SENATE—*Wednesday, August 4, 1993*

(Legislative day of Wednesday, June 30, 1993)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable BEN NIGHTHORSE CAMPBELL, a Senator from the State of Colorado.

PRAYER

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

Let us pray:

Lo, children are an heritage of the Lord * * *.—Psalm 127:3.

Gracious Father in Heaven, we pray for our children. The statistics are alarming. One CEO writes: "The evidence is mounting that our youth are in crisis. We are losing a generation of potential: Every 8 seconds of the school day, a child drops out. Every 6 seconds, a child runs away from home. Every 47 seconds a child is abused or neglected. Every 67 seconds a teenager has a baby. Every 7 minutes a child is arrested for a drug offense. Every day, 135,000 children bring their guns to school." (Doug Holladay, CEO, "One To One")

Pondering these conditions Father, we realize there is little, if anything, legislation can do to change the picture. How desperately we need the intervention of Almighty God on our situation. Loving God, work in us, in our Nation, in our society, that we may see a spiritual and moral awakening.

We pray in the name of Jesus Who said, "Suffer the little children to come unto me, and forbid them not * * *."—Mark 10:14.

Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, August 4, 1993.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BEN NIGHTHORSE CAMPBELL, a Senator from the State of Colorado, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 2667, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2667) making emergency supplemental appropriations for the major, widespread flooding in the Midwest for the fiscal year ending September 30, 1993, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Harkin-Bond amendment No. 756, to provide full payments to producers for crop losses resulting from damaging weather or related conditions in 1993.

Mr. INOUYE addressed the Chair.

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

Mr. INOUYE. Mr. President, I ask unanimous consent that I be recognized to introduce a measure and that the time not be charged against the amendment.

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

The ACTING PRESIDENT pro tempore. The Senator is recognized.

Mr. INOUYE. I thank the Chair.

(The remarks of Mr. INOUYE, pertaining to the introduction of S. 1350, are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. INOUYE. I thank the Chair, and I thank the manager of the bill.

AMENDMENT NO. 756

The ACTING PRESIDENT pro tempore. There will now be 1 hour for debate on the Harkin amendment to H.R. 2667, to be equally divided and controlled in the usual form.

Who yields time?

Mr. HARKIN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Iowa [Mr. HARKIN] is recognized.

Mr. HARKIN. Mr. President, I yield myself such time as I may need.

Mr. President, let us recap where we are. For the benefit of Senators who were otherwise tied up yesterday in important committee meetings and other matters, the Senate now has before it the disaster assistance bill that was passed by the House and sent to the Senate.

We took it up yesterday afternoon. The amendment now before the Senate is an amendment that I offered on behalf of myself and Senator BOND and a number of Senators on both sides of the aisle. It is a bipartisan amendment.

I think it is important at this point to describe again for Senators both what the amendment does not do and what it does do.

Again, let us go back in time a little bit. Back in the 1980's, we had some disasters that hit this country, basically a big drought. At that time, the Congress responded with disaster assistance to farmers in the drought-stricken areas.

Then, in 1990, the Congress drafted the 5-year farm bill. In that farm bill, both the Senate and the House agreed to put in disaster provisions that were like what we did in the 1980's to help drought-stricken farmers. So that became part of the 1990 farm bill.

Now, those benefits are not 100 cents on the dollar. They never were before, they are not in the farm bill, and we do not intend to do that here. We in no way intend to reimburse everything a farmer has lost.

What the 1990 farm bill says is simply this: that if you are a farmer, you have a disaster, if you have crop insurance, the first 35 percent, you eat. You have to take care of your own first 35 percent. Then, everything above 35 percent of loss, we will give you disaster payments at 65 percent—not 100 percent, but at 65 percent—of the established price for those crops. In figuring losses, the USDA uses the program yields—which have been frozen since 1985—not the higher yield the farmer normally would produce.

So the farmer gets 65 percent of 65 percent, so to speak. Well, that is what is in the 1990 farm bill.

Based on that, a farmer, who acted in good faith and who had crop insurance and did everything right, suffering a natural disaster, like this flood or a drought, would basically get a disaster payment somewhere in the neighborhood of about 40 to 42 cents on the dollar for a total loss. Not enough to make up for everything, but enough to try to give that farmer something to pay the bills.

Because, as the distinguished occupant of the chair knows himself, farmers, in the spring, borrow money to buy

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

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the fertilizer, to buy the seed, to buy the fuel to put the crop in the ground. They harvest the crops in the fall, pay their bills, and, hopefully, they have enough left over to take care of the family a little bit, and they get ready for the next year.

So what this disaster payment of about 40 to 42 cents on the dollar means to a farmer is not that they can pay everything, but that it can get them through the year and perhaps get them started the next year and, hopefully, get a crop in the ground next year. So that is what is in the law.

In 1990, 1991, and 1992, we had some disasters that struck, notably Hurricane Andrew. The administration at that time, the administration of President Bush, allowed for only a certain amount of money to meet these disasters and to meet the agricultural needs of those disasters.

There was not enough money there. The President opposed providing enough money to meet the real needs out there to fulfill the mandate of the law; in other words, to fulfill that 65-percent payment.

So, rather than coming back to Congress and asking for more money to fulfill the provisions of the law, the President—the administration—simply said we are just going to pay out what we have, and we will figure out how much each farmer gets of that amount, pro rata. What that turned out to be was 50.04 percent of each eligible disaster claim calculated under the 1990 farm bill. That is 50.04 percent of what, of 100? No; 50.04 percent of the 65 percent of 65-percent formula.

In other words, as I said earlier, under the law a farmer basically got 65 percent of the established price for production losses below 65 percent. After eating the first 35 percent of his loss, the farmer got 65 percent of the established price on losses above that 35 percent.

The previous administration said OK, figure that up, figure out what that would be, figure out what the 65 percent times losses above 35 percent would come out to in dollars and cents terms and then pay only 50.04 percent. They did that. Congress did not do anything about it. We did not have the votes to provide the money to do anything about it. So what has happened now is that we have the 50.04-percent factor because we were unable to get adequate funding from the past administration.

So now we are faced with the tremendous damage we have had this year in the upper Midwest. OMB, in submitting the disaster bill to the House, put into the bill that same 50.04-percent factor that was used by the Bush administration. The House did manage to move that up to 90 percent, but only for losses above 75 percent.

At that time the administration's position—this administration, the Clinton administration's position—was they supported that. I suppose Members of the House felt they could not eliminate the 50.04 factor. So the bill came from the House and lands in our laps here with that 50.04 percent factor still in there.

In other words, you say to a farmer who has suffered the loss of almost everything, as they have in my State, we are going to figure up what you are entitled to under the law, under the 1990 farm bill. We will figure up what you are entitled to and then we will whack off 50 percent on the largest portion of your loss.

What that means is a farmer in Iowa who operated in good faith, who bought crop insurance, who did everything right, is faced with getting back somewhere in the neighborhood of about 20 some cents of disaster payments on the dollar of loss.

That is not enough to pay his fuel bills, fertilizer bills, seed bills, pay his rent if he is renting any land, and then get a crop in the ground next year. It is a simple fact. It just will not do it.

So, what this amendment I have offered—along with Senator BOND and a number of other Senators on both sides of the aisle—seeks to do is simply to strike out that portion of the bill before us that has that 50.04-percent factor and 90-percent factor in there. What that means is, we will go back to the basic 1990 farm bill which says that you, farmer, you take the first 35 percent of loss, you suffer that. Then we will reimburse you at a rate of 65 percent of that established price, which will be about 40 cents to 42 cents on the dollar on total losses.

That is all we are asking for. We are not asking for 100 cents on the dollar. I want to be clear to my colleagues what this amendment does and what it does not do. Last evening when I talked to Senators there was still some confusion that what we are trying to do is give farmers 100 cents on the dollar of every dollar they have lost. We are not trying to do that. No one is attempting to do that. The farm bill did not do that. We are just attempting to get back to about 40 cents on the dollar, 40 to 42 cents on the dollar. That is all we are seeking to do.

I spoke at length with the President about this issue. I have spoken at length with a lot of people about this issue, as a matter of fact. I have been informed by the people representing the President that rather than taking a hard and firm position one way or the other on this amendment, the administration's position is now that they neither support it nor do they oppose it. They will accept whatever the will of this body is.

That is why this amendment becomes so important, so important to farmers in Iowa, Missouri—in all the affected areas. I might also add the farmers in the drought-stricken areas of North Carolina down to Georgia. Because without this amendment succeeding, if we have to live with that 50 percent factor, I can tell you—and this is not hyperbole—in my State of Iowa, hundreds, if not thousands of farmers will not be able to make it next year.

I could not stand before you with a straight face and tell you that if this were just one tornado that came through and knocked out a few farms, or if one river had overflowed its banks and wiped out a half a dozen farmers or a dozen farmers, or if a big storm, a hailstorm had come through and wiped out one county, I could not stand here with a straight face and tell you if we did not pass this amendment the farmers of Iowa and our economy would suffer dire consequences. But, I can stand here with a straight face and with an honest mind and tell my colleagues if we do not pass this amendment it will be dire consequences for Iowa, because this has not been just one river out of its banks; it has not been one tornado; it has not been one hailstorm.

Again, I point to this chart to illustrate what happened to my State. I used it yesterday and want to use it again to bring it back to the attention of Senators. This is a satellite photo taken by NOAA, the National Oceanic and Atmospheric Administration. You use this bar graph here at the bottom of this chart. If it is in green it is moisture, if it gets yellow it is more moisture, if it is red it is more moisture, if it is blue it is wetter, and as it gets to the darker end of the spectrum that means the wetter the ground is.

If you look at this map of the central and eastern part of the United States you will see the darkest blue is the Great Lakes, obviously. That is the Great Lakes. You see Lake Superior, Lake Michigan, Lake Huron.

Then you come over here and see that same dark blue area right over Iowa and southern Minnesota and a little part of South Dakota and Nebraska. It is as big as Lake Erie—in fact bigger than Lake Erie. It is as if Lake Erie were situated right in my State.

You cannot deny this. This cannot be denied. This is not hyperbole, this is factual evidence taken by a satellite photograph. All of that water came rushing through the State of Iowa. It is not just one river out of its banks, not just one hailstorm or one tornado. This is a disaster of epic proportions.

So I can stand here with a straight face and tell you this amendment is needed for our economy, the economy of Iowa. I might say that is true also of Minnesota. I see the distinguished Senator from Minnesota here, and the Senator from Missouri. Those Senators can speak for their own States. But the same is true for their States, too. That is why this amendment was so needed and that is why I have taken this time again to lay out for Senators what this amendment does and what it does not do.

Mr. COCHRAN. Will the distinguished Senator yield 1 minute at this time?

Mr. HARKIN. I have had my say, what I wanted to lay out. I will be glad to yield however many minutes the Senator wishes. I yield 1 minute to the distinguished Senator from Mississippi and I thank him for his help and support in modifying this amendment. I am sure he wants to speak about that.

The ACTING PRESIDENT pro tempore. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator from Iowa for yielding time to me. I want to express to the principal sponsors of this amendment, the Senators from Iowa and Missouri, Mr. HARKIN and Mr. BOND, my appreciation for including language which gives the Secretary of Agriculture the discretion to make adjustments in previous disaster benefit payments that were made under the 1990 farm bill that creates this disaster assistance program.

The purpose of this amendment, as Senators now know, is to try to make sure the administration makes available the full benefits that are authorized under the disaster program of the 1990 farm bill. There were earlier disasters, particularly in the southern part of the United States, and drought in other parts of the country, under which disaster benefits were made available in crop years 1990, and 1991 and 1992 that were limited under the same——

The ACTING PRESIDENT pro tempore. The Senator's 1 minute has expired.

Mr. HARKIN. I yield to the distinguished Senator an additional minute of time.

Mr. COCHRAN. Under the same modification the Office of Management and Budget is urging the Congress approve in this disaster situation. It seems fair to this Senator and to the sponsors of this amendment that if that change is made by law here, it ought to apply as well to previous disasters under the 1990 farm bill disaster program. That is the purpose of the language that was included in the amendment.

I thank the Senators for including that discretionary authority in this amendment.

Mr. HARKIN. Mr. President, I thank the distinguished Senator from Mississippi for drafting the amendment, for alerting us to the need to do this.

