under this section shall be conducted for a period not to exceed _____ years after the date of the enactment of this Act. The Secretary may terminate a project if the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the application approved by the Secretary under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $_____ to carry out the purposes of this Act.

**SEC. 144. DEMONSTRATION PROJECTS TO REDUCE INFANT MORTALITY.**

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall out of funds appropriated for the special supplemental food program under section 17 of the

Child Nutrition Act of 1966 (hereafter in this section referred to as the "WIC program"), the Maternal and Child Health Services Block Grant under title V of the Social Security Act (hereafter in this section referred to as the "MCH program"), and the medicaid program under title XIX of the Social Security Act provide for demonstration projects to test methods of reducing infant mortality as described in subsection (b).

(b) DEMONSTRATION PROJECTS DESCRIBED.—The Secretary shall provide for demonstration projects in up to 20 States submitting applications approved under this section to allow individuals in the State to apply for benefits under the WIC program, the MCH program, and the medicaid program at one location using one standardized form for establishment of eligibility for such programs.

(c) APPROVAL OF STATE APPLICATIONS.—In order to be approved under this section the State must submit an application to the Secretary that demonstrates that the State will—

(1) provide centralized locations where an individual may establish eligibility for the WIC program, the MCH program, and the medicaid program all in one location;

(2) develop and utilize a standardized form to allow an individual to apply for benefits under all such programs;

(3) support outreach activities to publicize the program's existence to potential eligibles, and to make funds available for transportation and child care to enable eligible mothers to make health care appointments; and

(4) submit an annual report to the Secretary on the status of the project and on any significant impediments to carrying out the project in the State.

(d) DURATION OF PROJECT.—The demonstration projects provided for in this section shall be conducted for a period of 3 years. The Secretary may cancel a project in a State if the Secretary determines that such project is not being conducted consistent with or satisfactorily under this section.

(e) ANNUAL GRANTS.—The Secretary shall from the funds described in subsection (a) make annual grants to States in the amount of $_____ to carry out demonstration projects under this section.

(f) ANNUAL REPORT.—The Secretary shall within 90 days after the completion of the last demonstration project under this section submit a report to Congress detailing the findings of such projects including legislative recommendations for changes in the WIC, MCH, or medicaid programs.

## TITLE II—PUBLIC HEALTH SERVICE ACT PROVISIONS

### SEC. 201. DISEASE PREVENTION EDUCATIONAL PROGRAM.

Part A of title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end thereof the following new section:

### "SEC. 310A. DISEASE PREVENTION EDUCATIONAL PROGRAM.

"(a) ESTABLISHMENT.—The Surgeon General shall establish and implement a 3 year public education program concerning the prevention of disease through changes in personal behaviors and the use of preventive care and screening.

"(b) ELEMENTS.—The Surgeon General shall ensure that the program established under subsection (a) involves a coordinated effort that utilizes the broadcast and print media, including public service announcements, activities that outreach to community groups, cooperative ventures entered into with businesses, and the design of school curricula for use in health education classes as well as presentations on preventive health issues.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $10,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, and $20,000,000 for fiscal year 1995.".

### SEC. 202. INCREASING ACCESS TO PRIMARY CARE.

(a) INCREASED FUNDING FOR COMMUNITY HEALTH CENTERS.—Section 330(g)(1)(A) of the Public Health Service Act (42 U.S.C. 254c(g)(1)(A)) is amended by striking out "each of the fiscal years 1992 through 1994" and inserting in lieu thereof "fiscal year 1992, $_____,000,000 for fiscal year 1993, $_____,000,000 for fiscal year 1994, and $_____,000,000 for fiscal year 1995".

(b) USE OF AMOUNTS.—

(1) NEW CENTERS.—Additional amounts appropriated under the amendment made by subsection (a) in excess of the amount appropriated under section 330(g)(1)(A) of the Public Health Services Act for fiscal year 1992 shall be used for the establishment and operation of 250 new community health centers to be located in underserved areas or in areas with high concentrations of underserved target populations.

(2) EMERGENCY CARE.—Of the centers established under paragraph (1), the Secretary of Health and Human Services shall ensure that 20 of such centers are targeted toward the provision of emergency care in areas without such emergency care service.

(3) DIVISION OF FUNDS.—With respect to the amounts described in paragraph (1) for each fiscal year, the Secretary of Health and Human Services shall ensure that—

(A) not less than $160,000,000 shall be used for the establishment of new centers in fiscal year 1993;

(B)(i) not less than $90,000,000 shall be used for the establishment of new centers in fiscal year 1994; and

(ii) not less than $210,000,000 shall be used for the operation of such centers in fiscal year 1994; and

(C) not less than $290,000,000 shall be used for the operation of such centers in fiscal year 1995.

(c) REFOCUSING OF NATIONAL HEALTH SERVICE CORPS ASSIGNMENTS.—Section 333 of the Public Health Service Act (42 U.S.C. 254f) is amended by adding at the end thereof the following new subsection:

"(f)(1) The Corps shall revise its priorities in assigning members under this subpart to place and increased emphasis on demonstrated unmet need.

"(2) In carrying out paragraph (1), the Corps—

"(A) shall assign Corps personnel in a manner to increase the access of populations in health professional shortage areas (particularly infants and children, high-risk pregnant women, migrant workers and their families, drug and alcohol abusers, and the homeless) to primary medical care; and

"(B) should encourage primary care physicians to serve in community and migrant health centers, or in related health programs, or in underserved rural areas, and offer such physicians incentives for efficient private practice in such areas.

"(3) To carry out this subsection, the Secretary may award grants to public and nonprofit private entities.

"(4) To facilitate the implementation of this subsection, the Corps shall prepare a written plan describing the actions that the Corps will take under this subsection. The plan shall contain a description of measures by which it's success may be measured objectively. Upon the approval of the Secretary, the plan shall be published in the Federal Register.

"(5) There are authorized to be appropriate to carry out this section, $50,000,000 for fiscal year 1993, $100,000,000 for fiscal year 1994, and $100,000,000 for fiscal year 1995.".

### SEC. 203. RESEARCH TO FOSTER INDEPENDENT LIVING.

Subpart 5 of part C of the Public Health Service Act (42 U.S.C. 285e et seq.) is amended by adding at the end thereof the following new section:

### "SEC. 445G. RESEARCH TO FOSTER INDEPENDENT LIVING.

"(a) ESTABLISHMENT OF A CENTER.—There shall be established within the National Institute on Aging a Center for the Fostering of Independent Living (hereafter referred to as the 'Center'). The Center shall be headed by a Director, to be appointed by the Secretary, who shall report directly to the Director of the National Institute on Aging.

"(b) MISSION.—The Center shall conduct and support applied research, both social and scientific, concerning the manner in which to foster independent living among individuals suffering from impairments in their ability to perform activities of daily living. To carry out it's duties under this section, the Center shall have access to the scientific findings of the National Institute on Aging and the other institutes of the National Institutes of Health.

"(c) DUTIES.—The Center shall perform the following duties:

"(1) FUNCTIONAL ASSESSMENT AND EVALUATION OF THERAPIES.—The Center shall—

"(A) encourage the development of improved methods of assessing the ability of impaired individuals to function in a non-institutional setting; and

"(B) undertake an evaluation of the effectiveness of existing rehabilitative therapies.

"(2) ALLEVIATION OF DISABLING CONDITIONS.—The Center, in cooperation and consultation with the Food and Drug Administration, shall support the development and availability of drugs and devices such as those to—

"(A) eliminate falls or reduce their effect;

"(B) alleviate severe hearing or vision losses;

"(C) treat or correct urinary incontinence;

"(D) aid memory so as to combat wandering behavior and other severe consequences of memory deficits; and

"(E) compensate for losses in mobility.

"(3) LIVING ARRANGEMENTS.—The Center shall—

"(A) survey various types of living arrangements that would permit an individual implementing such arrangements to live independently;

"(B) develop or support methods to optimize the living arrangements described in subparagraph (A); and

"(C) conduct, or support the conduct of, one or more demonstration program concerning various living arrangements (except that no such demonstration may subsidize the living arrangements or care of any individual).

"(4) GUIDE TO INDEPENDENT LIVING.—The Center shall compile and publish a Guide to Independent Living which shall be widely distributed to elderly individuals, and provide such individuals with information concerning medical and technological developments, home and community-based services, and improved living arrangements, pertinent to aiding such individuals, particularly elderly individuals who are impaired, to remain within the community.

"(d) TECHNICAL ASSISTANCE.—The Center may provide technical assistance to States and local communities, and nonprofit organizations, to enable the recipients of such assistance to develop or implement improved arrangements to enable elderly individuals, particularly the elderly individuals who are impaired, to live independently.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $5,000,000 for fiscal year 1993, $109,000,000 for fiscal year 1994, and $110,000,000 for fiscal year 1995.".

**SEC. 204. MEDICAL TREATMENT OUTCOMES.**

Title IX of the Public Health Service Act (42 U.S.C. 299 et seq.) is amended by adding at the end thereof the following new section:

**"SEC. 928. REPORTS.**

"(a) DEVELOPMENT OF SYSTEM.—The Secretary, acting through the Agency for Health Care Policy and Research, shall develop a system to produce comprehensive reports under this title concerning the performance of local and regional health care markets.

"(b) CONTENTS.—Reports prepared under this section shall include a description—

"(1) of the local and regional health care market areas that are the subject of the report;

"(2) of the per capital allocation of hospital beds, physician, and other manpower in each such market;

"(3) of the utilization rates with respect to such markets; and

"(4) of certain health care market outcomes.

"(c) USE OF REPORTS.—Reports prepared under this section may be used to support practice parameters and alternative strategies for encouraging and enhancing the delivery of appropriate health care and to contain health care capacity.".

## TITLE III—PERMANENT HEALTH CARE REFORM

**SEC. 301. SHORT TITLE.**

This title may be cited as the "Consumer Choice Health Care Reform Act of 1992".

**SEC. 302. PURPOSE.**

The purposes of this title are to—

(1) make the American health care system responsive to consumer needs and encourage the provision of quality medical care at reasonable prices through enhanced competition;

(2) provide Americans with portable health insurance benefits and greater choice of health insurance plans;

(3) provide more equitable tax treatment of health insurance and medical care expenses; and

(4) assist low-income and uninsured Americans in purchasing health insurance and medical care.

### Subtitle A—Tax Treatment of Health Care Expenses

**SEC. 311. REFUNDABLE HEALTH CARE EXPENSES TAX CREDIT.**

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable personal credits) is amended by inserting after section 34 the following new section:

**"SEC. 34A. HEALTH CARE EXPENSES.**

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of—

"(1) 80 percent of the premiums for a qualified health plan paid by such individual during the taxable year which do not exceed the allowable limit, plus

"(2) 18 percent of such premiums which do exceed such limit, plus

"(3) 18 percent of the unreimbursed expenses for medical care paid by such individual during such taxable year.

"(b) ALLOWABLE LIMIT.—For purposes of this section—

"(1) IN GENERAL.—The allowable limit for any taxable year is equal to $275, multiplied by the number of qualified individuals.

"(2) QUALIFIED INDIVIDUALS.—

"(A) IN GENERAL.—The term 'qualified individual' means the taxpayer, the spouse of the taxpayer, and each dependent of the taxpayer (as defined in section 152) who is enrolled in a qualified health plan.

"(B) FEDERALLY COVERED INDIVIDUALS.—The term 'qualified individual' does not include any individual whose medical care is covered under title XVIII or XIX of the Social Security Act or is provided by the Department of Veterans Affairs.

"(C) SPECIAL RULE IN THE CASE OF CHILD OF DIVORCED PARENTS, ETC.—Any child to whom section 152(e) applies shall be treated as a dependent of both parents.

"(D) MARRIAGE RULES.—The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013(d) (relating to determination of status as husband and wife).

"(3) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1995, the dollar amount contained in paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1994' for 'calendar year 1989' in subparagraph (B) thereof.

"(c) QUALIFIED HEALTH PLAN.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified health plan' means—

"(A) an employer-sponsored health insurance plan effective on the date of the enactment of this section, or

"(B) a federally qualified health insurance plan.

"(2) FEDERALLY QUALIFIED HEALTH INSURANCE PLAN.—

"(A) IN GENERAL.—The term 'federally qualified health insurance plan' means a health insurance plan which—

"(i) provides at least the following minimum coverage levels for medical care:

"(I) 80 percent of the cost of inpatient hospital services up to a 365-day per stay maximum.

"(II) 80 percent of the cost of outpatient hospital services.

"(III) Appropriate alternatives to hospital care.

"(IV) 75 percent of the cost of physician services.

"(V) 75 percent of the cost of prenatal, well-baby, and well-child care.

"(VI) 75 percent of the cost of diagnostic tests.

"(VII) 75 percent of the cost of inpatient prescription drugs.

"(VIII) 100 percent of the cost of emergency services;

"(ii) does not impose patient cost sharing requirements greater than—

"(I) total deductibles of $1,000 per individual or $2,000 per family per calendar year, and

"(II) total patient cost sharing of $5,000 per individual or family per calendar year;

"(iii) provides the policyholder with a contractual right to renew the policy which stipulates that the insurer cannot cancel or refuse to renew the policy except for cases of—

"(I) nonpayment of premiums by the policyholder,

"(II) fraud or misrepresentation by the policyholder, or

"(III) the insurer ceasing to do business in the State governing the insurance contract; and

"(iv) provides that the policyholder is charged renewal premiums based on a carrier-wide average percentage increase or decrease, and not on the claims experience, or changes in the health status, of the individual policyholder.