The Senator is absolutely right. We did not mandate it, but we left it in discretionary, because as I said yesterday, the administration may want to go back and give that 65 percent on losses above 35 percent—again not 100 percent—but that level of disaster assistance in the farm bill to farmers who suffered under Hurricane Andrew and other disasters of those earlier years.

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

The ACTING PRESIDENT pro tempore. The Senator has 14 minutes 47 seconds.

Mr. HARKIN. I reserve the remainder of my time.

Mr. BURNS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Montana, Mr. BURNS, is recognized.

Mr. BURNS. Mr. President, I want to thank the Senator from Iowa and the Senator from Missouri for bringing this to our attention.

The ACTING PRESIDENT pro tempore. The Chair reminds the Senator that he needs time yielded to him.

Mr. HARKIN. How much time does the Senator want?

Mr. BURNS. Five minutes or less.

Mr. HARKIN. I yield 4 minutes to the distinguished Senator from Montana.

The ACTING PRESIDENT pro tempore. The Senator may proceed.

Mr. BURNS. Mr. President, I want to remind my good friend from Iowa that if it comes to a vote, I will support this amendment. I think what the chairman and what we are trying to do is remind our colleagues that we have to put one foot in front of the other first. I think once the waters recede in the Midwest—and I was raised in northwest Missouri. You can probably look on that map that the Senator from Iowa has, and I can show you my hometown where I was raised. I am accustomed to those people and how they make a living because I was raised on one of those little farms of 160 acres of two rocks and one dirt. We made a living.

I think we are kind of underestimating the people in that area—their resilience and willingness to bounce back—because they are not going to sit there waiting for the Government to help them. They are going to start doing things on their own, putting their lives back together.

What I am concerned with, though, is that there are things in this bill I would like to change. I would like to shift some money around, but I think if this amendment has a chance of holding up the money to build the building blocks with which we can put the Midwest back together again—and I am talking here about infrastructure—I will support this amendment, if it comes to a vote, and I think it is going to come to a vote. But I want to remind my colleagues that our main thrust is to put together transportation, communications, power, roads, rails in order to provide the service and rebuild the Midwest.

I just want my colleagues to understand that there has to be a commonsense approach to this so that we can rebuild the Midwest. We know what floods are all about, and I know what Iowa is all about. America's compassion should be for this part of the country because this is where America eats. This is the breadbasket of America and the impact will be tremendous upon our ability to feed and clothe ourselves in years to come.

So I will support this amendment, but let us not overlook first things first in order to rebuild the Midwest, to deliver those services and a premise with which to do it. I appreciate the work that the Senator from Iowa, Senator HARKIN, and Senator BOND have done on this because we have been through similar disasters in my home State of Montana. We were not in this flood. We are upstream from everybody. So our hearts and our prayers go out to those people who have been impacted because I understand where they are coming from, but I think we ought to have a commonsense look at it on the infrastructure first and then rebuild, in order to deliver those services to the people we are trying to help rebuild and serve.

I thank the Senator from Iowa for bringing this up. I yield the floor, and I yield the remainder of my time.

Mr. WELLSTONE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota needs time yielded to him.

Mr. HARKIN. How much time do I have left?

The ACTING PRESIDENT pro tempore. Eleven minutes six seconds.

Mr. WELLSTONE. I probably will not need more than 3 minutes.

Mr. HARKIN. I yield 3 minutes to the Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I do not need to take more than 3 minutes because I had a chance to speak last night.

First of all, I will just simply build on the comments of the Senator from Montana. We know that we are talking about tremendous devastation and much is needed. I know that everybody out here on the floor, including the distinguished chairman of the Appropriations Committee, is committed to helping people. There is no question about that. We appreciate the response of the administration.

Last night, I talked about James Lee Witt from FEMA. He has done just a magnificent job. The reason this Harkin-Bond amendment is so important is that if we do not make a change in the formula, this will be the problem: We will be providing assistance to people that really will not give them enough assistance so they will be able to get back on their feet. That is really what this amendment is all about.

We just simply make a plea to every one of our colleagues—Democrats and Republicans alike—people in our region are really hurting. When we go back to our States, farmers literally reach out and they say, "Senators, will you help us so that we can get back on our feet and rebuild our lives?" And we know that 20 cents on the dollar loss will not do the job.

If this amendment is not adopted, we will not have really provided that helping hand to farmers and it will not

have made the difference. We are here to do well for people. What we say to our colleagues is that this is not just an academic debate about formula, this is not just a question of trying to get more money into a particular region. I think really without exaggeration it is a life-or-death question as to whether or not people who have been absolutely devastated in the agriculture sector of the economy are going to have a chance, especially some of the younger farmers, some of the beginning farmers.

So that is why this amendment is so important. That is why we ask our colleagues for their full support.

I yield back the remainder of my time. I really had a chance to speak last night. I do not know how to add any more than what has just been said.

Mr. HARKIN. I want to thank the Senator from Minnesota for all his help in drafting the amendment and working with the bipartisan group of Senators to help fashion not only this amendment but our whole approach to this flood in the Midwest. Senator WELLSTONE has been great for agriculture not only in his State but the entire upper Midwest. I personally want to thank him for all of his help and support.

Mr. President, I reserve the remainder of my time at this point.

Mr. BYRD addressed the Chair.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. BYRD. I yield myself such time as I may require.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I want Senators to be very clear about what this amendment would do. The consequences of the amendment will be to add at least $1 billion to the cost of this legislation. That is OMB's estimate of what the amendment would add to the cost of providing disaster payments to farmers who have suffered losses as a result of the Midwest floods alone.

The additional expense of compensating those whose emergency has passed, whose disaster is over at the same rate as those in the Midwest will add up to $2.4 billion in spending, according to the OMB. Therefore, this one amendment would add $3.4 billion to this emergency spending bill for only one account in the agricultural area.

The policy contained in the President's request may be a right policy or it may be a wrong policy. It did not begin with this administration. It should not be ended here on the Senate floor today. This is a matter for the administration and the authorizing committees to work out.

What we are about here today is to get that which is justifiable to people inundated by the floods as quickly as possible. The floods have been and continue to be of such proportions that this will not be the last time that we address this disaster.

There will be regular appropriation bills for FEMA, HUD, Transportation, and the Corps of Engineers which will be acted upon in September, and, of course, the President may request further aid specifically for these communities. We will have ample opportunity to address these matters further.

We should be careful that we are not shooting ourselves in the foot by adopting this amendment. As I read the amendment by the Senator from Iowa, it may actually provide less assistance to the farmers in need than the bill as reported by the committee.

Under the bill as reported, the President may use additional funds from the Commodity Credit Corporation to pay up to 50.04 percent of eligible claims. Under the pending amendment, if the President wants to make additional payments over and above the amount we are appropriating here, he must pay 100 percent of the eligible claims.

The President and his Office of Management and Budget are already concerned about the total cost of this disaster assistance. It is clear that it will take a much greater amount of money under this amendment, and the President will be faced with a much more arduous decision about whether to make the additional funds available.

Time after time, I have heard on this Senate floor cries of "cut spending." I have heard President Clinton attacked for failing to cut spending first. Over the years, this Appropriations Committee has repeatedly been attacked for spending on Members' projects or for spending on programs that have not been authorized, yet here we are with a disaster bill before us bearing an emergency designation from the Oval Office and Members are out here trying to increase the cost of the bill.

I hear Members come to the floor and say that we ought to pay for our spending, yet we are trying to hold down the cost of this emergency bill by sticking to the President's estimates of what is absolutely needed to address this disaster, while in this Chamber we are seeing attempts to go back in time and spend more money on past disasters as well as on this current one.

Formula changes ought to be discussed in the authorizing committees, not on an appropriations bill. Members ought to get a grip on themselves and contemplate that we have a reconciliation bill up ahead that attempts to do some real and serious deficit reduction.

Let us not exploit this disaster legislation because it is the last available train leaving the station before the August break. Let us try to look at this from the perspective of the American people who must be watching and scratching their heads at our actions. We must not add needless and inappropriate spending to this emergency bill. If we sincerely want to cut spending in this body, which I hear over and over and over again, especially from the other side of the aisle, we can begin right now by doing only what is necessary to address this disaster adequately and appropriately. Disasters are not spending opportunities and must not become such.

Unmentioned thus far in the debate is the existence of the Federal Crop Insurance Program. Since 1938, we have had a wholly owned Government corporation, the Federal Crop Insurance Corporation. The Corporation offers insurance to agricultural producers to provide protection from losses caused by natural hazards—drought, flood, wind, and other weather conditions.

Based on data in the past three budget submissions, insured acreage under the program has fallen from 101,632,000 acres for crop year 1990, to 895,245,000 acres for crop year 1991, to 84,416,000 acres for crop year 1992, to an estimated 80,875,000 acres for crop year 1993.

Could it be that insured acreage has fallen because we have been so generous in our disaster payments that farmers no longer bother to get Federal insurance? Why pay insurance premiums if the Government is going to indemnify farmers for losses anyway?

The amendment by the Senator from Iowa, as modified by the provision offered by the distinguished Senator from Kentucky, provides authority to go back—back—3 years and make additional payments on claims that have already been paid. Are we today saying that a 1990 crop loss is an emergency today? Is that what we are saying 3 years later?

Here we are, Wednesday morning, trying to pass emergency legislation to help people deal with a major disaster before we leave for a month-long recess and we simply do not have the luxury to debate at length on whether we should provide retroactive payments or whether we should change the disaster formula for farmers. If the Senators representing those farmers in the disaster today are concerned about getting aid to those farmers who are currently deluged by this disaster, we need to move forward now. To provide additional payments for something that happened 3 years ago does not constitute an emergency today.

There are 3 days remaining for us to get some relief for these flood-torn communities. Why are we discussing and debating something that happened 3 years ago? It does not make sense.

Mr. President, I hope that Senators will not support this amendment. I commend those Senators who represent the areas that have been hit by this terrible disaster. My heart goes out to them and to the people who live in the areas, and I have always, as chairman

of the Appropriations Committee, supported legislation such as this, to provide help for areas that are stricken by disaster.

It is not a matter of heart, Mr. President. It is a matter of acting responsibly. The administration is in the best position to determine what the estimates should be. The administration continues to send up requests to be added to this bill. This indicates to me that the administration is very sensitive to the needs of the stricken areas, and there will be ample time to come in with additional supplemental bills—September, October, the beginning of next year.

It seems to me that we ought to depend upon the administration, which is in a far better position than any Senator on this floor or group of Senators, to determine what the estimate of the damages is.

So, Mr. President, I do not like to be in this position of opposing this amendment. The easy thing to do would be to vote for it. That would be the easy thing. The difficult thing to do but the responsible thing to do is to vote for the bill that the Appropriations Committee has reported out and which represents and will represent shortly everything that the President has requested because I intend to offer an amendment a little later to add something over $100 million which has come in at the request of the administration by way of a letter.

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

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. MCCONNELL addressed the Chair.

Mr. HARKIN. Mr. President, I have some requests for time. Senator MCCONNELL, 1 minute.

I yield to Senator MCCONNELL 1 minute. I only have 11 minutes remaining.

Mr. MCCONNELL. I thank my friend from Iowa.

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

Mr. MCCONNELL. Mr. President, let me say that if the Federal Government exists for any purpose, it seems to this Senator it is for national defense and natural disasters. And we are certainly concerned about the spending of the Federal Government, on the other hand.

Mr. DOLE. Mr. President, as I understand, leaders' time has been reserved, and if I could yield 10 minutes of that.

The ACTING PRESIDENT pro tempore. The Republican leader is correct.

Mr. DOLE. Two minutes.

Mr. MCCONNELL. Two minutes.

Mr. DOLE. Three minutes or four minutes.

Mr. MCCONNELL. I thank the Republican leader. That would give the Senator 3 minutes.

Mr. DOLE. And 3 additional minutes to the Senator from Kansas, Senator KASSEBAUM.

Mr. BYRD. Mr. President, would the Republican leader object to our having some additional time on this side?

Mr. DOLE. No. The same amount.

Mr. BYRD. Will the Republican leader make that request.

Mr. DOLE. I ask unanimous consent that 10 minutes more be allotted to the distinguished Senator from West Virginia.

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

Mr. MCCONNELL. Mr. President, I thank the Republican leader for the additional time.

As I was saying, if the Federal Government exists for any purpose, it seems to this Senator it is for national defense and natural disasters.