"(B) ACTUARIAL EQUIVALENTS ALLOWED.—The term 'federally qualified health insurance plan' includes a health insurance plan with benefits the actuarial value of which are at least equivalent to the actuarial value of the benefits required under clauses (i) and (ii) of subparagraph (A).

"(d) MEDICAL CARE.—For purposes of this section—

"(1) IN GENERAL.—The term 'medical care' means amounts paid—

"(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body, and

"(B) for transportation primarily for and essential to medical care referred to in subparagraph (A).

"(2) AMOUNTS PAID FOR CERTAIN LODGING AWAY FROM HOME TREATED AS PAID FOR MEDICAL CARE.—Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—

"(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and

"(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed $50 for each night for each individual.

"(3) COSMETIC SURGERY.—

"(A) IN GENERAL.—The term 'medical care' does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

"(B) COSMETIC SURGERY DEFINED.—For purposes of this paragraph, the term 'cosmetic surgery' means any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.

"(4) PHYSICIAN.—The term 'physician' has the meaning given to such term by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

"(e) SPECIAL RULES.—For purposes of this section—

"(1) LIMITATION WITH RESPECT TO MEDICINE AND DRUGS.—

"(A) IN GENERAL.—An amount paid during the taxable year for medicine or a drug shall be taken into account under subsection (a) only if such medicine or drug is a prescribed drug or is insulin.

"(B) PRESCRIBED DRUG.—The term 'prescribed drug' means a drug or biological

which requires a prescription of a physician for its use by an individual.

"(2) SPECIAL RULE FOR DECEDENTS.—

"(A) TREATMENT OF EXPENSES PAID AFTER DEATH.—Expenses for the medical care of the taxpayer which are paid out of the taxpayer's estate during the 1-year period beginning with the day after the date of the taxpayer's death shall be treated as paid by the taxpayer at the time incurred.

"(B) LIMITATION.—Subparagraph (A) shall not apply if the amount paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent, but this subparagraph shall not apply if (within the time and in the manner and form prescribed by the Secretary) there is filed—

"(i) a statement that such amount has not been allowed as a deduction under section 2053, and

"(ii) a waiver of the right to have such amount allowed at any time as a deduction under section 2053.

"(3) FORM OF INSURANCE CONTRACT.—In the case of an insurance contract under which amounts are payable for other than medical care—

"(A) no amount shall be treated as paid for insurance to which subsection (a) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

"(B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

"(C) no amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

"(4) EXCLUSION OF AMOUNTS ALLOWED FOR CARE OF CERTAIN DEPENDENTS.—Any expense allowed as a credit under section 21 shall not be treated as an expense paid for medical care.

"(5) COORDINATION WITH ADVANCE PAYMENT AND MINIMUM TAX.—Rules similar to the rules of subsections (g) and (h) of section 32 shall apply to any credit to which this section applies.

"(6) SUBSIDIZED EXPENSES.—No expense shall be treated as medical care if—

"(A) such expense is paid, reimbursed, or subsidized (whether by being disregarded for purposes of another program or otherwise) by the Federal Government, a State or local government, or any agency or instrumentality thereof, and

"(B) the payment, reimbursement, or subsidy of such expense is not includable in the gross income of the recipient.

"(7) SUBSIDIZED PREMIUMS.—Subsection (a) shall not apply to any premium with respect to which a deduction is allowable under section 220.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.".

(b) ADVANCE PAYMENT OF CREDIT.—Chapter 25 of the Internal Revenue Code of 1986 (relating to general provisions relating to employment taxes) is amended by inserting after section 3507 the following new section:

**"SEC. 3507A. ADVANCE PAYMENT OF HEALTH EXPENSES CREDIT.**

"(a) GENERAL RULE.—Except as otherwise provided in this section, every employer making payment of wages with respect to whom a health care expenses eligibility certificate is in effect shall, at the time of paying such wages, make an additional payment equal to such employee's health care expenses advance amount.

"(b) HEALTH CARE EXPENSES ELIGIBILITY CERTIFICATE.—For purposes of this title, a health care expenses eligibility certificate is a statement furnished by an employee to the employer which—

"(1) certifies that the employee will be eligible to receive the credit provided by section 34A for the taxable year,

"(2) certifies that the employee does not have a health care expenses eligibility certificate in effect for the calendar year with respect to the payment of wages by another employer,

"(3) states whether or not the employee's spouse has a health care expenses eligibility certificate in effect, and

"(4) estimates the amount of premiums for a qualified health plan and unreimbursed expenses for medical care (as defined in section 34A) for the calendar year.

For purposes of this section, a certificate shall be treated as being in effect with respect to a spouse if such a certificate will be in effect on the first status determination date following the date on which the employee furnishes the statement in question.

"(c) HEALTH CARE EXPENSES ADVANCE AMOUNT.—

"(1) IN GENERAL.—For purposes of this title, the term 'health expenses advance amount' means, with respect to any payroll period, the amount determined—

"(A) on the basis of the employee's wages from the employer for such period,

"(B) on the basis of the employee's estimated premiums for a qualified health plan and unreimbursed expenses for medical care included in the health care expenses eligibility certificate, and

"(C) in accordance with tables provided by the Secretary.

"(2) ADVANCE AMOUNT TABLES.—The tables referred to in paragraph (1)(C) shall be similar in form to the tables prescribed under section 3402 and, to the maximum extent feasible, shall be coordinated with such tables and the tables prescribed under section 3507(c).

"(d) OTHER RULES.—For purposes of this section, rules similar to the rules of subsections (d) and (e) of section 3507 shall apply.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.".

(c) TERMINATION OF MEDICAL EXPENSE DEDUCTION.—Section 213 of the Internal Revenue Code of 1986 (relating to medical, dental, etc., expenses) is amended by adding at the end thereof the following new subsection:

"(g) TERMINATION.—No amount paid after December 31, 1994, shall be treated as an expense paid for medical care.".

(d) TERMINATION OF HEALTH INSURANCE CREDIT.—Section 32 of the Internal Revenue Code of 1986 (relating to earned income credit) is amended by adding at the end thereof the following new subsection:

"(d) TERMINATION OF HEALTH INSURANCE CREDIT.—In the case of taxable years beginning after December 31, 1994, the health insurance credit percentage shall be equal to 0 percent.".

(e) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 34 the following new item:

"Sec. 34A. Health care expenses.".

(2) The table of sections for chapter 25 of such Code is amended by adding after the item relating to section 3507 the following new item:

"Sec. 3507A. Advance payment of health care expenses credit.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1994.

**SEC. 312. DEDUCTION FOR EMPLOYER-PROVIDED HEALTH INSURANCE PREMIUMS.**

(a) IN GENERAL.—Part VII of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

**"SEC. 220. EMPLOYER-PROVIDED HEALTH INSURANCE PREMIUMS.**

"(a) DEDUCTION ALLOWED.—In the case of an individual, there shall be allowed as a deduction the applicable percentage of the premiums paid by an employer for coverage under a qualified health plan (as defined in section 34A(c)(1)) for the individual, the individual's spouse, or a dependent (as defined in section 152).

"(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage is 100 percent, reduced (but not below 0 percent) by 20 percentage points in each taxable year beginning after December 31, 1993.".

(b) DEDUCTION ALLOWABLE IN ARRIVING AT ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding at the end thereof the following new paragraph:

"(14) EMPLOYER-PROVIDED HEALTH INSURANCE PREMIUMS.—The deduction allowed by section 220.".

(c) REPEAL OF EXCLUSION FOR EMPLOYER-PROVIDED HEALTH INSURANCE.—Section 106 of the Internal Revenue Code of 1986 (relating to contributions by employer to accident and health plans) is repealed.

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 220 and inserting after the item relating to section 219 the following new items:

"Sec. 220. Employer-provided health insurance premiums.

"Sec. 221. Cross references.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

**SEC. 313. LIMITATION ON BUSINESS DEDUCTION OF PREMIUMS.**

(a) IN GENERAL.—Section 162 of the Internal Revenue Code of 1986 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) OVERALL DOLLAR LIMITATION ON HEALTH INSURANCE COSTS.—No deduction shall be allowed under this section, including subsection (l), for employer-provided health insurance to the extent that the amount of such deduction exceeds the number of employees covered by such insurance for the taxable year, multiplied by the national average premium determined by the Secretary for such taxable year of a federally qualified health insurance plan (as defined in section 34A(c)(2)).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1994.

**SEC. 314. MEDICAL SAVINGS ACCOUNTS.**

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals), as amended by section 312, is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

**"SEC. 221. MEDICAL SAVINGS ACCOUNTS.**

"(a) DEDUCTION ALLOWED.—In the case of an individual, there shall be allowed as a deduction amounts paid in cash during the taxable year by or on behalf of such individual to a medical savings account.

"(b) LIMITATION.—

"(1) IN GENERAL.—The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the lesser of—

"(A) the applicable limit, or

"(B) the compensation (as defined in section 219(f)) includible in the individual's gross income for the taxable year.

"(2) APPLICABLE LIMIT.—For purposes of paragraph (1), the applicable limit is the sum of—

"(A) $4,800, plus

"(B) $600 for each individual who is a dependent (as defined in section 152) of the individual for whose benefit the account is established.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) MEDICAL SAVINGS ACCOUNT.—The term 'medical savings account' means a trust created or organized in the United States exclusively for the purpose of paying the qualified medical expenses of the individual for whose benefit the trust is established, but only if the written governing instrument creating the trust meets the following requirements:

"(A) No contribution will be accepted unless it is in cash and contributions will not be accepted for any taxable year in excess of the applicable limit (as defined in subsection (b)(2)).

"(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

"(C) No part of the trust assets will be invested in life insurance contracts.

"(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(2) QUALIFIED MEDICAL EXPENSES.—The term 'qualified medical expenses' means amounts paid by the individual for whose benefit the account was established for medical care (as defined in section 34A(d)) of such individual, the spouse of such individual, and any dependent (as defined in section 152) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise.

"(3) TIME WHEN CONTRIBUTIONS DEEMED MADE.—A taxpayer shall be deemed to have made a contribution on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

"(d) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any amount paid or distributed out of a medical savings account shall be included in the gross income of the individual for whose benefit such account was established unless such amount is used exclusively to pay the qualified medical expenses of such individual.

"(2) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Paragraph (1) shall not apply to the distribution of any contribution paid during a taxable year to a medical savings account to the extent that such contribution exceeds the amount allowable as a deduction under subsection (a) if—

"(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

"(B) no deduction is allowed under subsection (a) with respect to such excess contribution, and

"(C) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which it is received.

"(e) TAX TREATMENT OF ACCOUNTS.—

"(1) ACCOUNT TAXED AS GRANTOR TRUST.—

"(A) IN GENERAL.—The individual for whose benefit a medical savings account is established shall be treated for purposes of this title as the owner thereof and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grantors and others treated as substantial owners).

"(B) EXCLUSION FROM GROSS INCOME FOR $300 OF EARNINGS.—Notwithstanding subparagraph (A), an amount shall be includible in the gross income of an individual for a taxable year by reason of subparagraph (A) only to the extent such amount exceeds $300.

"(2) LOSS OF EXEMPTION OF ACCOUNT WHERE INDIVIDUAL ENGAGES IN PROHIBITED TRANSACTION.—

"(A) IN GENERAL.—If, during any taxable year of the individual for whose benefit the medical savings account was established, such individual engages in any transaction prohibited by section 4975 with respect to the account, the account ceases to be a medical savings account as of the first day of that taxable year.

"(B) ACCOUNT TREATED AS DISTRIBUTING ALL ITS ASSETS.—In any case in which any account ceases to be a medical savings account by reason of subparagraph (A) on the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

"(3) EFFECT OF PLEDGING ACCOUNT AS SECURITY.—If, during any taxable year, the individual for whose benefit a medical savings account was established uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

"(f) ADDITIONAL TAX ON CERTAIN AMOUNTS INCLUDED IN GROSS INCOME.—

"(1) DISTRIBUTION NOT USED FOR QUALIFIED MEDICAL EXPENSES.—If a distribution from a medical savings account is made, and not used to pay the qualified medical expenses of the individual for whose benefit the account was established, the tax liability of such individual for the taxable year in which such distribution is received shall be increased by an amount equal to 10 percent of the amount of the distribution which is includible in gross income for such taxable year.

"(2) DISQUALIFICATION CASES.—If an amount is includible in the gross income of an individual for a taxable year under subsection (e), his tax under this chapter for such taxable year shall be increased by an amount equal to 10 percent of such amount includible in his gross income.

"(3) DISABILITY OR DEATH CASES.—Paragraphs (1) and (2) do not apply if the payment or distribution is made after the individual for whose benefit the medical savings account was established becomes disabled within the meaning of section 72(m)(7) or dies.

"(g) SPECIAL RULES.—

"(1) COMMUNITY PROPERTY LAWS.—This section shall be applied without regard to any community property laws.

"(2) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if—

"(A) the assets of such account are held by a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which he will administer the account will be consistent with the requirements of this section, and

"(B) the custodial account would, except for the fact that it is not a trust, constitute a medical savings account described in subsection (c).

For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

"(h) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1995, each applicable dollar amount shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment for the calendar year in which the taxable year begins.

"(2) COST-OF-LIVING ADJUSTMENT.—For purposes of paragraph (1), the cost-of-living adjustment for any calendar year is the percentage (if any) by which—

"(A) the deemed average total wages (as defined in section 209(k) of the Social Security Act) for the preceding calendar year, exceeds

"(B) the deemed average total wages (as so defined) for calendar year 1994.

"(3) APPLICABLE DOLLAR AMOUNT.—For purposes of paragraph (1), the term 'applicable dollar amount' means—

"(A) the $4,800 and $600 amounts in subsection (b), and

"(B) the $300 amount in subsection (e)(1).