I wish at the outset to express my appreciation to Senator BOND and to Senator HARKIN for their leadership on this issue.

Kentucky has not escaped the effects of the devastating floods in the Midwest. While most of my State suffers from almost drought conditions, four counties in Kentucky along the 60-mile border of the Mississippi River will lose 40,000 to 50,000 acres. To make matters worse, the land affected there will be under water for a long period of time. As a result, thousands of acres in Kentucky and millions of acres across the Mississippi Valley will be totally destroyed.

Farmers have spent millions of dollars in fertilizer, seed, chemicals, fuel, and labor expenses. Also, mortgage payments are still due. Daily family living expenses are still needed, and now there are added expenses to rebuild and restore damaged property.

Because the flooding occurred so late in the year, there is no opportunity for farmers to replant a crop with the hope of getting some return on their investment this year.

Mr. President, our losses in Kentucky are not comparable to some in the Midwest. We estimate about $20 million as a result of the flooding in Carlisle, Ballard, Fulton, and Hickman Counties. I have been there, Mr. President. I have been over to Roy Dillard's farm in Hickman County, where two-thirds of his corn and soybean crops were under water. His land is still under water, and will probably stay flooded for several more weeks. He invited several neighbors over to his farm. And I heard stories from people who will lose everything.

Connie Keene made a point which really struck home. Without crop assistance from the Federal Government, some farmers in western Kentucky could lose their homes to bankruptcy. And there is very little difference in losing your home to flooding or a hurricane than losing your home because you lost your farm income and therefore cannot make your mortgage payments.

Paul Lee Williams of Fulton County has lost 1,000 of his 1,300 acres. His neighbor, Walt Goodman, has lost over half of his crop to flooding and the rest is burning up with drought conditions on the same farm. Cornfields which yielded 200 bushels per acre last year will yield zero if flooded, and about 100 bushels per acre if it survives the drought.

I met with a dozen farmers in Tony Gill's toolshed in Carlisle County. Wayne Earl Bean of Carlisle County told me farming is a 50–50 proposition right now. This is the way he put it. He said 50 percent of it is burned up, and the other 50 percent is under water. His son, Philip, pointed out how ridiculously complicated crop insurance and the disaster formula are for calculating losses and estimating assistance. He is right.

While this is not the time nor the place to make major changes in our disaster assistance programs, the amendment being offered by the Senator from Iowa and the Senator from Missouri is certainly necessary until we are able to make bigger changes. Millions of people, as we all know, have been directly affected by the floods.

Families have been displaced, businesses ruined, communities devastated, and lives changed forever. Farmers have lost millions of acres of crops and years of good stewardship have been washed away.

Mr. President, I hope the amendment will be adopted and that the Senate will forthwith provide maximum assistance to those who have been the victims of this natural disaster. This disaster will linger well after the television cameras have gone and the dollars in assistance are spent. All too often Government intrudes in the daily lives of Americans, but Government has a role and must respond promptly to this devastation.

Mr. DOLE. Mr. President, I understand I have been yielded 2 minutes by the Senator from Iowa.

Then I have, I think, a couple of minutes left on leader time. But I may not need that. I will go ahead and use leader time first. I am sure the Senator from Iowa has other requests.

Mr. President, how much time do I have left on leader time; 4 minutes?

The ACTING PRESIDENT pro tempore. The Senator is correct.

PRORATION AMENDMENT

Mr. DOLE. Mr. President, I just wanted to emphasize how important this amendment is and how important it is to many of us—no, not us; we are back here high and dry. I am talking about the people who live in this area. They are Republicans and Democrats, and they are people who have lost their homes and lost their farms.

If you watched, the piece the other day on Iowa, it had this young farmer

sitting in a Red Cross shelter, he and his wife. They had lost everything they had. It was their first year on the farm, and they lost everything. It almost made tears come to your eyes when they interviewed this young man who thought he had a great future on the farm, and everything was wiped out with the flood.

That in itself may not be adequate, but that happened thousands and thousands and thousands of times in 10 different States hit by floods. Then we have the drought in several Southern States.

I was in North Carolina last Saturday. The first thing they asked me was: "What about the drought aid? We have been dry." I know the same is true in Georgia and other areas of the South.

So I wanted to underscore what Senators BOND, HARKIN, GRASSLEY, and others have said here today. This is an important amendment. I know as far as the managers are concerned, they would like more help. If only the administration would say one way or the other, for or against, instead of waiting: Well, whatever happens is all right with us. But at least there is not a negative from the administration. So I will construe it as a positive. It would indicate to me that it seems they are not against this; they must be for it. That is how I interpret it.

I know the managers may have another interpretation. But flood waters do not choose party lines. I think this amendment should be supported. We had quite extensive damage in my State of Kansas. I have been there. I have flown over the State. I talked to people by telephone. We have taken all of the staff out of my office here who were not absolutely needed and sent them all to Kansas to visit with the people who have been hit by the flood. They came back with some pretty bad stories.

So it just seems to me there are a lot of reasons that we ought to support this. I want to make it clear that this is not going to make the farmer whole, whether they get 21 cents on the dollar or 42 cents, this is not going to make anybody whole.

When President Clinton toured there he talked about 50 cents on the dollar. I think probably he had in mind a formula which I just say does not give you 50 cents.

We lost 25 percent of our wheat crop in Kansas, about 100 million bushels. Just add that up to the market price. That is a lot of money taken out of the economy, away from the farmers, who will not be able to start up again this year.

I know we can say there will be another supplemental, and we can come back later. But when the cameras leave, aid for the area will also dry up.

I think this ought to be the important time to raise this issue. I do not know of any time when we have not stood up for others who have had disasters. It has never been partisan. It has always been nonpartisan on both sides of the aisle.

So what do you tell your bankers, the implement dealers, people whom you buy the fuel from and the seed from? You say: Give me one more chance. You go out and try to borrow more. They will say no. You cannot do it for 20 cents.

So I just hope we can pass this amendment. There is not a quarrel with the ranking member or the chairman. There is, I think, agreement by those of us who represent the 10 States in the flood. We reflect the views of our constituents. We are putting the money in there where it is most needed.

Now, I understand the concerns of those regarding cost. I would just point out that as market prices go up, because of disaster, there will be a decrease in the form of deficiency payments to the farmer. USDA has indicated this savings could range between $850 million and $1 billion, which goes a long way in paying for this increase.

I want to congratulate my colleagues on both sides of this debate. I hope when the time comes, we will have broad bipartisan support for this amendment.

Mr. President, we have heard from several Senators on both sides of the aisle, supporting the amendment to remove the 50.04 percent pro rate. I commend my colleagues for the bipartisan support they have shown in this debate. Obviously, the flood waters do not choose party lines.

There have been many reasons given on why this amendment should be supported. Like many that have spoken on the amendment, I have heard from the people back home as to what those reasons are. Some have called this a disaster. But once you see it, you know it is more than that, it is a catastrophe.

In Kansas over 25 percent of the crop has been destroyed by some type of disaster. High straight winds, tornadoes, hail, and floods have equated to more than a $437 million shortfall in the pockets of Kansas farmers. Over 53,000 of the States 67,000 farmers have been affected. And when the farmer is affected, main street is affected.

We have spent a lot of time talking about how the amendment will help farmers—and it will. Lets not forget about their creditors—the bank, the implement dealer, the fertilizer and chemical dealer, the grocery store. Money in the farmer's pocket is money in their pockets. America's small businessman has suffered in this disaster as well. While the Small Business Administration has loan programs to help, passing this amendment is one more way to provide our assistance.

The President has promised his support for the flood victims. The Congress has promised their support. Now is the time to show what our support means. By eliminating the 50.04 percent pro rate, we are putting money into the heartland where it is needed most.

Mr. BYRD. Mr. President, I think I should put a letter in the RECORD at this point. I will read it. It has been sent to me this morning dated August 4.

A similar letter was sent to the distinguished ranking member, Mr. HATFIELD. It reads as follows:

DEAR MR. CHAIRMAN: It is my understanding that when the Senate returns to H.R. 2667 this morning, the pending business will be an amendment which would eliminate the 50 percent pro rate for agriculture disaster payments. The Administration did not take a position on the amendment as originally offered since it was limited to 1993 crop losses. It is my further understanding that the amendment now has been modified to permit the Secretary of Agriculture to make retroactive payments to farmers who suffered crop losses from 1990–1992 in order to receive payments up to 100 percent of their eligible claims.

The Administration estimates that this amendment, as modified, would increase the cost of the Federal crop disaster assistance program from $1.4 billion to $4.8 billion. While the Administration did not take a position on the underlying amendment to strike the 50 percent pro rate, we must oppose the amendment as modified.

There simply is no basis for using the emergency authority to make retroactive payments for crop losses that occurred as far back as 1990. Were the emergency designation not used, enactment of this amendment would, under the Budget Enforcement Act, necessitate a reduction of FY 1994 discretionary spending of several billion dollars.

Sincerely,

LEON E. PANETTA,
Director.

Mr. President, while it is true that the administration took no position on the amendment that was originally offered by Mr. HARKIN—and he has stated that a number of times and he is correct in that—the administration is clearly on record as being opposed to the Harkin amendment as now modified by the language added by Mr. COCHRAN. I hope that Senators will be mindful of this when they come to vote on this matter.

Mr. President, I yield to the distinguished Senator from Oregon [Mr. HATFIELD].

Mr. HATFIELD. Mr. President, I just want to be very brief and reiterate two points. No. 1, as the chairman has indicated the position of the administration, let me translate that into the hard figures that we are dealing with. The committee came out with $4.7 billion, which was precisely the administration's proposal. Since that time, the administration asked for an additional $123 million. That would mean we are then dealing with, if we adopted the administration's second request, $4.8 billion. The Harkin amendment, now as modified, would add $3.4 billion in addition, making it an $8.2 billion package.

My point is simply that it might mean that we will ultimately have to spend more than $8 billion, but we have other vehicles that we can address as the information becomes available.

The second point is, I urge all Members to look at the Calendar of Business and find that we have listed 40 amendments to this bill. I am not saying that they are all going to be raised, but we have 40 listed amendments. This is Wednesday, August 4. The administration has made very high priority, as it should, on getting the resolution on our budget and fiscal matters accomplished before the recess begins. They say we will take up the reconciliation.

All I am saying, simply, is that time is running out, and if we further add to this bill, we have longer potential conferences with the House and a good possibility of not achieving any bill—any bill—until after the recess. I just think we have to face that reality.

Are the Members of this Congress who represent the States that are so inundated and devastated willing to take that risk? It will strictly be on your shoulders. I do not believe that it is an unreasonable speculation to make within the current timeframe—$4.7 billion or $4.8 billion—if we adopt the additional request of the administration, as against the possibility of nothing until after the recess.

This is not a vague or speculative warning. This is simply a statement of fact. This is Wednesday, August 4, and every Member here knows the processes that are required to conference with the House in the middle of the reconciliation resolution to be adopted before the Friday recess.

Need I also remind Members of that tremendous steamroller mentality that gains momentum as the date of recess nears, not for a weekend, but for the month of August. That is going to be very difficult to resist in order to complete this bill if we get into that kind of possible legislative morass. Think of the House's action and their difficulties and the statements on legislation on appropriations and all of the other things that have fouled up or delayed resolutions in the past, and you see the ingredients, the components in this bill taking shape to reach into that same kind of experience. We have repeated and repeated and repeated that. There is nobody on this floor who has more desire to help the people in the Midwest, but we cannot risk this idea by measuring compassion by the dollars involved in the bill because, if that were so, then this is a paltry few dollars to meet the needs of those people.

So I just offer that, not in opposition to the objective of this bill, but as the reality we face as members of the Appropriations Committee, to try to complete this bill before that deadline.

Mrs. KASSEBAUM addressed the Chair.

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

The Senator has 3 minutes.

Mrs. KASSEBAUM. Mr. President, I support the amendment offered by the Senator from Iowa [Mr. HARKIN] and the Senator from Missouri [Mr. BOND]. While I share the concern that this amendment adds to our deficit, I believe it is a necessary step to address the devastating floods of the past several weeks across the Midwest.

In my State, current estimates are that about 75 percent of all Kansas farmers have been hit by flooding and other natural disasters this spring and summer. About 4 million acres, roughly 25 percent of Kansas cropland, have been affected. Tentative estimates for total crop losses exceed $500 million in the State of Kansas alone. These losses have devastated farmers across the State.