"(4) ROUNDING.—If any amount as adjusted under paragraph (1) is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10 (or, if such amount is a multiple of $5 and not of $10, such amount shall be rounded to the next highest multiple of $10).

"(i) REPORTS.—The trustee of a medical savings account shall make such reports regarding such account to the Secretary and to the individual for whose benefit the account is maintained with respect to contributions, distributions, and such other matters as the Secretary may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.".

(b) DEDUCTION ALLOWED IN ARRIVING AT ADJUSTED GROSS INCOME.—Paragraph (7) of section 62(a) of such Code (relating to retirement savings) is amended—

(1) by inserting "OR MEDICAL EXPENSE" after "RETIREMENT" in the heading of such paragraph, and

(2) by inserting before the period at the end thereof the following: "and the deduction allowed by section 221 (relating to deduction of

certain payments to medical savings accounts)".

(c) TAX ON EXCESS CONTRIBUTIONS.—Section 4973 of such Code (relating to tax on excess contributions to individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities) is amended—

(1) by inserting "**MEDICAL SAVINGS ACCOUNTS,**" after "accounts," in the heading of such section,

(2) by redesignating paragraph (2) of subsection (a) as paragraph (3) and by inserting after paragraph (1) the following:

"(2) a medical savings account (within the meaning of section 221(c)),",

(3) by striking "or" at the end of paragraph (1) of subsection (a), and

(4) by adding at the end thereof the following new subsection:

"(d) EXCESS CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—For purposes of this section, in the case of a medical savings account, the term 'excess contributions' means the amount by which the amount contributed for the taxable year to the account exceeds the amount allowable as a deduction under section 221 for such taxable year. For purposes of this subsection, any contribution which is distributed out of the medical savings account and a distribution to which section 221(d)(2) applies shall be treated as an amount not contributed.".

(d) TAX ON PROHIBITED TRANSACTIONS.—Section 4975 of such Code (relating to prohibited transactions) is amended—

(1) by adding at the end of subsection (c) the following new paragraph:

"(4) SPECIAL RULE FOR MEDICAL SAVINGS ACCOUNTS.—An individual for whose benefit a medical savings account is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a medical savings account by reason of the application of section 221(e)(2)(A) to such account.", and

(2) by inserting "or a medical savings account described in section 221(c)" in subsection (e)(1) after "described in section 408(a)".

(e) FAILURE TO PROVIDE REPORTS ON MEDICAL SAVINGS ACCOUNTS.—Section 6693 of such Code (relating to failure to provide reports on individual retirement account or annuities) is amended—

(1) by inserting "**OR ON MEDICAL SAVINGS ACCOUNTS**" after "**ANNUITIES**" in the heading of such section, and

(2) by adding at the end of subsection (a) the following: "The person required by section 221(i) to file a report regarding a medical savings account at the time and in the manner required by such section shall pay a penalty of $50 for each failure unless it is shown that such failure is due to reasonable cause.".

(f) CLERICAL AMENDMENTS.—

(1) The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 221 and inserting the following:

"Sec. 221. Medical savings accounts.

"Sec. 222. Cross references.".

(2) The table of sections for chapter 43 of such Code is amended by striking the item relating to section 4973 and inserting the following:

"Sec. 4973. Tax on excess contributions to individual retirement accounts, medical savings accounts, certain 403(b) contracts, and certain individual retirement annuities.".

(3) The table of sections for subchapter B of chapter 68 of such Code is amended by inserting "or on medical savings accounts" after "annuities" in the item relating to section 6693.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1994.

**Subtitle B—Health Insurance Requirements**

**SEC. 321. GENERAL REQUIREMENTS OF EMPLOYERS.**

(a) PREMIUMS WITHHELD.—Each employer which does not provide an employer-sponsored health insurance plan for the employees of such employer shall—

(1) withhold from each employee's wages the amount of the employee's health insurance premium and remit such premium to the insurance plan of the employee's choice according to an agreed upon schedule, and

(2) within the first 30 days of any calendar year or the date of the hire of an employee, notify each employee of the employee's right to claim a tax credit for such premium under section 34A of the Internal Revenue Code of 1986.

(b) TREATMENT OF EMPLOYER'S CONTRIBUTION TO HEALTH PLAN.—

(1) IN GENERAL.—In the case of an employer contributing in whole or in part to an employer-sponsored health insurance plan, the employer shall, within the first 30 days of any calendar year or the date of the hire of an employee, notify each employee participating in the plan—

(A) of the amount spent by the employer on the employee's health insurance, and

(B) of the employee's right to elect to claim a tax deduction under section 220 of the Internal Revenue Code of 1986 and the applicable percentage of the premiums eligible for such deduction for the taxable year.

(2) AMOUNT OF CONTRIBUTION.—If an employer makes a contribution described in paragraph (1), the amount of such contribution shall equal the greater of—

(A) the average employer contribution for the applicable coverage (single or family) for the plan in which the employee is enrolled, or

(B) the largest such contribution made by the employer for any pay period beginning with the last pay period preceding such calendar year, and ending with the first pay period of such calendar year.

(3) INCLUSION IN GROSS INCOME.—Any amount described in paragraph (2) shall be added to the cash wages of the employee.

(4) HOLD HARMLESS.—Each employer shall hold employees harmless for the employer's share of any payroll taxes due on wages previously excluded from taxable income under section 106 of the Internal Revenue Code of 1986.

(c) REPORT TO STATE.—Each employer shall report to the appropriate State agency the health insurance coverage status of each employee and the employee's dependents and any changes with respect to such status or dependents.

(d) EFFECTIVE DATE.—The requirements under subsections (a), (b), and (c) shall apply with respect to calendar year 1995 and thereafter.

**SEC. 322. REQUIREMENTS WITH RESPECT TO CONVERSION OF NON-SELF-INSURED PLANS.**

In the case of an employer-sponsored health insurance plan in force on January 1, 1995, and which is not, or was not, a self-insured plan, the insurer from whom the plan was purchased shall—

(1) provide within the 90-day period beginning on such date all employees and their dependents participating in the plan on the last day it is, or was, in force, the option to convert their coverage to a federally qualified health insurance plan (as defined in section 34A(c)(2) of the Internal Revenue Code of 1986, and

(2) offer such coverage at rates which vary no more than 25 percent from the rates charged for individual and family coverage under the employer-sponsored plan on the last day it is, or was, in force.

**SEC. 323. REQUIREMENTS WITH RESPECT TO EXISTING SELF-INSURED PLANS.**

(a) IN GENERAL.—In the case of an employer-sponsored health insurance plan in force on January 1, 1995, and which is, or was, a self-insured plan, the employer sponsoring the plan may, at anytime following such date sell, transfer, or assign the plan to any existing or new, subsidiary, corporation, insurer, union, cooperative or association, willing to become the new sponsor of the plan, except that—

(1) such sale, transfer, or assignment may not take effect unless first approved by a two-thirds majority vote of all the primary-insured beneficiaries of the plan, and

(2) the terms or conditions and benefits or coverage of the plan, and the eligibility criteria for participation in the plan, may not be altered before January 1, 1995.

(b) PROVISIONS GOVERNING PLAN.—As of January 1, 1995, the sponsor of the plan described in subsection (a) becomes subject to all laws governing the operation of a corporation selling health insurance in the applicable State or States and to the provisions of section 322.

(c) PRIOR TERMINATION.—Any beneficiary of a self-insured plan who voluntarily terminates coverage under such a plan before January 31, 1995, forfeits the right to receive the value of the beneficiary's coverage in cash.

**SEC. 324. ENFORCEMENT.**

(a) IN GENERAL.—Chapter 47 of the Internal Revenue Code of 1986 (relating to excise taxes on qualified pension, etc. plans), as amended by section 121, is further amended by inserting after section 5000A the following new sections:

**"SEC. 5000B. FAILURE OF EMPLOYERS WITH RESPECT TO HEALTH INSURANCE.**

"(a) GENERAL RULE.—There is hereby imposed a tax on the failure of any person to comply with the requirements of section 322 of the Consumer Choice Health Care Reform Act of 1992 with respect to any employee of the person.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to an employee shall be $_____ for each day in the noncompliance period with respect to such failure.

"(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period—

"(A) beginning on the date such failure first occurs, and

"(B) ending on the date such failure is corrected.

"(3) CORRECTION.—A failure of a person to comply with the requirements of section 322 of the Consumer Choice Health Care Reform Act of 1992 with respect to any employee of the person shall be treated as corrected if—

"(A) such failure is retroactively undone to the extent possible, and

"(B) the employee is placed in a financial position which is as good as such employee would have been in had such failure not occurred.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that none of the persons referred to in subsection (d) knew, or exercising reasonable diligence would have known, that such failure existed.

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the first date any of the persons referred to in subsection (d) knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

"(d) LIABILITY FOR TAX.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the following shall be liable for the tax imposed by subsection (a) on a failure:

"(A) In the case of a health insurance plan other than a multiemployer plan, the employer.

"(B) In the case of a multiemployer plan, the plan.

"(C) Each person who is responsible (other than in a capacity as an employee) for administering or providing benefits under the health insurance plan and whose act or failure to act caused (in whole or in part) the failure.

"(2) SPECIAL RULES FOR PERSONS DESCRIBED IN PARAGRAPH (1)(C).—A person described in subparagraph (C) (and not in subparagraphs (A) and (B)) of paragraph (1) shall be liable for the tax imposed by subsection (a) on any failure only if such person assumed (under a legally enforceable written agreement) responsibility for the performance of the act to which the failure relates.

**"SEC. 5000C. FAILURE OF CARRIERS WITH RESPECT TO HEALTH INSURANCE.**

"(a) GENERAL RULE.—There is hereby imposed a tax on the failure of any person carrier offering any health insurance plan to comply with the requirements of section 323 of the Consumer Choice Health Care Reform Act of 1992.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of tax imposed by subsection (a) by reason of 1 or more failures during a taxable year shall be equal to _____ percent of the gross premiums received during such taxable year with respect to all health insurance plans issued by the carrier on whom such tax is imposed.

"(2) GROSS PREMIUMS.—For purposes of paragraph (1), gross premiums shall include any consideration received with respect to any health insurance contract.

"(3) CONTROLLED GROUPS.—For purposes of paragraph (1)—

"(A) CONTROLLED GROUP OF CORPORATIONS.—All corporations which are members of the same controlled group of corporations shall be treated as 1 carrier. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

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

"(c) LIMITATION ON TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) with respect to any failure for which it is established to the satisfaction of the Secretary that the carrier on whom the tax is imposed did not know, and exercising reasonable diligence would not have known, that such failure existed.

"(2) TAX NOT TO APPLY WHERE FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) with respect to any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date any of the carriers on whom the tax is imposed knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.".

(b) CLERICAL AMENDMENTS.—The table of sections for such chapter 47 is amended by adding at the end thereof the following new items:

"Sec. 5000B. Failure of employers with respect to health insurance.

"Sec. 5000C. Failure of carriers with respect to health insurance.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1995.

**SEC. 325. CONTINUATION OF EMPLOYER-PROVIDED HEALTH COVERAGE REQUIRED FOR MAXIMUM OF 60 MONTHS.**

(a) IN GENERAL.—Clause (i) of section 4980B(f)(2)(B) of the Internal Revenue Code of 1986 (relating to period of coverage) is amended to read as follows:

"(i) MAXIMUM REQUIRED PERIOD.—

"(I) IN GENERAL.—The date which is 60 months after the date of the qualifying event.

"(II) SPECIAL RULE FOR CERTAIN BANKRUPTCY PROCEEDINGS.—In the case of a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in subsection (g)(1)(D)(iii)), or in the case of the surviving spouse or dependent children of the covered employee, 60 months after the date of the death of the covered employee.

"(III) QUALIFYING EVENT INVOLVING MEDICARE ENTITLEMENT.—In the case of an event described in paragraph (3)(D) (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 60-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 8905a of title 5, United States Code, is amended to read as follows:

"(e) Continued coverage under this section may not extend beyond the date which is 60 months after the date the individual first meets the requirements of subsection (b)."

(2) Subsection (f) of section 8905a of such title 5 is amended—

(A) by striking "(subject to paragraph (3)) extend beyond the date which is 36 months" and inserting "extend beyond the date which is 60 months", and

(B) by striking paragraph (3).

(c) TECHNICAL AMENDMENT.—The last sentence of section 4980B(f)(2)(C) of such Code is amended by striking "described in subclause (I) or (II) of subparagraph (B)(i)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) qualifying events occurring after the date of the enactment of this Act, and

(2) qualifying events occurring on or before such date if the period of continuation coverage required under section 4980B of the Internal Revenue Code of 1986 (determined without regard to the amendments made by this section) has not expired on or before such date.

**Subtitle C—State Plan Requirements**

**SEC. 331. STATE PLAN REQUIREMENTS.**

(a) IN GENERAL.—As a condition of receiving Federal funds for health care programs after December 31, 1994, each State shall meet the requirements of the following subsections.

(b) HEALTH PLANS FOR UNINSURED.—The requirement of this subsection is to establish a program to provide health insurance coverage at least equal to that of the federally qualified health insurance plans (as defined in section 34A(c)(2) of the Internal Revenue Code of 1986) to residents who refuse to voluntarily purchase such insurance coverage privately. Such coverage may be through—

(1) the State's program under title XIX of the Social Security Act,

(2) an existing or new State health care program, or

(3) any private insurer the State contracts with for this purpose.

(c) ENROLLMENT IN PLAN.—The requirement of this subsection is to identify and automatically enroll uninsured individuals in the program, except that—

(1) the State may charge any such individual a premium for coverage under the program which the State deems appropriate given the cost of coverage and the individual's ability to pay, and

(2) any such individual may, upon submitting proof of having purchased a federally qualified private health insurance plan, terminate coverage under the State program without penalty.