Current provisions of the proposed disaster relief bill would allow farmers to recover about 20 cents for every dollar of crop loss. This amounts to only half of the amount that was afforded to farmers in the 1990 farm bill. I do not believe that this amount will provide sufficient assistance to the thousands of farmers whose operations have been crippled by severe flooding. In my opinion, Congress must make a stronger commitment to ensure that farmers are provided with the assistance they need to get back on their feet.

For this reason, I support efforts to restore disaster payments to levels established in the 1990 law. The amendment offered by Senators HARKIN and BOND accomplishes this goal and provides farmers with a reasonable amount of assistance.

Some argue that this provision is too costly. I agree that Congress must be cautious in adopting any measure that increases spending. However, the increased costs of this amendment would likely be offset by lower deficiency payments to farmers for Government Farm Program crops.

Largely due to flooding, the cash price for wheat has risen from $2.82 per bushel in July to about $3.08 per bushel this week. This will help farmers who have wheat to sell, and it should reduce deficiency payments made by the Government.

But the only help available to many farmers whose crops have been washed away will come from this bill. That help could well decide whether many of these farmers can recover.

Mr. President, our budget deficit is a serious problem and requires serious action. But I would point out that that problem existed long before these natural disasters. If we want to address the deficit, it must be done by addressing ongoing, day-to-day Federal spending. Natural disasters have not caused our deficit and the deficit should not be used as a reason to withhold assistance from cities, towns, and hundreds of thousands of families devastated by these floods.

Mr. President, there is no one whose dedication and compassion I admire more than the Senator from Oregon and also the Senator from West Virginia. The Senator from Oregon is the ranking member on Appropriations and has dealt for many years with the reality, as he says, of what we face here.

Mr. President, I do not think there is a Senator on this floor who has any concept, nor do I, of the day-to-day weariness, the day-to-day frustration, and the tragedy felt in the Midwest. For weeks, we have watched the sandbagging and wondered if levees were going to break. Now we must consider either the cleanup and devastation to the farms that have been lost or the months and months it will take to recoup some of the damages that have occurred in this major tragedy. It is not only the floods, but it is the droughts as well.

As the Senator from Kentucky pointed out, I think rightly so, the Federal Government does have a responsibility in dealing with natural disasters. These are not, we hope, going to be annual recurrences. We hope that this is the time to address what is before us this year once and for all. We have heard many figures explained about each State's problems, and I will not go into that.

The only help available to many farmers whose crops have been washed away, whose homes have been destroyed, will come from this bill. This help could well decide whether many of these farmers and small businesses can recover. I think we simply have to address this in the scope of what assistance we can give at this time to those who are suffering in ways that we really cannot fully imagine here.

Mr. HARKIN. How much time do I have remaining, Mr. President?

The ACTING PRESIDENT pro tempore. The Senator has 7 minutes 30 seconds.

Mr. HARKIN. I yield 2 minutes to the distinguished Senator from Missouri.

Mr. DANFORTH. Mr. President, last week the chairman of the Council of Economic Advisers said that this disaster was not a disaster for the entire country; that, as a matter of fact, it would be an economic plus for the rest of the country. It affected just a ribbon going through the middle of the country.

For those of us who live there, it is some ribbon. To fly over this land, you get the best view of it, because as you look down on the farmland adjacent to the rivers, especially the Mississippi River and the Missouri River, with the levees broken, you see total loss—total loss.

The whole farm is gone. The whole farm is under water. All the land is under water. The buildings are bobbing

up above the water. Everything is gone. It is a total loss for those who have been devastated by this flood.

The issue before us is very simple. The issue is whether the Congress of the United States means what it said in 1990 when we passed the farm legislation and when we promised 42 percent reimbursement for agricultural disasters. That was the promise of the act of Congress that was signed into law by President Bush. That is the law.

It has been artificially and administratively cut in half. Senator DOLE said it quite well, this is not going to be a windfall for anybody. Are we going to provide disaster assistance equal to 42 percent of the loss as provided by law, or are we going to welsh on that law and provide only half that amount, 21 percent?

The PRESIDING OFFICER (Mr. MATHEWS). Who yields time?

Mr. HARKIN. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Iowa controls 5 minutes and 36 seconds; the Senator from West Virginia controls 21 minutes and 40 seconds.

Mr. HARKIN. I yield 1 minute to my colleague from Iowa, Senator GRASSLEY. S0634

The PRESIDING OFFICER. The Senator from Iowa [Senator GRASSLEY] is recognized.

Mr. GRASSLEY. Mr. President, Senator HATFIELD put the question to us: Do we want to take the risk? Yes, we do want to take the risk. We want to take the risk, we take the risk because all we are asking for is equity with other disaster programs that are being funded by the Federal Government. We are funding FEMA, we are funding SBA, we are funding Farmers Home Administration, we are funding HUD, we are funding all these people who are going to benefit at the authorized levels.

We are cutting in half, under present policy, the authorized levels for disaster relief for farmers. We think that is unfair.

All we are asking for is that farmers be funded at the authorized level, not at some arbitrary 50 percent of that authorized level. We want equity for farmers on the same basis as small business, residential, and others.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. HARKIN. Mr. President, I yield 4 minutes to the cosponsor of the amendment, someone who has worked very hard on this amendment as he has on all flood disaster provisions, Senator BOND. I yield 4 minutes.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I thank my colleague from Iowa, who has worked long, hard and diligently on trying to assist our citizens who are victims of a 500-year flood. I hope my colleagues will keep this in mind, this is the kind of flood that comes once every 500 years. It might have been the time of Columbus since this has happened.

This is historically devastating to our country. The fire chief of St. Louis, on Sunday, told me that he had never heard of, or seen a disaster in his lifetime of this magnitude.

When we have a national disaster the responsibility of this body and the Federal Government is to respond. You do not keep score. You try to find ways to help.

One country song goes, "There ain't no future in the past." Do not look back and say, well, maybe in 1991 and 1992 we did not give enough.

We have discretion in this bill, if the Secretary wants to give aid to the people who have suffered disasters and been compensated in the past. Director Panetta has said we do not want to spend this additional $2 billion to $3 billion.

The whole point of this amendment is they do not have to. They are given discretion if they find there is equity in doing so. It is up to their discretion. We are not forcing them to do anything.

I think it is very important to realize that unfortunately the Federal Government is going to make a savings out of this disaster because of the loss of crop, 33 percent or more of many of the major crops in Missouri, and I am sure similar or greater losses in other States. There may be less supply, so there will be higher prices. And when prices on program crops go up, then the thing called deficiency payments. The difference we pay between the target price and the market price will go down, so there will be savings in the deficiency payments.

We are saying today to our colleagues in this body that the people of Missouri, Iowa, Illinois, and the other affected States are not complaining. They are sandbagging. They are rebuilding. They are fighting on. And they need our help. This is not a time to nickel and dime them and say we can make some savings and cut in half what was provided by the statute for agriculture disasters. We are saying give them a chance to get the full authorized level. It is only up to 42 cents on the dollar that they have lost.

Many of these farmers are going to be prevented, because of the disaster that this flood has visited on their land, from getting a crop, not only this year, but next year, and perhaps the year after. This is a lifeline that we will be throwing to farmers in the Midwest. They are hanging on by their fingernails.

It is 42 cents on the dollar to last them 1, 2, or 3 years. Is that too much to ask, Mr. President? I do not think so.

When I talked to the President on July 15 and told him that the OMB had recommended cutting the disaster assistance in half, he said he was not aware of it. I understand they have no position now on whether we should give them 50 cents on the dollar or the whole dollar.

I hope this body will say we meant it when we said in the 1990 farm bill that we will provide assistance under a formula for the farmers, and I urge my colleagues to support the amendment.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

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

The PRESIDING OFFICER. Thirty-five seconds.

Mr. HARKIN. I reserve that 35 seconds, if I could.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, we are not debating as to whether or not we have a responsibility here to act, and we are not debating as to whether or not we are going to provide assistance.

To listen to our friends, one would feel that this Senate is not going to provide assistance. That is what we are debating, as they say. There is no question but that we are going to provide assistance. There is no question but that we have a responsibility to do so.

Mr. President, what we are debating is whether or not we are going to quadruple the amount for the Commodity Credit Corporation for crop assistance. It is $1.4 billion in the bill for that purpose.

And what the amendment by Mr. HARKIN would do, as modified by the amendment by Mr. COCHRAN, would be to increase that to $4.8 billion.

Mr. HARKIN. Mr. President, could I ask the chairman to yield on that for a question?

Mr. BYRD. Yes, I yield for a question.

Mr. HARKIN. Yes. The Harkin amendment if adopted is totally discretionary on behalf of the Secretary of Agriculture, is that not so?

Mr. BYRD. It is discretionary.

Mr. HARKIN. It is discretionary. Therefore, if the Secretary of Agriculture, the administration, decides not to go back in 1991 and 1992—it does not cover 1990; it covers 1991 and 1992—if they decide not to go back to make any payments in those past 2 years, which is totally discretionary on the part, then will this cost the $3.4 billion.

Mr. BYRD. If he decides not to go back. But that is a big if, Mr. President. If he decides to go back, what does it do to the budget deficit?

Here are all these Senators over here—I have been hearing screaming all these many months cut spending, cut spending, cut spending, cut spending. Now when it comes to their States, we want to help them, and I have never

failed yet to vote for and to support any bill that provides for disaster relief, and I move those bills quickly. And as to compassion, I do not take a back seat to anyone.

I have had these floods in West Virginia. I have gone into the coal miners' homes at the base of the hollows after those sudden storms have swept over those mountains and filled the houses with mud, black dirt. I have seen those coal miners have to move their furniture out of the houses. I have seen them have to hose the houses out to get the black coal dust that has been converted into a black mud out of their houses.

We have had floods that have cost the lives of miners and others and have cost people who are in business. So I am compassionate with those who seek to get help here today.

But it amazes me that these are the same Senators who constantly talk about "cut spending," "cut spending first." They deride our President and say, "Well, we should cut spending first." That is their cry on this reconciliation bill that is going to be coming along.

I feel sorry for them that this disaster has hit their States. But we also have to consider what this does to the deficit.

Now, the $3.4 billion that would be added by the Harkin amendment, as modified by the Cochran amendment, would be added to the deficit. And this whole bill, which is $4.7 billion, as reported out of the committee, and which would become $8.1 billion if the amendment is agreed to, all of it is going to be added to the deficit.

Those of you who are constantly screaming about cutting spending, adding to the deficit, what about this? You are going to be adding $8.1 billion to the deficit.

I know it sounds hardhearted to talk about deficits and dollars when people need help. But what I am saying is, we do not need to deny those people help.

It seems to me that the administration, which has shown its great sensitivity to the disaster and to the suffering of people by constantly sending up requests for more money, has indicated that it is not insensitive to this problem. And the Senate will be back in September and the President can send up another supplemental.

Besides, there are various regular appropriations bills that will be coming along in September that will appropriate moneys for FEMA and for transportation and HUD and so on. So there are ample opportunities, may I say to my friends, ample opportunities to add to moneys that are in this bill at a time when we are in a better position to know more about what the damages and the costs thereof are.

And also, the administration, it seems to me, is in a far better position, with its various agencies and departments—the Corps of Engineers, FEMA, and so on—to determine more accurately as to what the damages are, far more so than any Senator or group of Senators.

So it is not for a lack of compassion, Mr. President. My heart says vote for this amendment. But that is not the responsible thing to do here today. The responsible thing is to vote for the bill that has been reported out, which is based on the administration's latest estimate right up to the moment, and then consider future recommendations by the administration. I am sure there are going to be further recommendations. We have not reached the end of the losses. We do not know what those losses are going to amount to. We will not know months from now. But we can continue to add as we see the new estimates come in.

Mr. President, I compliment Mr. COCHRAN and those who are supporting this amendment. But, I have a responsibility also. The bill fully funds the administration's request, to date. We had a request yesterday, I believe, making additional requests and it would be my intention to offer that amendment before the bill is passed by the Senate today.

The administration is better able to estimate the disaster costs and, as I say, can request further supplementals in September, October, February, March.

Third, the Harkin amendment, as modified by the Cochran amendment, increases the bill's cost from $4.7 billion to $8.1 billion. And that all goes on the deficit.

So those who continue to say "cut spending" should take note that they are recommending that we add spending today, when we can do it later and based on more accurate and more timely estimates.

It adds $3.4 billion to the deficit. It abuses the emergency designation. Now who is there to say that those persons who suffered losses and disasters of 1990, that we should go back now and apply an emergency designation to those losses and double up what the Government paid them at that time? They are no longer emergencies. Those people who suffered from those disasters in 1990, they are past those emergencies. The crisis is over. But we are going to say, let us go back. We are saying that they are eligible, if the Secretary so wishes to make them eligible, to receive what would amount to a doubling of the payment.

Not only does it go back, Mr. President, and add to the deficit, but it sets a precedent that we are going to have to live with in the future. I say that this is something that the authorizing committees and the administration should work out. It should not be dealt with on the floor today. Because this is going to set a precedent. And it seems to me that the authorizing committees and the President, the administration, should sit down and carefully consider this situation and decide what is best under all the circumstances.

Finally, Mr. President, this constitutes legislation on an appropriations bill.

I shall make that point of order and, of course, germaneness will be raised. And when Senators vote on a question of germaneness, they are not voting on a point of order. The Chair will decide that this constitutes legislation on an appropriations bill. It clearly does. But Senators will not be voting on that. They will be voting on a different question, the question of germaneness. So we never get to the point of order.

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

The PRESIDING OFFICER. The Senator has 9 minutes and 8 seconds remaining.

Mr. BYRD. Mr. President, does the Senator want some of my time?

Mr. HARKIN. I just want to respond for about a minute, if I could.

Mr. BYRD. I yield 2 minutes to the Senator.

Mr. HARKIN. I appreciate the chairman's kindness for these few minutes to respond.

First of all, Mr. President, let us keep in mind that, because of the increased crop prices, because we have lost so many crops, that we will save between $1 billion and $2 billion, if not more this year on deficiency payments.

That is coming out of farmers' pockets. We are saying at least let us help them with the disaster.

Second, on the issue whether or not this is legislation on an appropriation, the very fact this factor of 50.04 is in there is legislation on an appropriation. The House has already included legislation on an appropriation. So they have already opened that door.

Third, on whether or not we ought to leave the authorizing committees to do this, the authorizing committees have already spoken. We spoke in 1990 on the farm bill, the 50.04 factor was originally imposed because of appropriations action, not authorizing action. So the authorizing committees have already spoken on this issue.

Next, let us keep in mind the Cochran addition to my amendment is fully discretionary. The distinguished chairman has said we were going back to 1990 on some of these disasters that are not an emergency, but there may be some farmers who suffered damage because of Hurricane Andrew last fall—not even quite a year ago—that were not assessed until this year. Those farmers may be on the brink of going out of business. This may be immediate right now for a few. That is why, last, Mr. President, I want to point out the letter Senators will receive from Mr. Panetta at OMB is wrong. It is disingenuous at best. The first paragraph is right. But the second paragraph is

disingenuous when it says "* * * that this amendment, as modified, would increase the cost of the Federal crop disaster assistance program from $1.4 billion to $4.8 billion."

If he put in the word "could" it would be right, but not "would." This is fully discretionary upon the Secretary of Agriculture.

So, frankly again, Mr. President, this amendment as drafted is necessary. We need it. It does not fund farmers at 100 percent but only gets us back to the farm bill level of 1990.

The PRESIDING OFFICER. The Senator has consumed 3 minutes.

The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, the Senator says the letter is disingenuous. I think that is a bit unfair. The pressures are going to be there. The Senator knows that. He says there may be a case or there may be another case—there may be—to which this should apply.

Let the authorizing committees and the administration sit down and work that out. There is plenty of time to do that. Let us not open up a door here in this appropriations bill which will certainly be entered. The Senator would not want to stand up here and tell this Senate that if this legislation that is incorporated in the current amendment is agreed to, that Senators will not apply all the pressure they can apply downtown to get the Secretary to do just what this amendment allows him to do. The Senator knows that there will be all kinds of pressure on him.

Mr. President, prior to the 1990 farm bill, Public Law 101-624 disaster assistance was provided, not by direct appropriation, but rather through direct use of Commodity Credit Corporation funds. The authorizing committee in the 1990 farm bill authorized disaster assistance for 1990 crop losses only—only. We keep hearing the cry, "Well, we ought to stand by the law. All we are asking for is to live by the law that is presently on the books. That is all we are wanting."

Well, the authorizing committee in 1990 authorized disaster assistance for 1990 crop losses only, and made the assistance subject to appropriation. No disaster assistance has been authorized for crop losses for 1991, 1992, or 1993, at least not by any authorizing committees. Rather, we have authorized disaster payments right in appropriations bills. And I am the Senator who has brought those bills through the committee, brought them to the floor, supported them, and moved them in conference along with other Senators. I have chaired the Senate conferees. No disaster assistance has been authorized, may I say again, for crop losses for 1991, 1992, or 1993, at least not by the authorizing committees. It has been done by this committee, the Appropriations Committee.

We have authorized disaster payments right in appropriations bills beginning with Public Law 102-229, which was enacted on December 12, 1991. In that appropriations act, we authorized assistance for 1991 and 1992 crops. And since then we have authorized disaster assistance for 1993 crops again by means of appropriations bills. That is the way we are doing it today.

So, Mr. President, we are being asked to make further authorizing changes now. We are being asked to monkey with a formula, if you will. I recognize the proponents of the amendment are saying we just want full payments for the formerly authorized program, but that program was only for 1990 crop losses. Perhaps the authorizing committee should go back and revisit the formula in light of its being a different year—1993 is not 1990. Perhaps there are good reasons, excellent reasons, compelling reasons to change the formula or to apply the formula in a different manner. But this bill is not the vehicle for addressing those issues.

How much time do I have left?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. BYRD. Mr. President, in my closing 2 minutes let me read again the letter that has been addressed to me, and a similar letter to Senator HATFIELD under today's date.

DEAR MR. CHAIRMAN: It is my understanding that when the Senate returns to H.R. 2667 this morning, the pending business will be an amendment which would eliminate the 50 percent pro rate for agriculture disaster payments. The Administration did not take a position on the amendment as originally offered since it was limited to 1993 crop losses. It is my further understanding that the amendment now has been modified to permit the Secretary of Agriculture to make retroactive payments to farmers who suffered crop losses from 1990-1992 in order to receive payments up to 100 percent of their eligible claims.

The Administration estimates that this amendment, as modified, would increase the cost of the Federal crop disaster assistance program from $1.4 billion to $4.8 billion. While the Administration did not take a position on the underlying amendment to strike the 50 percent pro rate, we must oppose the amendment as modified.

There simply is no basis for using the emergency authority to make retroactive payments for crop losses that occurred as far back as 1990. Were the emergency designation not used, enactment of this amendment would, under the Budget Enforcement Act, necessitate a reduction of FY 1994 discretionary spending of several billion dollars.

Sincerely,

LEON E. PANETTA,
Director.

Mr. President, I close by saying again that I have great compassion for the people who have suffered in the various States that we have been reading about and seeing on our evening news programs. I also have great compassion and understanding for and sympathy for those Senators who are attempting to get the appropriations increased. But I say in closing that I will be the first to stand up and support any additional supplementals that the administration sends up to the Congress to consider. And there will be time for that. And I have no doubt but that the administration will be sending up additional requests.

Mr. President, I raise the point of order under rule XVI that the amendment constitutes legislation on an appropriations bill.

Mr. HARKIN. I will assert the defense of germaneness.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, I move to table the question.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the question of germaneness on the amendment of the Senator from Iowa.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced, yeas 50, nays 50, as follows:

[Rollcall Vote No. 237 Leg.]

YEAS—50

Bingaman	Gregg	Murray
Boren	Hatfield	Nickles
Bradley	Helms	Nunn
Brown	Hollings	Packwood
Bryan	Jeffords	Reid
Byrd	Kennedy	Riegle
Campbell	Kerry	Robb
Chafee	Lautenberg	Roth
Coats	Levin	Sarbanes
Cohen	Lieberman	Simpson
DeConcini	Lugar	Smith
Dodd	Mathews	Specter
Domenici	McCain	Stevens
Feinstein	Metzenbaum	Wallop
Glenn	Mikulski	Warner
Gorton	Mitchell	Wofford
Graham	Moynihan	

NAYS—50

Akaka	Dorgan	Kohl
Baucus	Durenberger	Leahy
Bennett	Exon	Lott
Biden	Faircloth	Mack
Bond	Feingold	McConnell
Boxer	Ford	Moseley-Braun
Breaux	Gramm	Murkowski
Bumpers	Grassley	Pell
Burns	Harkin	Pressler
Cochran	Hatch	Pryor
Conrad	Heflin	Rockefeller
Coverdell	Hutchison	Sasser
Craig	Inouye	Shelby
D'Amato	Johnston	Simon
Danforth	Kassebaum	Thurmond
Daschle	Kempthorne	Wellstone
Dole	Kerrey	

So the motion was rejected.

The PRESIDING OFFICER. Therefore, pursuant to rule XVI, the Chair

submits the question, Is the amendment offered by the Senator from Iowa, Mr. HARKIN, germane to any legislative language already in the House-passed bill? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent that each side have 3 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Who yields time?

Mr. BYRD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Conversations will cease.

The Senator from West Virginia has the floor.

Mr. BYRD. Mr. President, Members of the Senate, I thank all Senators for their patience. This has been a very difficult vote, I know.

Mr. President, I have always supported appropriations for emergencies of this kind. I shall continue to do so.

The bill, as reported by the committee, fully funds the administration's request. The administration is better able to estimate disaster costs and can request further supplementals in September and subsequently.

My Appropriations Committee certainly considers those compassionately and supports those requests, as far as I am concerned.

The amendment, as modified by Mr. HARKIN—let there be no mistake about it now—increases the bill from $4.7 to $8.1 billion. It adds $3.4 billion to the deficit.

We are going to be asked later this week to vote for a reconciliation bill to reduce the deficit. That bill is going to be hard to vote for. Nobody is going to like it. You are not going to be pleased, anybody. But we are going to be asked to vote for that bill to cut the deficit. It will be a hard vote. Right here, today, we are voting to add $3.4 billion to the deficit.

So the gasoline tax that I believe is 4.3 cents on the gallon will just about be wiped out for the first year by this vote today by adding $3.4 billion to the deficit.

It abuses the emergency designation. We went to the summit in 1990 and we came out with a policy that provides for designating certain items as emergencies if joined in by the President and the Congress, and they would consequently then not be charged against the category caps.

This would abuse that designation by going back to 1990, 1991, and 1992 and saying, you folks who had disasters back then, you have gotten past them now, but we are going to designate this as an emergency for you. That is what is going to add to the deficit.

Not only that, but it is going to be a precedent for the future. It will be a precedent for the future. I say that the President and the administration and the authorizing committees of the Congress should decide this matter. Let us not do it on an appropriations bill. Are we saying that a 1990 crop loss is an emergency today, or 3 years later? It constitutes a costly precedent for the future.

Mr. President, I hear this cry: Cut spending, cut spending, cut spending. Now when it comes to one's own State, you want to add spending. Let us add spending at such time as the administration comes before the Congress and says, on the basis of up-to-date, new estimates, we ask for additional money.

The PRESIDING OFFICER. The Chair reminds the Senator that he has spoken for 3 minutes.

Mr. BYRD. I thank the Chair. I thank all Senators. I hope, Mr. President, that on this question, which is a question of germaneness, I hope Senators will vote "no."

Mr. HARKIN. Mr. President, I yield 1 minute to the Senator from Missouri.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Missouri is recognized.

Mr. BOND. Mr. President, this is not a question of whether there are going to be further appropriations. There will have to be further appropriations, because we do not know the full extent of the damage.

The question is whether it is germane to take out of the bill submitted by the administration a provision which changes the underlying authorization. This has language in it saying we are going to cut in half the assistance going to farmers. If there is anything more germane than taking that out, I do not know what it is.

I urge my colleagues to support the position of Senator HARKIN and myself. The chairman has objected to the permission of the Secretary to look back, and the Director of the OMB opposes it. I can assure you that if the OMB opposes providing assistance for 1990, 1991, and 1992, it will not happen.