(d) MONITORING.—The requirement of this subsection is to designate or create an office of the State government to monitor the health insurance coverage status of workers and their dependents residing in the State for the purposes of—

(1) determining eligibility for State health care assistance programs, and

(2) monitoring and enforcing compliance with the requirement for individuals and families to obtain minimum health insurance coverage.

**Subtitle D—Federal Preemption**

**SEC. 341. FEDERAL PREEMPTION OF CERTAIN STATE LAWS.**

All State laws in existence on January 1, 1995, in the following areas are preempted for a period of 5 years:

(1) MANDATED INSURANCE BENEFIT LAWS.—Laws requiring health insurance policies to cover specific diseases, services, or providers.

(2) ANTI-MANAGED CARE LAWS.—Laws restricting the ability of managed care plans to selectively contract with providers of their choice.

(3) MANDATED COST-SHARING LAWS.—Laws restricting the extent to which insurers may require enrollee cost sharing as part of their plans, or restricting the extent to which managed care plans may impose different levels of cost sharing on enrollee claims for treatment by providers not participating in the plan.

(4) CERTIFICATE OF NEED LAWS.—Any laws requiring State or local government approval of capital purchases or construction by health care providers, which do not also apply to businesses, industries or individuals not engaged in the delivery of health care services.

**Subtitle E—Medicaid Reform**

**SEC. 351. NEW FEDERAL-STATE ROLE UNDER MEDICAID.**

(a) IN GENERAL.—Section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended to read as follows:

"(b)(1) Except as provided in paragraph (2), the term 'Federal medical assistance percentage' for any State shall be 100 per centum for medical assistance other than long-term care assistance.

"(2) The Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act).

"(3) For purposes of this section, the term 'long-term care assistance' means medical assistance which is remedial care recognized under State law as specified by the Secretary, including services described in paragraphs (7), (14), (15), (18), (19), (20), (23), and (24) of subsection (a).".

(b) ALL POVERTY-LEVEL INDIVIDUALS COVERED.—Subclause (I) of section 1902(a)(10)(A)(i) of the Social Security Act (42 U.S.C. 1396(a)(10)(A)(i)) is amended by inserting "whose family income does not exceed 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved, including all individuals" before "who are receiving".

(b) GRANTS TO STATES FOR THE PROVISION OF LONG-TERM CARE.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended by adding at the end the following new subsection:

"(t)(1) The Secretary is authorized to award an annual grant in an amount which does not exceed $_____ to each State to enable such State to provide long-term care to individuals eligible for medical assistance under this title.

"(2) Grants awarded pursuant to paragraph (1) may be used for activities such as

_____.

"(3) Each State desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective

_____.

**TITLE IV—ANTITRUST PROVISIONS**

**Subtitle A—Modification of the Operation of the Antitrust Laws to Hospitals**

**SEC. 401. PURPOSE.**

The purpose of this subtitle is to encourage cooperation among hospitals in order to contain costs and achieve a more efficient health care delivery system through the elimination of unnecessary duplication and proliferation of expensive medical services or expensive high technology equipment.

**SEC. 402. EXEMPTIONS FROM THE OPERATION OF THE ANTITRUST LAWS.**

(a) GENERAL EXEMPTION.—It shall not be unlawful under the antitrust laws for 2 or more hospitals to engage in conduct solely for the purpose of negotiating a proposed agreement (including the sharing of data), to be submitted under subsection (b), to share expensive medical services or expensive high technology equipment.

(b) SPECIFIC EXEMPTIONS.—

(1) AUTHORITY TO GRANT WAIVER.—The Secretary of Health and Human Services shall issue waivers in accordance with paragraph (4) to exempt from the operation of the antitrust laws conduct engaged in by hospitals to carry out agreements contained in applications approved under paragraph (3).

(2) ELIGIBILITY.—To be eligible to receive a waiver under paragraph (1), 2 or more hospitals shall submit to the Secretary an application that contains (in accordance with guidelines established by the Secretary)—

(A) a proposed agreement that only—

(i) provides that such hospitals shall share the expensive medical services or expensive high technology equipment identified in such agreement,

(ii) specifies the period of time during which such agreement shall be in effect,

(iii) describes the particular medical services or high technology equipment to be shared under such agreement, and

(iv) contains such other terms and conditions as the Secretary may reasonably require, and

(B) such information and assurances as the Secretary may reasonably require.

(3) APPROVAL.—For purposes of determining whether to approve an application submitted under paragraph (2), the Secretary shall consider whether—

(A) the proposed agreement contained in such application satisfies the guidelines issued under paragraph (6), and

(B) implementation of such agreement will result in—

(i) enhancement of the quality of hospital care or hospital-related care,

(ii) the preservation of hospital services in geographical proximity to the communities traditionally served by the applicants,

(iii) improvement in the cost-effectiveness of high-technology services provided by the applicants,

(iv) improvement in the efficient utilization of hospital resources and capital equipment,

(v) the provision of services that would not otherwise be available, or

(vi) the avoidance of duplication of hospital resources.

(4) ISSUANCE AND EFFECT OF WAIVER.—If—

(A) the Secretary approves under paragraph (3) an application submitted under paragraph (2), and

(B) the applicants enter into the proposed agreement contained in such application, modified as the Secretary may require as a condition for approval,

then the Secretary shall issue a waiver with respect to the agreement entered into. Except as provided in paragraph (5), such waiver shall exempt the applicants from the operation of the antitrust laws for conduct the applicants engage in during the period specified in such waiver and solely to carry out the agreement with respect to which such waiver is issued.

(5) REVOCATION OF WAIVER.—(A) If the Secretary determines that a hospital with respect to which a waiver is in effect under paragraph (4) is not carrying out, or has not carried out, fully the terms of the agreement with respect to which a waiver is issued under paragraph (4), the Secretary may revoke such waiver.

(B) If the Secretary revokes such waiver—

(i) the Secretary shall specify the period during which such hospital did not carry out fully the terms of such agreement, and

(ii) such waiver shall have no legal effect with respect to such period.

(6) ISSUANCE OF GUIDELINES.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall establish the guidelines for applications under paragraph (2).

**SEC. 403. REPORTS.**

(a) REPORTS TO THE SECRETARY.—Each hospital with respect to which a waiver is issued under section 402(b)(4) shall submit to the Secretary—

(1) during the period such waiver is in effect, an annual report at such time, in such form, and containing such information as the Secretary may require, including a detailed description of the implementation of the agreement to which such waiver applies, and

(2) such other information as the Secretary may require for purposes of determining compliance with section 402.

(b) REPORT TO COMMITTEES OF THE CONGRESS.—

(1) CHAIRMEN OF COMMITTEES.—Not later than 7 years after the date of the enactment of this Act, the Secretary shall submit the report described in paragraph (2) to—

(A) the chairman of the Committee on the Judiciary of the House of Representatives,

(B) the chairman of the Committee on Ways and Means of the House of Representatives,

(C) the chairman of the Committee on Energy and Commerce of the House of Representatives,

(D) the chairman of the Committee on the Judiciary of the Senate,

(E) the chairman of the Committee on Finance of the Senate, and

(F) the chairman of the Committee on Labor and Human Resources of the Senate.

(2) CONTENTS OF REPORT.—The report required by paragraph (1) shall contain a description of the nature of the agreements with respect to which the Secretary issued waivers under section 402(b)(4) and of the results of implementing such agreements, including an assessment of whether such agreements caused—

(A) a reduction in health care costs,

(B) an increase in access to medical services, and

(C) improvement in the quality of health care.

Such report shall also contain the recommendations of the Secretary with respect to other arrangements to facilitate cooperative activities to achieve the results specified in subparagraphs (A), (B), and (C).

**SEC. 404. DEFINITIONS.**

For purposes of this subtitle:

(1) The term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes—

(A) section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section applies to unfair methods of competition, and

(B) any State law similar to the antitrust laws.

(2) The term "high technology equipment" includes drugs, devices, equipment, and medical and surgical procedures utilized in medical care, and the organizational and support systems within which such care is provided, that—

(A) have high capital costs or extremely high annual operating costs, and

(B) use technologies with respect to which there is a reasonable expectation that shared ownership will avoid a significant degree of the potential excess capacity of service in the geographical area to be served.

(3) The term "medical services" includes services that—

(A) either have high capital costs or extremely high annual operating costs, and

(B) with respect to which there is a reasonable expectation that shared ownership will avoid a significant degree of the potential excess capacity of such services in the geographical area to be served,

and may include mobile services.

(4) The term "hospital" means a hospital that—

(A) has entered into, and has in effect, a participation agreement under section 1866(a) of the Social Security Act, or

(B) which has in effect a participation agreement under title XIX of such Act with the State in which the hospital is located.

(5) The term "Secretary" means the Secretary of Health and Human Services.

**Subtitle B—Encouraging Enforcement Activities of Medical Self-Regulatory Entities**

**SEC. 411. ANTITRUST EXEMPTION FOR MEDICAL SELF-REGULATORY ENTITIES.**

No damages, interest on damages, costs, or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, 15c), or under any State law similar to such section, from any medical self-regulatory entity (including its members, officers, employees, consultants, and volunteers) as a result of engaging in standard setting or enforcement activities designed to promote the quality of health care provided to patients.

**SEC. 412. CONSULTATION WITH MEDICAL SELF-REGULATORY ENTITIES RESPECTING MEDICAL PROFESSIONAL STANDARDS.**

Any Federal agency engaged in the establishment of medical professional standards shall consult with and use appropriate medical self-regulatory entities, if available, in carrying out standard setting and related regulatory activities.

**SEC. 413. DEFINITIONS.**

For purposes of this subtitle:

(1) The term "medical self-regulatory entity" means a medical society or association, a specialty board, a recognized accrediting agency, a hospital medical staff, or other entity designed to ensure the provision of high quality medical care.

(2) The term "standard setting and enforcement activities designed to promote the quality of health care provided to patients" means peer review, accreditation of medical education and hospitals, technology assessment, risk management, or the development and implementation of practice guidelines, practice parameters, or ethical codes.

**Subtitle C—Interagency Committee**

**SEC. 421. INTERAGENCY COMMITTEE ON HEALTH CARE REFORM AND ANTITRUST POLICY.**

(a) ESTABLISHMENT.—There is hereby established the Interagency Committee of Health Care Reform and Antitrust Policy (hereafter in this section referred to as the "Committee"). The Committee shall be composed of—

(1) the Secretary of Health and Human Services (or the designee of the Secretary),

(2) the Attorney General of the United States (or the designee of the Attorney General),

(3) the Director of the Office of Management and Budget (or the designee of the Director), and

(4) the Commissioners of the Federal Trade Commission (or the designees of the respective Commissioners).

(b) DUTIES.—The duties of the Committee are—

(1) with respect to the Federal entities referred to in subsection (a), to coordinate policy regarding health care reform and antitrust policy, and

(2) to make such recommendations to the Congress from time to time, as the Committee considers to be appropriate, regarding achieving both health-care cost containment and greater access to quality health care through cooperation among health care providers.

**TITLE V—MEDICAL MALPRACTICE REFORM**

**Subtitle A—General Provisions**

**SEC. 501. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds that—

(1) in recent years, there has been increasing and widespread public and professional concern about the problems associated with health care malpractice actions, and such concern has focused primarily on the issues of—

(A) the reduction in access of patients to quality health care as a result of these problems;

(B) the increasing portion of health care costs attributable to defensive health care practices and the costs of health care liability insurance premiums;

(C) the ability of health care professionals to continue to practice in high risk areas of health care treatment;

(D) the inefficiency of the civil judicial system in providing access to the courts and fair compensation for individuals injured by health care malpractice and in deterring such malpractice; and

(E) the inefficiency of State disciplinary systems in restricting the activities of health care professionals who endanger patient safety;

(2) all health care consumers are adversely affected, directly or indirectly, by the effect that the problems associated with health care malpractice actions have on the availability and affordability of health care services;

(3) regardless of whether the solution to the problems associated with health care malpractice actions is the responsibility of public or private sectors, or a combination of these, the Federal Government has a major interest in these problems as a direct provider of health care to many Americans through the Public Health Service, and as a source of payment for the health care of a much larger number of Americans through medicare, medicaid and other programs;

(4) health care liability issues have created tensions among the professions of law and medicine, the insurance industry, and consumers of health care services, and these tensions have impeded the development and implementation of solutions;

(5) the civil judicial system is a costly and inefficient mechanism for resolving claims of health care malpractice and compensating injured patients, a disproportionately large percentage of dollars spent to compensate patients for health care malpractice is distributed to a few patients, while adequate compensation is not provided to most patients injured by health care malpractice, and far too little of the amounts paid by health care professionals and health care providers for liability insurance premiums is received by injured patients;

(6) California's reform of medical liability tort law has demonstrated that modification of existing tort law governing health care malpractice actions can bring stability and predictability with respect to the size of awards and slow the increase of health care liability insurance premiums;

(7) the Department of Health and Human Services' 1987 Task Force on Medical Liability and Malpractice was correct in recommending that the Federal Government and State governments explore, through research and demonstration projects, alternative dispute resolution mechanisms that have the potential for resolving health care malpractice claims more fairly and cost-effectively than the current civil judicial system, for promoting patient safety, and for deterring health care malpractice; and

(8) a variety of proposals to solve the problems of health care liability and health care malpractice can be implemented, studied and evaluated by using the States as laboratories in which to develop and explore various alternative dispute resolution systems.

(b) PURPOSE.—It is the purpose of this title to—

(1) improve the quality of health care through the deterrence of avoidable injuries and the detection of health care providers and health care professionals who commit health care malpractice or otherwise endanger patient safety;

(2) improve the availability of health care services in cases in which health care malpractice actions have been shown to be a major factor in the decreased availability of services;

(3) expeditiously identify patients eligible to receive compensation for injuries and deliver such compensation more quickly and more efficiently than the civil judicial system; and

(4) improve the fairness and cost-effectiveness of the State system to resolve disputes over, and provide compensation for, health care malpractice by reducing uncertainty and unpredictability in the amount of compensation provided to injured individuals.

**SEC. 502. DEFINITIONS.**

As used in this title:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM.—The term "alternative dispute resolution system" means a system that—

(A) is enacted or adopted by a State to resolve health care malpractice claims other than through a health care malpractice action;

(B) applies to one or more types of injuries resulting from health care malpractice;

(C) applies to one or more political subdivisions of a State or to the entire State; and

(D) meets the requirements of section 512.

(2) ARBITRATION.—The term "arbitration" means a dispute resolution process in which

the parties submit the dispute outside of a State or federal civil justice system for resolution by a person or panel of persons.

(3) ECONOMIC LOSSES.—The term "economic losses" means losses for hospital and medical expenses, lost wages, lost employment, and other pecuniary losses.

(4) HEALTH CARE MALPRACTICE ACTION.—The term "health care malpractice action" means a civil action alleging a health care malpractice claim against a health care provider or health care professional.

(5) HEALTH CARE MALPRACTICE CLAIM.—The term "health care malpractice claim" means any claim relating to the provision of (or the failure to provide) health care services based on negligence or gross negligence, breach of express or implied warranty or contract, or failure to discharge a duty to warn or instruct to obtain consent.

(6) HEALTH CARE PROFESSIONAL.—The term "health care professional" means any individual who provides health care services in a State and who is required by State law or regulation to be licensed or certified by the State to provide such services in the State, including (but not limited to) a physician, nurse, chiropractor, nurse midwife, physical therapist, social worker, or physician assistant.

(7) HEALTH CARE PROVIDER.—The term "health care provider" means any organization or institution that is engaged in the delivery of health care services in a State and that is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State.

(8) INJURY.—The term "injury" means any injury, illness, disease, or other harm that is the subject of a health care malpractice claim.

(9) NONECONOMIC LOSSES.—The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, and other nonpecuniary losses.

(10) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(11) STATE.—The term "State" means each of the several States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

### Subtitle B—Grant Programs

### PART I—IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION SYSTEMS

**SEC. 511. INCENTIVE GRANTS.**

(a) IN GENERAL.—The Secretary shall make grants to States from amounts allocated under section 531(a) for the development and implementation of alternative dispute resolution systems, under such terms as the Secretary may require. A State shall use a grant made under this section to develop, implement, and evaluate the effectiveness of such a system.

(b) OPTION TO REFUSE GRANT.—Not later than 90 days after the Secretary makes a grant under this section to a State, the State may send a notice to the Secretary that it refuses the grant. At the time the State sends such notice, the State shall return any amounts paid under the grant to the Secretary.

(c) AMOUNT OF GRANT.—The amount of a grant made to a State under this section shall be equal to the amount which the Secretary finds reasonable and necessary for the implementation and evaluation of the State's alternative dispute resolution system, except that—

(1) the amount of a grant made under this section to a State other than the Commonwealth of Puerto Rico, Guam, or the Virgin Islands may not exceed $10,000,000; and

(2) the amount of a grant made under this section to the Commonwealth of Puerto Rico, Guam, or the Virgin Islands may not exceed $2,000,000.

(d) REPORTS ON COMPLIANCE.—

(1) SUBMISSION OF REPORTS.—Each State shall annually submit a report to the Secretary containing such information as the Secretary may require to determine whether the State is in compliance with the terms of the grant made under this section.

(2) DETERMINATION OF NONCOMPLIANCE.—If, after reviewing the report submitted under paragraph (1), the Secretary determines that a State receiving a grant under this section is not in compliance with the terms of the grant, the Secretary shall provide the State with written notice of such determination. Such notice shall specify—

(1) the reasons for the determination of the Secretary;

(2) that the Secretary will require the State, not later than 60 days after receipt of such notice, to return all funds provided to the State under the grant, unless the State—

(A) takes such corrective action as may be necessary to ensure that the State is in compliance with the terms of the grant; or

(B) requests a hearing under paragraph (3); and

(3) that the State may request a hearing on the record before an administrative law judge under section 554 of title 5, United States Code, concerning the allegations set forth in the notice.

**SEC. 512. ALTERNATIVE DISPUTE RESOLUTION SYSTEMS DESCRIBED.**

(a) IN GENERAL.—An alternative dispute resolution system meets the requirements of this section if the system—

(1) is a system described in subsection (a), (b), (c), (d), (e), or (f); and

(2) provides for the resolution of health care malpractice claims in a manner other than through health care malpractice actions for all individuals receiving health care services in the State.

(b) FAULT-BASED ADMINISTRATIVE SYSTEMS.—

(1) ESTABLISHMENT.—A State may establish an administrative process within the State government for the resolution of health care malpractice claims. Under such process, an individual alleging an injury (or the parent or guardian of such an individual) shall be required to file a claim with the State administrative process. The process shall provide for the dismissal of nonmeritorious claims and shall provide for the award of damages when an injury is found to have been caused by health care malpractice.

(2) REQUIREMENTS.—The administrative process established under paragraph (1) shall provide for—

(A) an expedited review of all claims filed;

(B) a procedure for early dismissal of claims when the expedited review process does not support a finding of possible liability;

(C) the opportunity for claim investigation and a meaningful hearing on claims with possible merit before an administrative officer or panel; and

(D) the opportunity for review of the initial decision within the administrative process.

(3) JUDICIAL REVIEW.—Any judicial review of the final administrative decision on a claim under the process established under paragraph (1) shall be limited in order to avoid duplication of the administrative process in the courts. The State shall provide that—

(A) judicial review of the final administrative decision may not extend to de novo consideration of the underlying facts of a claim resolved under the administrative process; and

(B) if a court determines that an issue of fact requires resolution, the court must remand to the State agency which conducted the administrative process for resolution of the issue.

(4) PROCEDURES FOR FILING.—The administrative process established under paragraph (1) shall include a simplified process for filing claims.

(5) COORDINATION OF PROCEDURES.—The State shall establish procedures—

(A) to ensure that the process referred to in paragraph (1) is coordinated with or monitored by the health care provider and health care professional licensing and disciplinary authorities of the State; and

(B) for the routine referral to such authorities of findings and decisions under the process that indicate that health care malpractice occurred.

(6) PAYMENTS; LEGAL ASSISTANCE.—Under the administrative process established under paragraph (1), payment may be made for economic losses and noneconomic losses. The State shall establish a formula or guidelines for the calculation of payments for noneconomic losses, and section 541(a) shall apply to claims resolved under the process. In order to ensure access to affordable legal representation for individuals filing claims under the process, the State may establish programs offering legal assistance to such individuals.

(7) EXPERTS.—The State shall empower any administrative hearing officer or panel used in the administrative process established under paragraph (1) to call independent experts not retained by a party to give evidence. The State shall provide that if called, experts are subject to cross-examination by all parties.

(c) DEFINED CATASTROPHIC INJURY COMPENSATION SYSTEMS.—

(1) ESTABLISHMENT.—A State may establish a system under which the State establishes a compensation fund to compensate all individuals who incur a certain injury (as defined by the State) in the course of receiving health care services. The State shall provide that if an individual incurs such an injury, the individual may only receive compensation for such injury by filing a claim with the State for compensation from such fund, and that such individual may not file a health care malpractice action in any State or Federal court for damages resulting from such injury.

(2) PROCEDURES FOR FILING.—The State shall establish procedures for an individual to file a compensation claim for the defined injury under paragraph (1). No payment may be made from the fund for an individual unless such individual (or the patient or guardian of such individual) complies with such procedures.

(3) REQUIREMENT OF PROCEDURES; DEADLINE FOR DETERMINATIONS.—The State shall ensure that the procedures under paragraph (2) allow an individual to file and pursue a claim without the assistance of counsel or to retain counsel if the individual chooses. The State shall make a final determination on a claim not later than 6 months after the date on which the claim is filed.

(4) PAYMENTS.—The State shall make payments from the compensation fund under

paragraph (1) for economic losses, and section 541(a)(3) shall apply to payments for economic losses from the compensation fund. The State may make payments for future economic losses as such losses are incurred, or may make such payments in a lump-sum amount. The State may elect to pay injured individuals for noneconomic losses from the compensation fund according to a schedule established by the State.

(5) FUNDING.—The State may require that funding for the compensation fund under paragraph (1) be paid by health care providers and professionals that engage in the health care treatment or procedure which results in the injury covered by the fund. The State may establish requirements for additional sources of payments into the fund, including patient contributions or contributions made by employees covered by health care insurance plans, and, if appropriate, may establish procedures for employers to pay for contributions of employees.

(6) REVIEW.—The State shall establish a quality review mechanism to review claims filed with the fund established under paragraph (1) and identify instances of health care malpractice. The State shall provide for the routine referral under the quality review mechanism to health care provider and health care professional licensing and disciplinary authorities of the State of findings that indicate that health care malpractice occurred.

(d) EARLY OFFER AND RECOVERY MECHANISMS.—

(1) ESTABLISHMENT.—The State may establish a system under which health care providers and professionals have the option to offer, within a specified time period after an injury or (in certain circumstances determined by the State) after the initiation of a health care malpractice action, to compensate an individual for economic losses in accordance with this subsection.

(2) INCLUSION OF OTHER PROVIDERS OR PROFESSIONALS.—Under the system established under paragraph (1), an offer may include other health care providers or professionals who were involved in the provision of health care services, with their consent.

(3) DETERMINATION OF LOSSES.—Section 541(a)(3) shall apply to the determination of an individual's economic losses for purposes of the system established under paragraph (1). Future economic losses shall be payable to the individual as they occur, or may be payable in a lump-sum amount.

(4) ARBITRATION.—If, after an offer is made under the system established under paragraph (1), the individual alleging an injury disputes the amount of the economic losses for which the offerors propose to provide compensation, or the participants dispute the relative contributions of the health care providers or professionals to the payments to be made to the individual, such disputes shall be resolved by binding arbitration in accordance with rules and procedures established by the State.

(5) ACTION ON RECEIPT OF OFFER.—

(A) IN GENERAL.—If an individual—

(i) receives an offer under this subsection;

(ii) rejects such offer after all issues with respect to the amount of economic losses suffered by such person have been resolved under paragraph (4) or refuses to participate in arbitration under such paragraph; and

(iii) initiates a health care malpractice action against one or more persons who made such offer,

the provisions of subparagraph (B) shall apply to such health care malpractice action.

(B) BURDEN OF PROOF AND DAMAGES.—In any health care malpractice action to which subparagraph (A) applies—

(i) the plaintiff may only prevail if the plaintiff has proven each element of his case beyond a reasonable doubt;

(ii) with respect to claims of negligence, the plaintiff must establish that a defendant was grossly negligent; and

(iii) the amount of damages for noneconomic losses which a plaintiff may recover with respect to an injury shall not exceed $150,000.

(e) BINDING ARBITRATION.—

(1) ESTABLISHMENT.—The State may establish a system under which—

(A) prior to treatment, health care providers and professionals offer their patients an opportunity to enter into an agreement to arbitrate any health care malpractice claims relating to such treatment; or

(B) each individual receiving health care services in the State and the health care providers and professionals providing such services shall be deemed to have entered into an agreement to arbitrate any health care malpractice claims relating to such services.

(2) LIMITATIONS.—An individual's consent to an agreement to arbitrate under the system established under paragraph (1)(A) may not be a prerequisite to the provision of health care services. Neither of the systems established under paragraph (1) shall apply to a contract for binding arbitration between a health care entity which agrees to provide comprehensive medical care to voluntarily enrolled patients for a predetermined annual fee and its patients or members.

(3) REVOCATION.—An arbitration agreement under the system established under paragraph (1)(A) may be revoked by the patient not later than 15 days after the date on which the patient signs the agreement, except that the patient may not revoke the agreement after the health care services were provided. The health care provider or professional may not revoke the agreement to arbitrate. The agreement shall be binding as to any cause of action that accrues prior to revocation of the agreement.

(4) PROHIBITION ON MALPRACTICE ACTIONS.—No health care malpractice action may be brought with respect to an alleged injury if an arbitration agreement under a system established under paragraph (1) with respect to such injury is in effect at the time of such injury. Section 541(a) shall apply to claims resolved through the systems established under paragraph (1).

(5) REQUIREMENTS.—Each arbitration agreement entered into under the system established under paragraph (1)(A) must include, in boldfaced print, a notice that—

(A) by signing the agreement, the patient is waiving the right to the initiation or hearing of a health care malpractice action;

(B) the patient may revoke the arbitration agreement not later than 15 days after the date on which the patient signs the agreement, except that the patient may not revoke the agreement after health care services are provided; and

(C) signature of the agreement by the patient cannot be required by the health care provider or health care professional as a prerequisite to the provision of health care services.

(6) ARBITRATION PANELS.—Each arbitration conducted under the systems established under paragraph (1) shall be conducted by an arbitration panel consisting of three arbiters. One arbiter shall be chosen by the individual alleging the health care malpractice claim. One arbiter shall be chosen jointly by all health care providers and health care professionals who are parties to the agreement to arbitrate. The third arbiter, who shall chair the panel, shall be chosen by the other two arbiters.