Mr. GRASSLEY. Mr. President, I rise up in strong support for the Harkin-Bond amendment and am happy to cosponsor. This was debated and agreed to in the 1990 farm bill—and I believe that it is fitting and proper that we move to reverse the inequity of providing only a fraction of the relief that the Congress of the United States approved back in 1990.

The 50.04 percent factor is a bureaucratic quirk which took on a life all its own. Finite amounts of money were thrown after infinite losses—and the magic number 50.04 turned up. Now it seems it is written in stone somewhere that farmers will only get half of what this body had earlier decreed that they should receive. It is high time that this be changed.

As I stated yesterday, of all the Federal disaster assistance programs, from FEMA to SBA to other Federal grants, only agriculture disasters are prorated.

What is particularly galling is that they are pro rated by half; while every other Federal program gets full funding as per legislative fiat, farmers will get only half of what this body had earlier decided what they should get.

Some might argue that equity demands that all disasters be treated the same, that it would be unfair to give farmers in the Midwest a better deal than that given earlier recipients of disaster funds. But parallels to disasters past do not tell the whole story.

While hurricanes may cut a considerable swath through affected States, they do not decimate wholesale sections of these States; they do not cripple the major engine of those States' economies; they do not knock out the livelihood of a vast majority from these States for up to 2 or 3 years.

The rains and floods In the Midwest, on the other hand, have crippled the dominant industry in a nine-State region.

We do not have the tourism of some States, the gambling or high-tech corridors of others. Life, as Iowa and the rest of the Midwest knows it, has stopped completely in some places—maybe for a year for some people, possibly forever for others.

As I stated earlier this summer, I had hoped that we could avoid pitting commodity against commodity, or region against region, as we debate the aid package. Disasters are times when we must come together.

Farming is the bread and butter for the areas hit by rain—and I fear that a region of the country so decimated by rains will take many years to recover.

Parallels are being drawn to the farm credit crisis of the 1980's where, in my view, a whole generation of farmers, were lost. Farmers were just starting to dig out when the droughts hit. Another setback—another layer of farmers just barely hanging on were wiped out.

And now, we are confronted with what is called the greatest natural disaster in the history of this country—and we meet hesitation as scores of farmers, and their families, totter on the brink.

I am pleased to join my friends Senator HARKIN and Senator BOND on this much-needed amendment, and I urge my colleagues to vote with us on this important measure.

Mr. HARKIN. Mr. President, again I want to refer to the letter from Mr. Panetta. I still repeat that I believe it is somewhat disingenuous. The addition of the Cochran amendment only gives the Secretary discretion; it does not mandate that he do anything. So when they say it is going to increase it by $3.4 billion, that is if they went to every single little disaster, no matter where, when, or how it happened, clear back to 1990.

But there may be some farmers who got hit by Hurricane Andrew just 1 year ago who were not assessed as to their damages until maybe this spring and may be in dire straits and may need this disaster assistance. There may be a handful of those in Florida or in Louisiana. These are the ones we want to respond to, but not everybody back to 1990.

To say this is going to add $3.4 billion is disingenuous, not right. Other Senators say, well, the Secretary will not be able to say no. It is my view that this administration is very good at saying no when it comes to spending; they want to cut the deficit. I think that is going to be true in the future also.

There is one last thing that I hope my colleagues will keep in mind: Because of the tremendous losses in the crops this year in the Midwest and in the Southeast because of the drought, we will save the taxpayers up to $2 billion in deficiency payments that the Government will not have to spend out. All we are asking is to let us use some of that money to help pay for these farmers who are in dire straits because of this flooding and because of the drought, so we are not asking for billions of dollars to add to the deficit. We are already saving up to $2 billion. I submit that it is probably even more than $2 billion, because we will not be spending it out in deficiency payments.

Again, all we are seeking to do is to use the authorized level that we put in the 1990 farm bill to give farmers not 100 percent, but only 65 percent of their losses.

The PRESIDING OFFICER. Pursuant to rule XVI, the chair submits the question: Is the amendment offered by the Senator from Iowa [Mr. HARKIN] germane to any legislative language already in the House-passed bill?

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 46, nays 54, as follows:

[Rollcall Vote No. 238 Leg.]

YEAS—46

Akaka	Dole	Kohl
Baucus	Dorgan	Leahy
Bennett	Durenberger	Lott
Biden	Exon	McConnell
Bond	Faircloth	Moseley-Braun
Boxer	Feingold	Pell
Breaux	Ford	Pressler
Bumpers	Gramm	Pryor
Burns	Grassley	Rockefeller
Cochran	Harkin	Sasser
Conrad	Hatch	Shelby
Coverdell	Heflin	Simon
Craig	Hutchison	Thurmond
D'Amato	Inouye	Wellstone
Danforth	Kassebaum	
Daschle	Kempthorne	

NAYS—54

Bingaman	Campbell	Domenici
Boren	Chafee	Feinstein
Bradley	Coats	Glenn
Brown	Cohen	Gorton
Bryan	DeConcini	Graham
Byrd	Dodd	Gregg
Hatfield	Mack	Reid
Helms	Mathews	Riegle
Hollings	McCain	Robb
Jeffords	Metzenbaum	Roth
Johnston	Mikulski	Sarbanes
Kennedy	Mitchell	Simpson
Kerrey	Moynihan	Smith
Kerry	Murkowski	Specter
Lautenberg	Murray	Stevens
Levin	Nickles	Wallop
Lieberman	Nunn	Warner
Lugar	Packwood	Wofford

The PRESIDING OFFICER. On this vote, there are 46 yeas, 54 nays. The amendment is voted nongermane and falls for that reason.

Mr. BYRD. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 758

(Purpose: To provide full payments to producers for crop losses resulting from damaging weather or relation condition in 1993)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself and Mr. BOND, propose an amendment numbered 758.

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

Mr. BYRD. Mr. President, I ask that the amendment be read.

Mr. HARKIN. I withdraw the request.

The PRESIDING OFFICER. The clerk will continue reading the amendment.

The legislative clerk continued reading the amendment, as follows:

On page 2, line 13, at the end of the sentence insert the following: notwithstanding any other provision of this Act, the following shall be the law with respect to the Commodity Credit Corporation:

COMMODITY CREDIT CORPORATION

COMMODITY CREDIT CORPORATION FUND

For an additional amount for the "Commodity Credit Corporation Fund" to cover 1993 crop losses resulting from damaging weather or related floods associated with the conditions as defined in section 2251 of Public Law 101-624, in 1993, $1,050,000,000, and in addition $300,000,000, which shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress, the total to remain available until June 30, 1994: *Provided*, That from funds previously made available Public Law 102-368 by Presidential declaration, $100,000,000 to remain available until June 30, 1994, shall be for 1993 crop losses only: *Provided further*, That if prior to April 1, 1994, the President determines that extraordinary circumstances exist that warrant further assistance, the Secretary of Agriculture shall use such funds of the Commodity Credit Corporation as are necessary to make payments in an amount equal to 100 percent of each eligible claim as determined under title XXII of Public Law 101-624: *Provided further*, That Congress hereby designates the entire amount provided here in as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: *Provided further*, That notwithstanding any provision of Public Law 103-50, funds provided by such Act shall not be expended for 1993 crop losses resulting from 1993 natural disasters, and claims for assistance from funds provided by that by Act producers with 1990, 1991 and 1992 crop losses shall be paid only to the extent such claims are filed by September 17, 1993.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

VIETNAM WOMEN'S MEMORIAL

Mr. WARNER. Mr. President, I ask unanimous consent that I may speak for not to exceed a minute and a half.

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

Mr. WARNER. Mr. President, I rise today to share with my colleagues a truly historical event which took place last week here in the Nation's Capital: the groundbreaking ceremony for the Vietnam Women's Memorial on the grounds of the Vietnam Veterans Memorial.

As Gen. Colin Powell, Chairman of the Joint Chiefs of Staff, pointed out in his heartfelt remarks at that dedication, this memorial has been "9 years in the making, and over 20 years in the needing."

The ceremony was the culmination of over 9 years of dedicated work by Ms. Diane Carlson Evans. Ms. Carlson Evans experienced firsthand the cruelty of war while serving as a nurse in the Vietnam conflict. With her experience came the painful burden of remembering those victims who became the casualties of war, as well as the awareness that she was not alone. So many women served and sacrificed in Vietnam, yet their contributions were overlooked.

As Americans, we have sought to heal the wounds inflicted on those who served in Vietnam, as well as those they loved who suffered here at home. The Vietnam Wall, envisioned by my dear friend Jan Scruggs, and the Vietnam Memorial have taken extraordinary steps toward achieving this difficult but necessary healing. However, our focus has been concentrated on the men who served our country during this tragic time. We have not truly

honored the women who stood by them and cared for them and suffered with them. For these women, there was no glory to be found in warfare. Their role was to bear witness to the brutal testament of war, and reexperience the horrors of battle with each casualty brought back from the front.

Diane Carlson Evans, through the Vietnam Women's Memorial, is reaching out to those who shared her pain; she is also ensuring that we complete the healing process which was begun with the Wall. I witnessed firsthand the incredible power of this memorial, created by an extraordinary sculptress from Santa Fe, NM, Glenna Goodacre. The ceremony was indeed a moving event. Gen. Colin Powell, one of the honored speakers, gave remarks which captured from a wounded soldier's experience the sacrifices made by these extraordinary women. His comments touched the hearts of all present. I would like to have these remarks entered into the RECORD so all my colleagues can gain a true understanding of the contributions made by these women.

I have always maintained that the effectiveness of a memorial lies in its ability to offer solace to each person who visits it, offering comfort to the private, individual grief we each experience. I left that ceremony with a warm and positive feeling that this memorial will have that perhaps mystical ability. I found hope in the reassurance that so many people's lives will be touched, helped, and, hopefully, healed by this monument.

After experiencing the ground breaking ceremony, now, more than ever, I am compelled to encourage my colleagues to participate in honoring those women who served our country in the Vietnam era. Accordingly, I strongly urge all of my colleagues who have not already done so, to show support for these brave women by cosponsoring S. 469, the Vietnam Women's Memorial Coin Act of 1994, which I introduced with my colleague from Maryland, Senator BARBARA MIKULSKI on March 2, 1993. This legislation would authorize the Secretary of the Treasury to mint coins in commemoration of the Vietnam Women's Memorial project. The proceeds from this coin will go toward establishing an endowment which would serve as a permanent source of support for this well-deserved memorial.

The sacrifices made by all women in this painful chapter in our Nation's history must never be forgotten.

I ask unanimous consent that the remarks of Gen. Colin Powell be printed in the RECORD.

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

Thank you very much, Diane, for your kind introduction. Distinguished platform guests, ladies and gentlemen, my fellow veterans.

I am very, very honored and so enormously proud to be here with you this morning to take part in this ceremony. In a few minutes the first few shovels of earth will be turned for a monument that has been nine years in the making and over twenty years in the needing.

I want to thank all of the people who worked so very, very hard to make this day possible: first of course, Diane Carlson Evans, who has given so much of herself to this project for the past decade; of course Doris Lippman, who served in Japan during that conflict treating burn victims and who has been with this project since 1986; Evangaline Jamison, a veteran of World War II, Korea, and Vietnam; Jane Carson, a 27-year veteran of the Army nursing program; Mrs. Shirley Crowe, our distinguished former First Lady of the Armed Forces of the United States and so many, many others who have worked so hard for this day.

In fighting for this day you've all performed a tremendous service, not just for the women who served with you during the Vietnam years, but for all Americans. And I congratulate you for this achievement.

When this monument is finished, it will be for all time a testament to a group of American women who made an extraordinary sacrifice at an extraordinary time in our nation's history: the women who went to war in Vietnam.

Over 265,000 women served in uniform during that time, and this monument of course honors all of them. But it honors most especially the 11,500 who actually served in-country and many of you here today were among that group of 11,500.

You went. You served. You suffered. The names of eight of your sisters are etched on the "Wall" for having made the supreme sacrifice.

And yet your service and your sacrifice have been mostly invisible for all these intervening years.

When you finished what you had to do, you came quietly home. You stepped back into the background from which you had modestly come.

You melted away into a society which, for too long now, has ignored the vital and endless work that falls to women and is not appreciated as it should be.

I knew you there in Vietnam. I knew you as clerks. I knew you as map makers. I knew you as intelligence specialists. I knew you as photographers and air traffic controllers and Red Cross and USO and other kinds of volunteers.