(7) APPEALS TO STATE COURT.—

(A) IN GENERAL.—A party participating in an arbitration under the systems established under paragraph (1) may file an appeal with the court of appropriate jurisdiction of the State (as determined under State law) to vacate the decision of the panel if the party files a motion to appeal not later than 60 days after the panel renders its decision.

(B) STANDARD OF REVIEW.—A court reviewing the decision of a panel arbitrating a claim may not vacate the panel's decision unless it determines that the decision was arbitrary or capricious.

(f) STATE-INITIATED ALTERNATIVE.—For purposes of subsection (a)(1), if a State proposes to establish or has established an alternative dispute resolution system that does not meet the requirements of subsection (b), (c), (d), or (e), the system shall be deemed to be a system described in one of those subsections if the Secretary determines that the system would accomplish the purposes of this title described in section 502(b) and meets the requirements of section 541(a).

## PART II—OTHER GRANT PROGRAMS

### SEC. 521. RESEARCH GRANTS.

(a) IN GENERAL.—The Secretary shall make grants to States and to private nonprofit organizations located in a State from amounts allocated to the State under section 531(a) for the conduct of basic research in the prevention of and compensation for injuries resulting from health care professional or health care provider malpractice, and research of the outcomes of health care procedures. In making such grants, the Secretary shall give particular consideration to applications for research on the behavior of health care providers and health care professionals in carrying out their professional duties and of other participants in systems for compensating individuals injured by health care malpractice, the effects of financial and other incentives on such behavior, the determinants of compensation system outcomes, and the costs and benefits of alternative compensation policy options.

(b) APPLICATION.—The Secretary may not make a grant under this section unless an applicant submits an application to the Secretary at such time, in such form, in such manner, and containing such information as the Secretary may require.

### SEC. 522. DISCIPLINARY AND EDUCATIONAL GRANTS.

(a) IN GENERAL.—The Secretary shall make grants to States from amounts allocated under section 531(a) to assist States in improving the State's ability to license and discipline health care professionals. A State may use a grant awarded under this subsection to develop and implement improved mechanisms for monitoring the practices of health care professionals or for conducting disciplinary activities.

(b) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to States to assist them in evaluating their medical practice acts and procedures and to encourage the use of efficient and effective early warning systems and other mechanisms for detecting practices which endanger patient safety and for disciplining health care professionals.

(c) EDUCATION.—The Secretary shall make grants to States and to local governments and private nonprofit organizations located

in a State from amounts allocated to a State under section 531(a) for—

(1) educating the general public about the appropriate use of health care and realistic expectations of medical intervention;

(2) educating the public about the resources and role of health care professional licensing and disciplinary boards in investigating claims of incompetence or health care malpractice; and

(3) developing programs of faculty training and curricula for educating health care professionals in quality assurance, risk management, and medical injury prevention.

(d) APPLICATIONS.—The Secretary may not make a grant under subsection (a) or (c) unless the applicant submits an application to the Secretary at such time, in such form, in such manner, and containing such information as the Secretary shall require.

**PART III—ADMINISTRATIVE PROVISIONS**

**SEC. 531. ADMINISTRATIVE PROVISIONS.**

(a) ALLOTMENTS TO STATES; METHOD OF PAYMENT.—

(1) DETERMINATION OF INITIAL ALLOTMENTS.—From amounts appropriated for grants under this subtitle for a fiscal year, the Secretary shall make an allotment to each State in an amount equal to the product of—

(A) the amount appropriated for grants for such fiscal year; and

(B) a percentage equal to the quotient of—

(i) an amount equal to the number of people living in the State, divided by

(ii) an amount equal to the total number of people living in the United States.

(2) ADDITIONAL ALLOTMENTS.—A State shall receive an additional allotment for a fiscal year (in accordance with a formula determined by the Secretary) if funds appropriated for grants under this subtitle and alloted under paragraph (1) for the year are not paid to States under this subtitle because—

(A) a State has notified the Secretary that it refuses the grant made to the State under section 511, or has not submitted an application for a grant under subtitle B for the fiscal year;

(B) a State has notified the Secretary that it does not intend to use the full amount of its allotment for the fiscal year; or

(C) the amount paid to a State or to an entity located in a State for a grant during the fiscal year is reduced, offset, or repaid pursuant to subsection (b).

(3) SCHEDULE OF PAYMENTS.—The Secretary may make payments for grants awarded under this subtitle in advance, on the basis of estimates, or by reimbursement (with necessary adjustments because of underpayments or overpayments), and in such installments and on such terms and conditions as the Secretary determines necessary to carry out the purposes of such grants.

(b) REDUCTIONS FOR EXPENSES OF SUPPLIES, EQUIPMENT, AND EMPLOYEE DETAIL.—The Secretary, at the request of a recipient of a grant under this subtitle, may reduce the amount of such a grant by—

(A) the fair market value of any supplies or equipment furnished to the recipient by the Secretary;

(B) the amount of pay, allowances, and travel expenses incurred by any officer or employee of the Federal Government when such officer or employee has been detailed to the recipient; and

(C) the amount of any other costs incurred in connection with the detail of an officer or employee as described in subparagraph (B),

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience, and at the request, of such recipient and for the purpose of carrying out activities under the grant.

(c) RECORDS.—Each recipient of a grant under this subtitle shall keep such records as the Secretary determines appropriate, including records that fully disclose—

(1) the amount and disposition by such recipient of the proceeds of such grant;

(2) the total cost of the activity for which such grant was made;

(3) the amount of the cost of the activity for which such grant was made that has been received from other sources; and

(4) such other records as will facilitate an effective audit.

(d) AUDIT AND EXAMINATION OF RECORDS.—The Secretary and the Comptroller General shall have access to any books, documents, papers, and records of the recipient of a grant under this subtitle, for the purpose of conducting audits and examinations of such recipient that are pertinent to such grant.

(e) MAINTENANCE OF EFFORT.—Each recipient of a grant under this subtitle shall use the grant to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of grant be made available for the programs and activities for which funds are provided under this subtitle. In no event shall a recipient of a grant under this subtitle use the grant to supplant such State, local, and other non-Federal funds.

**SEC. 532. REPORTS ON GRANT PROGRAMS.**

Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, each recipient of a grant under this subtitle during any such 2-year period shall prepare and submit to the Secretary a report which describes the activities conducted by the recipient with any grants received under this subtitle during the preceding 2-year period and provides the Secretary with appropriate information to enable the Secretary to report on the matters described in section 544.

**SEC. 533. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated for grants under this subtitle a total of $300,000,000 for fiscal years 1993 through 1995, of which—

(1) not more than $280,000,000 shall be available for incentive grants under section 511;

(2) not more than $10,000,000 shall be available for research grants under section 521; and

(3) not more than $10,000,000 shall be available for disciplinary grants under section 522.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated for grants under this subtitle shall remain available until expended, except that amounts appropriated for incentive grants under section 511 shall remain available from October 1, 1992, to September 30, 1997.

**Subtitle B—Health Care Malpractice Dispute Reform**

**SEC. 541. FEDERAL REFORM OF CIVIL ACTIONS.**

(a) IN GENERAL.—

(1) APPLICABILITY.—This subsection shall govern any health care malpractice action brought in any Federal or State court and any health care malpractice claim resolved through arbitration, except that paragraph (6) shall not apply to any action for damages arising from a vaccine-related injury or death for which a petition was filed under section 2111 of the Public Health Service Act.

(2) PAYMENTS.—No person may be required to pay more than $100,000 in a single payment in damages for expenses to be incurred in the future, but such person shall be permitted to make such payments on a periodic basis. The periods for such payments shall be determined by the court, based upon projections of when expenses are likely to be incurred.

(3) DAMAGES.—

(A) REDUCTIONS.—The total amount of damages received by an individual shall be reduced, in accordance with subparagraph (B), by any other payment which has been made or which will be made to such individual to compensate such individual for an injury, including payments under—

(i) Federal or State disability or sickness programs;

(ii) Federal, State, or private health insurance programs;

(iii) private disability insurance programs;

(iv) employer wage continuation programs; and

(v) any other source of payment intended to compensate such individual for such injury.

(B) AMOUNT OF REDUCTION.—The amount by which an award of damages to an individual for an injury shall be reduced under subparagraph (A) shall be—

(i) the total amount of any payments (other than such award) which have been made or which will be made to such individual to compensate such individual for such injury; minus

(ii) the amount paid by such individual (or by the spouse, parent, or legal guardian of such individual) to secure the payments described in clause (i).

(4) LIMITATION ON NONECONOMIC DAMAGES.—The total amount of damages which may be awarded to an individual and the family members of such individual for noneconomic losses resulting from an injury which is the subject of a health care malpractice claim may not exceed $250,000, regardless of the number of health care professionals and health care providers against whom the claim is brought or the number of claims brought with respect to the injury.

(5) ATTORNEYS' FEES.—Attorneys' fees may not exceed—

(A) 33 percent of the first $100,000 of any award or settlement;

(B) 15 percent of the next $100,000; and

(C) 10 percent of any additional amounts in excess of $200,000.

(6) STATUTE OF LIMITATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no health care malpractice claim may be initiated after the expiration of the 2-year period that begins on the date the alleged injury should reasonably have been discovered, or the expiration of the 4-year period that begins on the date the alleged injury occurred, whichever is later.

(B) EXCEPTION FOR MINORS.—In the case of an alleged injury suffered by a minor who has not attained 6 years of age, no health care malpractice claim may be initiated after the expiration of the 2-year period that begins on the date the alleged injury should reasonably have been discovered, or the date on which the minor attains 10 years of age, whichever is later.

(b) PREEMPTION.—

(1) IN GENERAL.—Subsection (a) supersedes any State law only to the extent that State law establishes higher payment limits, permits the recovery of a greater amount of damages or the awarding of a greater amount of attorneys' fees, or establishes a longer period during which a health care malpractice claim may be initiated.

(2) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE OF LAW OR VENUE.—Nothing in subsection (a) shall be construed to—

(A) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(B) waive or affect any defense of sovereign immunity asserted by the United States;

(C) affect the applicability of any provision of the Foreign Sovereign Immunities Act of 1976;

(D) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(E) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground in inconvenient forum.

(c) EFFECTIVE DATE.—Subsection (a) shall apply to health care malpractice claims initiated after the expiration of the 2-year period that begins on the date of the enactment of this Act.

**SEC. 542. STATE MANDATES FOR RISK MANAGEMENT AND PROFESSIONAL DISCIPLINE.**

(a) ADOPTION OF MANDATES REQUIRED FOR STATES TO CONDUCT SURVEYS AND CERTIFICATIONS UNDER MEDICARE.—

(1) IN GENERAL.—Part A of title XVIII of the Social Security Act is amended by adding at the end the following new section:

"STATE REQUIREMENTS FOR RISK MANAGEMENT AND PROFESSIONAL DISCIPLINE

"SEC. 1821. (a) IN GENERAL.—The requirements referred to in section 1864(f) are the requirements described in subsections (b) through (e).

"(b) DISCIPLINARY REFORMS.—Each State shall allocate the total amount of fees paid to the State in each year for the licensing or certification of each type of health care practitioner, or an amount of State funds equal to such total amount, to the State agency or agencies responsible for the conduct of disciplinary actions with respect to such type of health care practitioner.

"(c) PROVIDER RISK MANAGEMENT.—Each State shall require each provider of services located in the State to have in effect a risk management program to prevent and provide early warning of practices which may result in injuries to patients or which otherwise may endanger patient safety.

"(d) INSURER RISK MANAGEMENT.—Each State shall require each entity which provides health care practitioner liability insurance to health care practitioners in the State to—

"(1) establish risk management programs based on data available to such entity or sanction programs of risk management for health care practitioners provided by other entities; and

"(2) require each such practitioner, as a condition of maintaining insurance, to participate in one program described in paragraph (1) at least once in each 3-year period.

"(e) ROLE OF PROFESSIONAL SOCIETIES.—

"(1) REVIEW OF CLAIMS.—Each State agency responsible for the conduct of disciplinary actions for a type of health care practitioner shall enter into agreements with State or county professional societies of such type of health care practitioner to permit the review by such societies of any health care malpractice action, health care malpractice claim or allegation, or other information concerning the practice patterns of any such health care practitioner. Any such agreement shall comply with paragraph (2).

"(2) REQUIREMENTS OF AGREEMENTS.—Any agreement entered into under paragraph (1) for the review of any health care malpractice action, health care malpractice claim or allegation, or other information concerning the practice patterns of a health care practitioner shall—

"(A) provide that the health care professional society conduct such review as expeditiously as possible;

"(B) provide that after the completion of such review, such society shall report its findings to the State agency with which it entered into such agreement and shall take such other action as such society considers appropriate; and

"(C) provide that the conduct of such review and the reporting of such findings be conducted in a manner which assures the preservation of confidentiality of health care information and of the review process.

"(3) EXEMPTION FOR CERTAIN ENTITIES.—An agreement entered into under paragraph (1) may not provide for the review of the action or conduct of any employee of an entity which—

"(A) employs more than 25 health care practitioners of the same type;

"(B) has in effect a continuing program for reviewing the quality of professional care provided by its employees; and

"(C) is required by State law to report certain finding to the State agency responsible for the conduct of disciplinary actions for a type of health care practitioner.

"(4) APPLICABILITY OF ANTITRUST LAWS.—Notwithstanding any other provision of law, any activity conducted pursuant to an agreement entered into under paragraph (1) shall not be grounds for any civil or criminal action under Federal antitrust laws, as defined in the first section of the Clayton Act and in section 4 of the Federal Trade Commission Act, or under the antitrust laws of the State or for any other civil action under the laws of the State.".

(2) CONFORMING AMENDMENT.—Section 1864 of the Social Security Act (42 U.S.C. 1395aa), as amended by section 4027(g) of the Omnibus Budget Reconciliation Act of 1990, is amended by adding at the end the following new subsection:

"(f) STATE REQUIREMENTS FOR RISK MANAGEMENT AND PROFESSIONAL DISCIPLINE.—The Secretary may not enter into an agreement under this section with any State unless the State certifies that it meets the requirements specified in section 1821.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 2 years after the date of the enactment of this Act.

**SEC. 543. COMMUNITY AND MIGRANT HEALTH CENTERS RISK RETENTION GROUP.**

(a) IN GENERAL.—Subpart I of part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by adding at the end thereof the following new section:

**"SEC. 330A. RISK RETENTION GROUP.**

"(a) GRANT.—The Secretary shall make a grant to an entity that represents recipients of assistance under section 329 and 330 to enable such entity to develop a business plan as described in subsection (b)(2) and establish a nationwide risk retention group as provided for in Liability Risk Retention Act of 1986 (15 U.S.C. 3901 et seq.), and that meets the requirements of this section.

"(b) BUSINESS PLAN AND FORMATION.—

"(1) DEVELOPMENT AND ESTABLISHMENT.—

"(A) IN GENERAL.—Not later than September 30, 1991, the grantee shall develop a business plan as described in paragraph (2) and have established a risk retention group that meets the requirements of section 2(4) of the Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901(2)(4)).

"(B) ESTABLISHMENT.—In establishing the risk retention group under subparagraph (A), the grantee shall take all steps, in accordance with this subsection, necessary to enable such group to be prepared to issue insurance policies under this section.

"(2) BUSINESS PLAN.—The grantee shall develop a plan for the operation of the risk retention group that shall include all actuarial reports and studies conducted with respect to the formation, capitalization, and operation of the group.

"(3) STRUCTURE, RIGHTS, AND DUTIES OF THE RISK RETENTION GROUP.—

"(A) BOARD OF DIRECTORS.—

"(i) APPOINTMENT.—The board of directors of the risk retention group shall consist of 12 members to be appointed by the recipient of the grant under subsection (a), and approved as provided in clause (ii).

"(ii) APPROVAL.—The initial members appointed under clause (i) shall be approved by the Secretary, and shall serve for a term as provided in clause (iii). All subsequent members shall be subject to the approval of the members of the risk retention group.

"(iii) TERMS.—The recipient of the grant under subsection (a) shall appoint the members of the board under clause (i) as follows:

"(I) Four members shall be appointed for an initial term of 1 year.

"(II) Four members shall be appointed for an initial term of 2 years.

"(III) Four members shall be appointed for an initial term of 3 years.

Members serving terms other than initial terms shall serve for 3 years. Members may serve successive terms.

"(iv) EXECUTIVE DIRECTOR.—The Executive Director of the board shall be elected by the members of the board, and shall serve at the pleasure of such members.

"(v) VACANCIES.—Vacancies on the board shall be filled through a vote of the remaining members of the board, subject to the approval of the members of the risk retention group.

"(B) BYLAWS.—The board shall develop the bylaws of the risk retention group that shall be subject to the disapproval of the Secretary. Any changes that the board desires to make in such bylaws shall also be subject to the disapproval of the Secretary. The Secretary shall provide the board with 90 days notice of the Secretary's intent to disapprove a bylaw.

"(C) ADMINISTRATION.—The risk retention group may negotiate with other entities for the purposes of managing and administering the risk retention group, and for purposes of obtaining reinsurance.

"(D) PROVISION OF INSURANCE.—The risk retention group shall provide professional liability insurance, and other types of profitable insurance approved for issuance by the Secretary, to migrant and community health centers that receive assistance under sections 329 and 330 and that meet the requirements of subparagraph (E).

"(E) PARTICIPANTS.—

"(i) IN GENERAL.—Except as provided in clause (ii), all community and migrant health centers that receive assistance under section 329 and 330 shall become members in the risk retention group established under this section and shall purchase the professional liability insurance that is offered by such group for such centers and any health care staff or personnel employed by such centers or under contract with such centers. All professional staff members of such centers shall be eligible to obtain the insurance offered by such group.

"(ii) EXCEPTIONS.—

"(I) GOOD CAUSE.—The Secretary may, on a showing of good cause by the center, exempt

such center from the requirements of clause (i).

"(II) FAILURE TO MEET CONDITIONS.—If the risk retention group determines that a center is not complying with the established underwriting standards, such group may decline to provide insurance to such center. The risk retention group shall provide a center with 60 days notice of a decision by the group not to provide insurance to such center.

"(III) HEARING.—Prior to the Secretary granting an exemption or severance as requested in an application submitted under subclause (I), the Secretary shall require that the applicant provide evidence concerning its application and shall afford the risk retention group an opportunity to address the allegations contained in such application. The Secretary may grant the center temporary relief under this subparagraph without a hearing in emergency situations.

"(F) APPLICABILITY OF INSURANCE TO CLAIMS.—Insurance provided by the risk retention group under this section shall apply to all claims filed against a covered community or migrant health center after the initiation of insurance coverage by the risk retention group, including acts that occur prior to coverage under this section that are not covered by other insurance.

"(c) SUBMISSION OF BUSINESS PLAN TO OUTSIDE EXPERTS.—After the development of the business plan and the establishment of the risk retention group as required under subsection (b), the risk retention group shall enter into a contract with individuals or entities who are insurance, financing, and business experts to require such individuals or entities to analyze and audit the group. Such individuals and entities shall provide the group with an evaluation of such plan and group.

"(d) SUBMISSION OF PLAN AND EVALUATION.—

"(1) IN GENERAL.—The risk retention group shall submit to the Secretary the business plan required under subsection (b) and the evaluation completed under subsection (c) to the Secretary.

"(2) DETERMINATION BY SECRETARY.—Not later than September 30, 1991, the Secretary shall make a determination, based on the plan and evaluation submitted under paragraph (1), of whether the operation of the risk retention group result in an increase in the amount of funds available for use by community and migrant health centers and other entities that receive assistance under sections 329 and 330 in the 2-year period ending on September 30, 1993.

"(3) IMPLEMENTATION.—If the Secretary makes an affirmative determination under paragraph (1), the Secretary shall permit the implementation of the plan and the operation of the risk retention group as provided for in this section, and shall capitalize such group as provided for in subsection (e)(2).

"(e) FUNDING.—

"(1) GRANT.—There are authorized to be appropriated to make a grant under subsection (a), $1,000,000 for fiscal year 1992.

"(2) CAPITALIZATION.—There are authorized to be appropriated for fiscal years 1992 and 1993 such sums as may be necessary to provide adequate capitalization to the risk retention group. Amounts appropriated under this paragraph may only be made available if the Secretary makes an affirmative determination under subsection (d)(2).

"(3) REMAINING ASSETS.—All assets of the risk retention group that remain after the dissolution of such group shall become the property of the Secretary who shall use such assets to pay the remaining expenses of the group.".

(b) CONFORMING AMENDMENTS.—

(1) Section 329(h)(1)(A) of such Act (42 U.S.C. 254b(h)(1)(A)) is amended by striking "1991" and inserting "1993".

(2) Section 330(g)(2)(A) of such Act (42 U.S.C. 254b(h)(1)(A)) is amended by inserting ", and such sums as may be necessary for fiscal year 1992" after "1991".

**SEC. 544. REPORTS TO CONGRESS.**

The Secretary shall monitor the effects of the reforms required under this subtitle and report to Congress not later than 3 years after the date of the enactment of this Act on the effect of such reforms on—

(1) access to health care;

(2) the costs of health care;

(3) the number of health care malpractice actions filed in the United States;

(4) the number of health care malpractice claims or disputes resolved through alternative dispute resolution systems; and

(5) the length of time for individuals injured by health care malpractice to receive compensation for their injuries.

## TITLE VI—MISCELLANEOUS PROVISIONS

**SEC. 601. PRESIDENT'S COUNCIL ON SENIOR FITNESS.**

(a) ESTABLISHMENT.—There is established in the Department of Health and Human Services the President's Council on Senior Fitness (referred to in this section as the "Council").

(b) MEMBERSHIP.—The Council shall be composed of 20 members appointed by the President.

(c) FUNCTIONS OF THE COUNCIL.—The Council shall—

(1) enlist the active support and assistance of individual citizens, civic groups, private enterprise, voluntary organizations, and others in efforts to promote and improve the fitness of all citizens over age 50 through regular participation in suitable programs of physical fitness;

(2) initiate programs to inform the general public of the importance of exercise and the link that exists between regular physical activity, and good health and effective performance;

(3) strengthen coordination of Federal services and programs relating to physical fitness of citizens over age 50;

(4) encourage State and local governments to emphasize the importance of regular physical fitness for such older citizens;

(5) encourage research in physical fitness for such older citizens;

(6) assist business, industry, government, and labor organizations to establish sound physical fitness programs to reduce the financial and human costs of physical inactivity;

(7) coordinate the activities of the Council with the activities of the President's Council on Physical Fitness and Sports; and

(8) advise the President and the Secretary of Health and Human Services (referred to in this section as the "Secretary") as to the activities of the Council related to devising and promoting programs to improve the fitness of such older citizens.

(d) CHAIRPERSON AND VICE CHAIRPERSON.—The President shall designate one member to serve as Chairperson of the Council and one member to serve as the Vice Chairperson of the Council.

(e) TERM OF OFFICE.—Members shall be appointed for the life of the Council.

(f) VACANCIES.—Any vacancy occurring in the membership of the Council shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Council.

(g) TRAVEL EXPENSES.—The members of the Council shall not receive compensation for their service on the Council. Each member of the Council shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(h) ADMINISTRATIVE SERVICES.—To the extent permitted by law, the Secretary shall furnish the Council with necessary staff, supplies, facilities, and other administrative services. The expenses of the Council shall be paid from funds available to the Secretary.

(i) EXECUTIVE DIRECTOR.—The Secretary shall appoint an Executive Director of the Council.

(j) INFORMATION.—The Secretary and the Council are authorized to request from any Federal agency such information or assistance as the Secretary and the Council may determine to be necessary to carry out their functions under this section. Each Federal agency is authorized, to the extent permitted by law and within available funds, to furnish such information and assistance to the Secretary and the Council.

(k) FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding any other provision of Federal law, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.), except the function of reporting annually to the Congress, shall be performed by the Secretary in accordance with guidelines and procedures established by the Administrator of General Services.

(l) TERMINATION.—The Council shall terminate on the date 4 years after the date of enactment of this Act, unless sooner extended.

**SEC. 602. PROGRAMS TO ENCOURAGE HEALTH LIFESTYLES.**

(a) PURPOSE.—It is the purpose of this section to provide for the development and implementation, through the President's Council on Physical Fitness and Sports, of programs to encourage healthy lifestyle choices, including programs designed to motivate individuals to—

(1) avoid illegal drugs;

(2) avoid excessive alcohol consumption;

(3) avoid the use of tobacco products;

(4) choose proper foods as components of a healthy, balanced diet;

(5) utilize effective ways to manage stress; and

(6) engage in regular exercise.

(b) PROGRAMS AND ACTIVITIES.—The Secretary of Health and Human Services, acting through the President's Council on Physical Fitness and Sports (as continued under Executive Order 12345 (February 2, 1982, 47 F.R. 5189)), shall develop and implement programs consistent with the purposes of this section. Such programs shall be designed to—

(1) enlist the active support of individuals, civic groups, business enterprises, foundations, and other entities in efforts to promote healthy lifestyle choices by all Americans;

(2) initiate activities to inform the general public of the importance of healthy lifestyle choices, and of the link between appropriate lifestyle behaviors and good health and productivity;

(3) encourage State and local governments to emphasize the importance of making healthy lifestyle choices;

(4) advance the concept of physical fitness through healthy lifestyle choices, to system-

atically encourage the development of community programs;

(5) develop cooperative programs with societies of health professionals to encourage Americans to make healthy lifestyle choices;

(6) assist educational agencies at all levels in developing high quality, innovative health and physical education programs that emphasize the importance of making the right lifestyle choices for good health; and

(7) assist business, industry, government, and labor organizations, in encouraging and entering into public/private ventures that establish programs to promote healthy lifestyle choices by their employees and to reduce the financial and human costs resulting from inappropriate lifestyle choices.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $200,000 for fiscal year 1993, $200,000 for fiscal year 1994, and $300,000 for fiscal year 1995.•

## TRIBUTE TO IRVINE

• Mr. MCCONNELL. Mr. President, I rise today to pay tribute to Irvine in Estill County.

Irvine is a small mountain town about 55 miles southeast of Lexington. Though the era of Estill County as a leading iron producer has passed, Irvine is making great strides to maintain a strong economic future.

The region's topography makes large industry and development difficult. Lately, Irvine has been attracting small businesses to the area. Armada Manufacturing, which builds fiberglass pleasure boats, opened its plant in 1989 with only 12 employees. Today, it has nearly 80 workers and expects to produce up to 1,500 boats this year. In addition, a new chamber of commerce has been promoting the area. Residents believe that tourism could grow because of Irvine's proximity to the Kentucky River and the scenic surrounding countryside.

The smalltown atmosphere is evident by the residents of Irvine. People greet each other as well as strangers on the streets. Families stay in Irvine for generations. The quiet setting is a welcome change from the hustle and bustle of metropolitan life.

I applaud Irvine's efforts to maintain its historic charm, but at the same time its move forward, making it one of Kentucky's finest towns.

Mr. President, I insert a tribute and a recent article from Louisville's Courier-Journal be submitted in today's CONGRESSIONAL RECORD.

The material follows:

### IRVINE

(By Richard Wilson)

Like many mountain towns, Irvine's heyday has passed, and few residents who remember or have heard about the good times expect them to return anytime soon.