And above all I knew you as nurses when you cared for those who were wounded and when you cared also, as one of them, for me.

And yet now, almost 25 years after my return, I've begun to realize that I didn't really, really know you well enough.

I didn't know what you have been going through all these many years. I didn't know in my heart truly what memories and nightmares you had brought home with you.

Only in the past few days have I come to know and to understand what you have been carrying inside. Only in the past few days have I truly come to understand why this monument is so very important to you and so very important to the nation.

Because, you see, over the weekend as I thought about coming here today, I sat down and began to read a little bit. And on Saturday I picked up a book of poems, poems that you wrote. The book is called "Visions of War, Dreams of Peace," edited by Lynda Van Devanter and Joan Furey.

I started just to skim the book to get a few ideas, but what I found myself doing instead was reading the entire book cover to cover, every poem, in one sitting and some poems I have read over and over the last several days.

I was overcome. I was transported back over 20 years. I was sharing a time with fellow veterans, women veterans, comrades in arms whose experience I had never fully understood before.

Through your poems, finally, I was listening to you.

I realized for the first time that for male soldiers, the war came in intermittent flashes of terror, occasional death, moments of pain; but for the women who were there, for the women who helped before the battle, and for the nurses in particular, the terror, the death, and the pain were unrelenting, a constant terrible weight that had to be stoically carried.

It was a pain that had to be stowed away in a corner of your mind and put in an isolated piece of your heart or you wouldn't be able to continue your work.

The nurses saw the bleakest, most terrifying face of war: the mangled men, the endless sobs of wounded kids . . . not just now and then, but day after day, night after hellish night.

I read other books this weekend. I read interviews you have given. I saw photographs you brought home. To see your strained faces and grim surroundings in 25-year-old snapshots was to marvel again and anew at the strength you displayed.

It's to wonder at the strength you had to press on, the courage you had to fight to save yet another life, the fortitude to risk your feelings and compassion on yet another wounded soul that might spurn you by dying.

It's to feel the invisible wound that you received every time that happened.

How much of your heart did you leave there? How often were you the mother for a kid asking for Mom in the last few seconds of his life? How many 19-year-old sons did you lose?

I didn't realize, although I should have, what a burden you carried. I didn't realize how much your sacrifice equaled and even exceeded that of the men.

I didn't realize how much we owed to you then, and how much we should have thanked you and recognized you and comforted you since then.

And yet I see that yours is not a story only of loss and tragedy. It is, as well, a story of inspiration. It's a story of the triumph of the human spirit.

I look into your eyes today; and I see there old pain, yes, but also great wisdom, tempered courage, deep wells of character.

I find there the ability to clear the highest hurdles that life can put before any human being, the ability to take on the most terrible truths, and to prevail.

No words of mine can match your own words, and so let me borrow from you by reading a poem written by Lynda. It's called "Making Friends."

Twenty years since my life was changed
Twenty years making a friend of death
Knowing it
Respecting it
Wishing for it at times
Fighting with it as friends sometimes do.
But the nightmares of war have faded as I've healed
My dreams are now of peace
Peace of mind
Peace of heart
Hoping for Peace on earth
It's time I made a friend of Life.

My prayer today is that all of you who were forced at such a young age to make a

friend of death have now been able to make a friend of life.

The bronze statue that will stand on this spot this Fall will celebrate the hope and the strength, the tenderness and the power, the kindness and the passion that our Vietnam women brought to the struggle for life.

The statue will show three women and a wounded GI, touching each other, giving strength to one another, struggling with mortality, with human emotions, with the pain and exhaustion of both their lives and their spirits.

As part of this Vietnam "circle of healing" which will now be complete, the statute will for all time witness the truth about what you did.

There are many scarred but living veterans who will never forget you nurses for helping to bring them back from the brink of eternity.

There are many others who are here only in spirit on the sacred Wall who will never forget you, for trying so hard in those last desperate hours.

This monument will ensure that all of America will never forget that all of you were there, that you served, and that even in the depths of horror and cruelty there will always beat the heart of human love . . . and therefore our hope for humanity.

My fellow veterans—you and your sacrifice will never be forgotten. God Bless you all and thank you very much.

The PRESIDING OFFICER. The Senator from Vermont.

FOREIGN OPERATIONS APPROPRIATIONS BILL

Mr. LEAHY. Mr. President, I will be very brief, especially with the distinguished chairman of the Senate Appropriations Committee waiting here. I want to inform my colleagues who have been asking me that I regret it will not be possible to move the fiscal 1994 foreign operations appropriations bill to the Senate floor before the August recess. Despite enormous efforts by all involved, both Senators and administration, it has not been possible to find the money necessary to honor the President's commitment to a special assistance package of $1.8 billion for Russia and the other Republics of the former Soviet Union.

I want to note while the chairman of the Appropriations Committee, the distinguished senior Senator from West Virginia, is here on the floor, that the chairman made a special effort to help us move this bill. He spent a great deal of time last week, in meeting after meeting, to help make it possible and was fully prepared, had we been able to put the funding package together, to provide time for us to go from the subcommittee to the full committee. I want to thank the distinguished chairman for the effort he made. We would not have gotten as far as we did without that effort.

In order to make room for the administration's request for Russia—which was not part of the original budget request, nor was it contemplated in the budget resolution—it is going to be necessary to make extraordinary cuts in other foreign assistance programs. Even then, with massive reductions, we have not been able to come up with the necessary money for Russia. Even with deep cuts we do not have the necessary money.

To give the Members some idea of the size of the cuts I am talking about, I would note that the foreign operations appropriation bill passed by the House is a cut of over $1.4 billion from the President's request, and an absolute cut of $1.1 billion from last year's enacted level.

The bill I expect to report to the Senate in September will contain cuts several hundred million dollars deeper than those of the House. Because of the need to squeeze the special Russia aid package into our funding allocation, virtually every program in the foreign aid budget will be reduced, some very deeply. Programs that I have fought for years to protect will have to be cut. Help for international disaster relief will have to be cut. We will not be able to fund assistance for refugee relief at anything like the real needs. And the list goes on and on.

Work on finding ways to fund the President's Russia aid request will continue over the August break. We must either devise a solution to the shortfall during the recess, or consider reducing the overall assistance program for Russia and the other successor states. I strongly support the President's program for the new Independent States of the former Soviet Union. This is an historic opportunity to help build democracy and free enterprise in our former adversaries. It is a goal worth fighting for, and I will fight hard for it.

But, let me say now that as far as this Senator is concerned, there can be no more cuts in ongoing foreign aid programs to find the shortfall in aid to Russia. Nearly $2 billion in cuts is already creating havoc in our regular foreign aid program. That confronts us all, the administration and supporters of the Russia aid package, with a stark choice: Either, in cooperation with all involved parties, we find other funds to meet the administration's Russia program, or the Russia program will have to be reduced from the President's request.

Mr. President, let me also call attention to one simple fact. There will be no time for further prolonged discussions after the Senate reconvenes on September 7. This bill must be signed into law by September 30, or the portion of the special Russia aid package that is contained in a fiscal 1993 supplemental as title VI of the foreign operations appropriation—$1.6 billion in the House bill—will be null and void.

I make these points, Mr. President, to signal to all parties that the foreign operations bill must begin to move through the markup and floor action process promptly after the Senate reconvenes. In the crowded Senate agenda in the scant 3 weeks between September 7 and September 30, there will be no time for further delay in moving the foreign operations bill through the laborious process of getting it to the President's desk, and signed into law prior to midnight.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, we have just had a series of votes on the question of disaster relief. I just wanted to point out the amendment the Senator from Iowa has now offered is a significant change. There would be no reachback to 1990, 1991, and 1992 under the amendment that is now before the Senate. I think it is very important our colleagues understand what we will be voting on next.

The 1990, 1991, and 1992 reachback is gone. The question that will be before the body when we get back on the amendment that has been offered by the Senator from Iowa is simply a question of whether we will offer the same level of aid to stricken farmers in 1993 that we provided in 1988 and 1989 when we suffered massive drought losses.

I say to colleagues who are perhaps listening in, in 1988 and 1989 we had the 50-year drought. Now we have the 100-year flood. The question before this body will be simply: Do we provide the same level of assistance in 1993 that we provided in 1988 and 1989? Or do we provide one-half as much? That is going to be the question.

I submit to my colleagues that we ought to do what we did in 1988 and 1989. We ought to do what the authorizing committee called for, the formula that was written into the 1990 farm bill. We ought to do what the law provides.

There is in law a specific formula that was developed in the disasters of 1988 and 1989. We ought to follow that formula now. Because if we do not, we will provide one-half of the assistance that we gave in 1988 and 1989.

What is that level of assistance? If we provide half as much, we will reimburse farmers, through the disaster assistance, 20 cents on the dollar of loss. That is the loss compared to what they would reach in income in a normal year. This was not going to be a normal year. This was going to be an extraordinary year. So we are not covering 20 cents on the dollar of the losses that they are experiencing this year. We are replacing less than 20 cents on the dollar if we stay with the formula that is before us now.

If, instead, we provide the level of assistance that we did in 1988 and 1989, that would be 40 cents on the dollar. That is a very long way from making farmers whole, nowhere close to making farmers whole. But at least it would allow many farmers across the heartland of America to survive to fight another day.

I inquire if the Senator from West Virginia seeks recognition. I will be happy to yield the floor—or the Senator from Iowa. I was just taking this time with the understanding there were consultations going on.

Mr. BYRD. I thank the distinguished Senator. I do wish to offer an amendment, which the distinguished Senator from Iowa is in accord with.

Mr. HARKIN. I would be pleased to yield the floor.

Mr. BYRD. I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, yesterday the administration sent a letter to the chairman of the Appropriations Committee and a similar letter to the ranking member in which the administration made additional requests for funds. I shall read the letter into the RECORD. The letter is dated August 3, 1993:

DEAR MR. CHAIRMAN: The Administration commends the Senate Appropriations Committee for acting expeditiously to approve requested legislation that will provide urgently needed assistance to the flood-stricken areas of the Midwest. The Administration is committed to working with the Congress to ensure mutual agreement on funding needs.

The Administration supports passage of H.R. 2667, as reported by the Senate Appropriations Committee. In order to expedite action on the bill, the Administration urges the Senate to keep the bill free of amendments that are not related to providing relief to victims of the flood.

The Administration continues to review the cost estimates for disaster assistance programs. Based on this review, we urge the Senate to approve funding beyond the levels requested and approved by the Committee for the following accounts:

$11.1 million in contingent appropriations for title III of the Job Training Partnership Act, which authorizes assistance to dislocated workers. This additional funding would be available for the Secretary of Labor to finance temporary jobs to repair damage caused by the flooding in the Midwest, clean up affected areas, and provide public safety and health services. This amount is in addition to the $43.5 million already approved by the Committee;

$2 million in contingent appropriations for the Commission on National and Community Service. The Commission helps to finance State-level Youth Corps and Conservation Corps programs to assist in disaster clean-up activities. The $2 million, which is in addition to the $2 million approved by the Committee, would fund the participation of young people in youth corps services over the next year to help with disaster relief services;

$100 million in contingent appropriations for the Department of Commerce, Economic Development Administration. These funds, which are in addition to the $100 million approved by the Committee, would be used to promote the long term recovery efforts in the region affected by the floods; and

$10 million in contingent appropriations for the Small Business Administration Disaster Loan program account. These resources, which are in addition to funds approved by the Committee, would provide additional loan authority of $49 million. Language is requested that would increase from $500,000 to $750,000 the current law limitation on business disaster loans. This increase in the limitation would be available to victims of the flood.

Each of these requests would be available only to the extent that the President subsequently submits an official budget request to the Congress that designates the entire amount of the request as an emergency requirement, pursuant to the Balanced Budget and Emergency Deficit Control Act, as amended.

I understand that an amendment may be offered by Senator Stevens to provide economic assistance related to the destruction of chum salmon in the Arctic-Yukon-Kuskokwim River region. While we are sympathetic to the hardships endured by the residents of this region, we believe their needs can be met with existing resources. We will work with the Bureau of Indian Affairs, the Economic Development Administration, the Department of Housing and Urban Development and USDA to identify steps that can be taken administratively to respond to this problem.

We look forward to working with the House and Senate Appropriations Committees as the bill moves through the Congress.