Gone are the days more than a century ago when Irvine's gigantic furnaces made Estill County a leading iron-producer. It has been nearly 70 years since Estill Springs, the town's spa, drew wealthy vacationers to the Cumberland Mountain foothills to take the waters. And gone are the hotels, rooming houses and restaurants that once provided room and board for the railroaders who ran and serviced the trains that hauled "black gold" from the Eastern Kentucky coalfields.

Innovations in the iron industry and depletion of ore undercut that industry shortly after the Civil War. Estill Springs was never rebuilt after the main hotel burned in 1924, and the transition from steam locomotives to diesels in the 1940s and 1950s killed much of the railroad activity at the Irvine-Ravenna yards. Even the region's oil, gas and timber industries are mere shadows of what they used to be.

Despite these setbacks, the Estill County seat is doing the best it can with what it has and is hoping for better times. Unlike some Central Kentucky towns, Irvine has no aggressive industrial recruiting primarily because its hilly topography leaves little land for development. A chamber of commerce was started only a couple of years ago. And one of the town's more stable employers—South East Coal Co.—is facing hard times.

But the town is close enough to other Central Kentucky cities to allow residents to reach urban Kentucky quickly—and then return to the quiet splendor of Irvine's setting. The crime rate is manageable, and, except for periodic drug busts, offenses are minor.

Most residents know each other and their families, and they greet strangers easily on the streets. The small-town atmosphere also draws natives home for retirement and keeps others there for a lifetime.

There's a lot of people here like myself, who once they've lived in a small town, they don't want to go to the city and put up with the hassle of trying to survive there," said Mayor W.T. "Tom" Williams, who commuted daily to the IBM plant in Lexington for 33 years before retiring three years ago.

Many locals who haven't reached retirement age seem to agree. Twice a day, a stream of Estill countians commute to jobs in Richmond, Lexington and Winchester. Williams' son, Kevin, who is also a city councilman, commutes to Lexington, where he's a firefighter.

While its relaxed way of life is emblematic of most small towns, Irvine shares one problem with its larger municipal cousins. Its downtown traffic can be mind-boggling, particularly at noon and the end of the workday when cars, schoolbuses and large trucks are sometimes backed up for blocks on River Drive, Broadway and Main Street.

"I never dreamed we'd have traffic problems in a town this size. It's atrocious," says Guy Hatfield, publisher of the Citizen Voice & Times, a local weekly newspaper.

But no one is holding his breath in anticipation of a bypass to relieve the traffic jams.

Several downtown stores are vacant, victims either of the economy or the death of their proprietors. The town has only one stylish restaurant. The home cooking at Cedar Village draws customers from throughout the region.

And while style may not be a priority, anyone can get a hearty meal at Howell's Restaurant, on the riverbank under the Kentucky River bridge, or at Shirley's on Main Street.

The town's only motel is across Ky. 52 from Cedar Village. Another one was sold recently in a bankruptcy proceeding. The Colonial and Riverview hotels, once the center of downtown activity, went out of business years ago. Hatfield's newspaper office is in the Colonial, while the first floor of the Riverview is not a doctor's office.

The downtown claims two local distinctions—the community's only elevator, at Witt's Furniture Store, and one of small-town Kentucky's few remaining movie theaters—called the "New Irvine Theater" by its owners and the "Mack," according to its marquee.

The theater, operated since 1939 by the McClanahan family, is open most weekends. Ralph McClanahan, a former county-judge/executive who operates it with his son, daughter-in-law and grandson, regales visitors with stories of earlier years. During hard times he said, his parents accepted chickens, vegetables or eggs from patrons who had no money for tickets. Even today, hard-up youngsters can sometimes talk McClanahan into putting their tickets on the cuff.

"There've been a lot of happenings there that you wouldn't believe," McClanahan said. Years ago, the crowds were so rough that ushers carried pistols. "I'll never forget one time an usher dropped his pistol and shot himself in the foot. I took him to the doctor, who asked what had happened. I told him (the usher) was climbing over a fence."

Then there was the time when a patron who feared for the safety of a cowboy hero shot a screen villain from the audience. The show went on with a hole in the screen. Even today, an armed policeman and deputy sheriff patrol the theater at times. "If we didn't do that they'd be selling drugs in there," McClanahan said.

Apparently, there won't be a last picture show anytime soon. "We just feel it's kind of an obligation for us. We've been here for so many years, so why close now as long as we can break halfway even," McClanahan said.

Irvin is also a town where you frequently need to know the nicknames to know the residents. Mention such imaginative monikers as Tobo, Doodoo, Owl-head, Oink, Chalk-eye or Pidge, and most locals will know who you are talking about.

Perhaps the most widely known local nickname belongs to Delmus "Bunt" Gross, a former Chevrolet-Oldsmobile dealer who sold cars to Eastern and Central Kentuckians for years. Gross lost his dealership after a federal court jury convicted him in 1989 of 18 counts of laundering illegal drug money through his dealership. An appellate court later reversed 16 of the 18 counts, but Gross still faces a five-year prison sentence on the other two charges.

Many local people are closely watching the impact of a more recent case that they fear may have a disastrous impact on the local economy. The Irvine-based South East Coal Co. was on the losing end of a state Supreme court decision June 4 in a long coal contract dispute with Kentucky Utilities Co. That ruling has jeopardized the future of the company, which is already operating in bankruptcy, and it's 72 jobs at a local coal-washing plant.

The company also has been a major philanthropic force in Estill County, where it has contributed heavily to such projects as the public library.

A local court action—or inaction—in another matter has upset residents more recently. State police this summer arrested several dozen local residents in a drug bust. Trial dates for most of the offenders were set for next summer. "That has upset quite a few people who think a special judge should be brought in," Police Chief James Gross said.

Gross acknowledged that both the cultivation of marijuana and sale of drugs is a problem. But he said that more residents have began cooperating with policy by notifying them of potential offenses.

And, as in most other Kentucky towns of Irvine's size, the search for job-producing industries continues. Rex Jones, a banker who heads the Chamber of Commerce, said the area's geography is both an obstacle and a blessing in attracting new industry and more jobs. A lack of flat land is the biggest obstacle, Jones says. But the Kentucky River, proximity to I-75 (20 miles away) and the scenic countryside should be an attraction.

"We won't have the boom like a Toyota moving to Estill County, but I think the good news is going to continue to filter out. Over time, more and more people are going to realize Estill County sits here at the very end of the Bluegrass and the beginning of the mountains, and you won't find a more picturesque place in the state," he said.

Jones and others believe that attracting small businesses to the area is the region's greatest hope for a rosy economic future. They note that Armada Manufacturing, which builds fiberglass pleasure boats in Ravenna, opened its plant in 1989 with just 12 employees, building about 100 boats a year. Today, it has 77 workers and expects to turn out nearly 1,500 boats this year.

Joe Anders, the plant's chief operating officer, said that one of Armada's main reasons for locating in the Ravenna was its familiarity with the local work force. The company is largely owned by a Lexington family that has employed many Estill countians in its tobacco warehouse.

"We employed people from Estill County for years. We knew what type of people they were. They're good workers," Anders said.

If Armada's business continues to grow, the company will have to expend it's operation, Andrew said. "We'd love to stay here."

Population (1990): Irvine, 2,826; Estill County, 14,614.

Per Capita Income (1989): $9,320, or $4,503 below the state average.

Jobs (1991): Total employment, 2,116; wholesale and retail trade, 592; state/local government, 552; manufacturing, 386; services, 288; mining and quarrying, 100.

Big Employers: Carhartt Inc., (men's outerwear, work clothing), 290 employees; CSX Transportation, (rail yard), 165; Armada Manufacturing Co. (fiberglass boats), 77; South East Coal Co. (coal washing plant), 72.

Media: Newspapers—Citizens Voice & Times and Estill County Tribune, both weeklies. Radio)—WIRV-AM (country and oldies) and WYCO-FM (country).

Transportation: Rail—CSX Transportation provides mainline service. Air—The nearest commercial service is at Lexington's Blue Grass Airport, 54 miles northwest. Trucking)—11 companies serve Irvine. Roads—Irvine is served by Ky. 52 and Ky. 89. The Mountain Parkway is 14 miles north and I-75 is 23 miles west.

Education: Estill County public schools, 2,789 students.

Topography: Irvine sits on the east bank of the Kentucky River. Terrain ranges from flat bottomlands to mountainous.

FAMOUS FACTS AND FIGURES

The city of Irvine was established Jan. 25, 1812, and named for Col. William Irvine. Irvine was killed by Indians in 1786. The town was built on land once owned by Gen. Green Clay, the founder of Richmond and a large landholder in the area. Clay was the father of Cassius Marcellus Clay, the prominent abolitionist.

Estill County was formed in 1808 from parts of Clark and Madison counties and is named for Capt. James Estill, who was killed in March 1782 during Estill's Defeat, a battle with Indians near what is now Mount Sterling. William Irvine was wounded in the battle.

Daniel Boone was one of the area's earliest explorers, and in 1769 reportedly spent his first winter in Kentucky in what is now Estill County. Irvine was the site of two confrontations between Union and Confederate forces during the Civil War. On July 30, 1863, a Confederate detachment led by Col. J.S. Scott, looted an arsenal before retreating. Confederate guerillas attacked the town on Oct. 13, 1864, burned the jail and ransacked the community.

The old Estill Springs resort was once one of Kentucky's most popular spas, drawing vacationers from throughout the eastern United States. Its popularity faded in the early 20th century, and the resort did not reopen after the main hotel burned on Dec. 15, 1924.

During much of the 19th century, Estill County was a leading iron producer, and traces of the once-thriving industry can still be seen in the ruins of several steam furnaces in the area.

## CONDEMNING THE ABUSES OF THE MILITARY REGIME IN HAITI

• Mr. D'AMATO. Mr. President, I rise today to condemn the militarily installed Haitian Government and to urge the United States to take a stronger stance against their oppressive leadership. We must further our efforts at reestablishing a freely elected government in Haiti and promote the expansion of democracy throughout the Western Hemisphere.

The United States cannot tolerate the existence of repressive regimes established by generals who seize control through aggressive, nondemocratic means. The military government which deposed President Jean-Bertrand Aristide of Haiti is one such regime. Guilty of numerous abuses, the military government has not only proven an inability to provide acceptable leadership, but has also exhibited a willingness to use repressive measures to quiet opposition and pursue its goals.

We have witnessed the end of the Communist regime in the Soviet Union and eastern block nations, yet within our own hemisphere the abuses of oppressive regimes remains rampant. Since the overthrow of the democratically elected Aristide regime, the people of Haiti have been denied the rights of freedom and expression which we in the United States have always cherished. The United States must not stand idly by and allow this situation to continue. As a champion of individual rights and liberties, the United States must strengthen its position to protect the rights of the people of Haiti. It is the duty of the democratic nations of this world to extend democratic rights to the peoples of the world which continue to experience persecution from oppressive regimes.•

## ORDERS FOR TOMORROW

Mr. BRADLEY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 8:40 a.m., Thursday, October 8, that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day, that there then be a period for morning business, not to extend beyond 9 a.m., with Senators permitted to speak therein for up to 5 minutes each, with Senator GRAHAM recognized for up to 20 minutes.

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

## RECESS UNTIL 8:40 A.M. TOMORROW

Mr. BRADLEY. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 8:37 p.m., recessed until tomorrow, Thursday, October 8, 1992, at 8:40 a.m.

## NOMINATIONS

Executive nominations received by the Senate October 7, 1992:

DEPARTMENT OF JUSTICE

JOHN J. MCKENNA, OF PENNSYLVANIA, TO BE U.S. MARSHAL FOR THE EASTERN DISTRICT OF PENNSYLVANIA FOR THE TERM OF 4 YEARS VICE THOMAS C. RAPONE, RETIRED.

FEDERAL AGRICULTURAL MORTGAGE CORPORATION

DAVID M. BREWER, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION, VICE GORDON CLYDE SOUTHERN.

# EXTENSIONS OF REMARKS

## SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD—SENATE on Monday and Wednesday of each week.

Meetings scheduled for Thursday, October 8, 1992, may be found in the Daily Digest of today's RECORD.

## MEETINGS SCHEDULED

### OCTOBER 15

9:30 a.m.
Select on POW/MIA Affairs
To hold open and closed hearings on symbols and imagery found in Vietnam that may indicate the possibility of live Americans in the region.
SH–216

1:00 p.m.
Select on POW/MIA Affairs
To hold closed hearings on possible live sightings of POWS and MIAs in Nhammorat, Vietnam.
SH–219

### OCTOBER 16

9:30 a.m.
Select on POW/MIA Affairs
To resume closed hearings on possible live sightings of POWs and MIAs in Nhammorat, Vietnam.
SH–219

### NOVEMBER 10

1:00 p.m.
Select on POW/MIA Affairs
To hold hearings on Russian and Korean perspectives of the Cold War and World War II.
SH–216

### NOVEMBER 11

10:00 a.m.
Select on POW/MIA Affairs
To continue hearings on Russian and Korean perspectives on the Cold War and World War II.
SH–216

### DECEMBER 1

9:30 a.m.
Select on POW/MIA Affairs
To hold oversight hearings on issues relating to POWs/MIAs.
SH–216

### DECEMBER 2

9:30 a.m.
Select on POW/MIA Affairs
To continue oversight hearings on issues relating to POWs/MIAs.
SH–216

### DECEMBER 3

9:30 a.m.
Select on POW/MIA Affairs
To continue oversight hearings on issues relating to POWs/MIAs.
SH–216

### DECEMBER 4

9:30 a.m.
Select on POW/MIA Affairs
To continue oversight hearings on issues relating to POWs and MIAs.
SH–216