Sincerely,

LEON E. PANETTA,
Director.

Identical letters have been sent to the Honorable WILLIAM H. NATCHER, the Honorable JOSEPH M. MCDADE, and the Honorable MARK O. HATFIELD.

Mr. President, my distinguished colleague, Mr. HATFIELD, may wish to speak to this amendment. When he completes his statement, I have an amendment which I shall offer on behalf of Mr. HATFIELD, myself, Mr. HARKIN, and any others who wish to join, which will carry out the requests that have been submitted by the administration in the letter which I have just read.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I join the chairman of the committee in offering these amendments on behalf of the administration. I want to make two points about these amendments because, first of all, there is a very strong and, I think, clear signal to our colleagues from the Midwestern States that since the committee acted upon the administration's request of $4.7 billion precisely as they requested it, allocated as they requested, with a few minor modifications that we made that were not significant, I want the Senate to understand that now the administration, since that action of the full committee, has said,

"As we continue to evaluate the needs wrought upon these people in the Midwest by these floods, we want to ask the committee to amend the committee's original bill, as reported, to include another $123 million allocated by accounts."

The symbol and the signal is that we, as the committee chairman and ranking member, are most anxious to meet, as the administration has evaluated those needs, any additional money.

The second point I will make is that this is going to be the pattern, I am persuaded, that is going to face us when we come back from the recess, that we are going to have additional requests, we are going to have additional evaluations by the administration and the various agencies, and that we, therefore, are not closing the issue with this one particular supplemental.

One may argue or discuss, as it has happened already, allocations within the package or the failure of certain legislative rules and regulations to meet those needs as perceived, and perhaps I would venture that none of us would disagree on that matter of need in these farmers' situations. But I still feel, as the chairman has indicated, that the executive branch of Government, with all of its multiple agencies and expertise, ought to be effective not only in evaluating the need but in administering those moneys, reaching the people targeted with those evaluations. It has to be an Executive Office function. As a multimember body of the Senate or the House, we are not staffed, we are not constituted to do that type of evaluation, assessment, information gathering necessary to say these are the dollars that we can appropriately, efficiently spend.

So to me, again, these amendments represent the attitude of the administration, the attitude of the leadership of our committee, and the willingness to work together to meet the needs of the people.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I will just take a minute and then I will yield the floor.

AMENDMENT NO. 759

(Purpose: To provide additional disaster assistance requested by the administration)

Mr. BYRD. Mr. President, I ask unanimous consent that I may temporarily set the pending amendment aside and send to the desk, on behalf of myself, Mr. HATFIELD, Mr. HARKIN, and Mr. WELLSTONE, an amendment which complies with the request contained in the letter which I just read into the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for himself, Mr. HATFIELD, Mr. HARKIN, and Mr. WELLSTONE, proposes an amendment numbered 759.

Mr. BYRD. 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:

Before the period at the end of the first excepted Committee amendment, insert the following: ": *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for Economic Development Assistance programs under the heading "Economic Development Administration" shall be $200,000,000 of which $100,000,000 shall only be available to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for the Disaster Loan Program account under the heading "Small Business Administration" shall be $70,000,000, of which $10,000,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of law, the $500,000 limitation on the amounts outstanding and committed to a borrower provided in paragraph 7(c)(6) of the Small Business Act shall be increased to $750,000 for Presidentially-declared major disasters for recent Midwest flooding: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein under the heading "Employment and Training Administration" for part B of title III of the Job Training Partnership Act shall be $54,600,000, of which $11,100,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for programs and activities of the Commission on National and Community Service shall be $4,000,000, of which $2,000,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That all of the above amounts are designated by Congress as emergency requirements pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended"

Mr. BYRD. Mr. President, this amendment incorporates four supplemental revisions received on yesterday, August 3, from the Director of the Office of Management and Budget.

First, the amendment provides an additional $11.1 million as a contingent appropriation for title III of the Job Training Partnership Act.

Second, the amendment provides an additional $2 million as a contingent appropriation for the Commission on National Community Service.

Third, the amendment provides an additional $100 million for the contingent appropriation for Economic Development Administration programs.

Finally, the amendment provides an additional $10 million for the Small Business Administration disaster program as a contingent subsidy appropriation and provides an increase of $250,000 in the current law limitation on business disaster loans. The increase in the limitation will be available to victims of the flood.

Mr. President, I ask that action on the amendment be momentarily delayed. I yield the floor in the meantime.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I came in when I heard about these amendments. I wanted to take a look at them. We have not seen the justification for them. But as one who has had to deal with disasters, I can certainly appreciate the position that the chairman and the ranking member of the Appropriations Committee have taken; that where there is a natural disaster, particularly one of the magnitude which confronts us in the Midwest, we do need to give discretion and we need to give resources to the administration.

Were it my call, I would, obviously, have some different ideas, and I am currently working with the administration to try to obtain some additional resources in areas which we perceive have very great needs, things that have either developed since the initial legislation was set up or in some cases I believe represent oversights in the budget that they presented.

This is not a time, as I said in my arguments on previous administrations, to be nickeling and diming the administration where they perceive there is a real emergency. I would only ask that my colleagues view with an open mind additional disaster assistance that we will be seeking, and we hope we will get the concurrence of the administration. When we have a disaster of this magnitude, there are tremendous resources that will be needed. They will in most instances not fully compensate or repair the damage or even come close to it, but I think it is vitally important that we move forward.

Some of my colleagues said we ought to be paying for these things. I say that when you have a disaster, it is the highest priority for domestic spending. I will work with my colleagues to cut spending elsewhere with lower priorities.

I will also urge that this body in the future appropriate a disaster contingency fund of sufficient magnitude to meet the disaster needs which we cannot specify in advance. Nobody knew that an earthquake was going to hit San Francisco, or Hurricane Andrew, or the floods of 1993, but we do know that almost every year a disaster occurs. We ought to set aside money in the budget for it.

While I may not agree with the particular priorities in the additional requests submitted, I will not object to them because I assume there are needs which may not be evident in my State that may be evident in other States. I do seek to work with the administration and with the chairman and the ranking member of our Appropriations Committee as we seek to provide needed resources to deal with the devastation visited upon our States.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I ask unanimous consent to speak for 10 minutes as if in morning business so as not to interrupt the flow of the debate in the RECORD.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

BUDGET RECONCILIATION

Mr. DODD. Mr. President, I rise this afternoon to address the issue of the budget reconciliation package which we will face a decision on in the next several days, and to express my views on that package.

Mr. President, the current debate on the budget reconciliation package reminds me of Winston Churchill's famous statement before Parliament in 1947. As my colleagues will remember, he said then that "Democracy is the worst form of Government except for all those other forms that have been tried from time to time."

I presume most of my colleagues are familiar with that quotation. I would argue, Mr. President, the same may be said of the deficit reduction package that we will be considering later this week. It may seem like the worst form of deficit reduction, except for every other proposal that has been put on the table during the past number of months. Unfortunately, the point of Winston Churchill's statement is lost, in my opinion, on many critics of the current plan: If we measure our efforts against the yardstick of perfection, nothing will measure up and we will get nothing.

Legislating in real life is not about creating political ideals. It is about choosing the best alternatives—in this case, in the context of our political process—from among many options, none of which are perfect.

This is not unlike the decisions families make every day. All of us would like to have ideal situations with every available resource to us so we would not have to be confounded by difficult

choices. But we all know that option does not exist; that each and every day all of us are asked to make decisions and choices dealing with the realities that are before us.

This budget reconciliation package that we in this body will have to grapple with is just like that. It is not perfect. It has its warts. It has its bruises. It has its imperfections. But I have to say for my part, Mr. President, having looked around, it is the best alternative I have seen so far.

I do not like it, frankly. I do not like standing here and talking about raising taxes for my constituents in Connecticut. They have been hard pressed in the last several years. We have watched a new income tax go into effect in my State. We have witnessed the highest State unemployment rates in memory. You have to go back to the economic depression to talk about the economic hardship which parallels that in the State of Connecticut over the last number of years.

So even a 4.3 cent gasoline tax is not something I take any joy in supporting. Nor is talking about major cuts in Medicare, with my elderly and seniors who are out there hurting and suffering. I do not like that one bit. So there is no joy whatsoever in this particular effort.

But I also went through an election last year, and day after day, week after week, month after month, my constituency said, I wish you guys in Washington could get out of each other's way and think about the country for once; I wish you would start doing what has to be done to get the Nation's economy moving so that we would have a chance in the future, with decent job opportunities and the like.

Everyone believes that is not going to happen unless there is deficit reduction. We will never have long-term economic growth unless there is a serious effort in this regard.

We just went through a debate on a matter not unrelated to the particular problem of deficit reduction. We all want to help in certain areas, but there are limitations to our resources.

So, Mr. President, I stand here this afternoon with the full knowledge and awareness that this is not a perfect plan. I do not take any joy or pleasure in talking about raising taxes and imposing additional burdens on the constituents of my State or other States in this country. But I also know just as assuredly that the people of my State and the people of this country want this Nation to be strong. They want our economy to be vital. And they want a better future for their children and their grandchildren.

This effort, this measure which will be laid before us, I think help us get there—again, not perfectly, but helps move that process along.

So I believe this is a test we have to use this week if we truly want to make progress on this deficit. There is no future in waiting for the perfect deficit reduction package to mysteriously appear before us. That is not going to happen. Perfect packages in the form of painless solutions do not exist. If they did, Mr. President, this issue would have been solved light years ago. But they do not exist. There is no easy solution to this problem. And the sooner we come to the realization of that as mature adults in the Congress, the better off this institution and our country will be.

Our job is to select the best alternative from among several flawed proposals.

Now, what is really in this plan? What is included in it? Again, there has been much reporting of information about it. I do not want to take a lot of time on this. But let me just point out briefly that the package includes $496 billion in deficit reduction over the next 5 years. The President said several months ago he wanted $500 billion. There were many here who said if he had less than $500 billion, they would never vote for a package. So it has to be meaningful.

We think we have done that with $496 billion over the next 5 years. That is not going to solve the deficit problem. But it does make the problem a bit more manageable than it would be without this bill.

Mr. President, the bill contains more in spending cuts than revenue increases—$255 billion in spending cuts versus some $241 billion in tax increases. That is a major issue for many people: Are there more spending cuts here than tax increases? And I am satisfied, having listened to the chairman of the Finance Committee and others, that in fact there are.

On tax increases, the lion's share falls on those who can afford to shoulder more of the burden. Fully 75 percent of all new taxes fall on those making more than $200,000 per year.

Let me put it more categorically. If you and your family are making less than $180,000—I do not know how many out there are, but if you are, then the only tax that you probably have to worry about in this package is the gasoline tax.

So if you are a family making in excess of $180,000, yes, this is a tax increase. But make less than that, and you and your family do not fall into that situation at all. I think we have to drive that point home.

So while the gasoline tax bothers people, you ought to know that if you are in that upper income category, the top 1.2 percent of income earners, this bill really does not affect you significantly unless you have a mother or a father on Medicare—the other programs. You may get affected by the spending cuts and fall into that category but on taxes you are not affected. That point has not been made as clearly as it should in my view.

Let us also consider what is not in the package, contrary to some of the claims of the critics. The package does not sock it to the middle class at all. The President in his February State of the Union Address estimated his plan's impact on the middle class would be about $17 a person per month. That is what he said in January. But, Mr. President, we have improved on the initial design. For most middle-class Americans, the only new taxes to be paid under this week's package will, as I said a moment ago, be the 4.3-cent gasoline tax increase. That works out, if you want to know how it effects you in direct dollars and cents, to an average of less than $3 a month for most Americans. That is about $36 a year. I do not like it. I wish we did not have to do it. But the fact of the matter is that is the impact. That is the reality.

I will get to some more points here.

How does the package affect small business? Mr. President, according to the claims and the critics, the package sticks it to small business. But consider the reality of this package. It increases annual equipment expensing for small business from the current $10,000 to $17,500. That is not sticking it to small business. That is a real help. My small businesses in Connecticut said that is something we can really use. And this package provides that additional help to smaller businesses by almost doubling the annual equipment expense for small business.

With regard to small business, the package would establish a targeted capital gains cut for long-term investments in small business. The senior Senator from Arkansas, DALE BUMPERS, has fought for years on this issue—Members of the House have as well. My colleague, Senator LIEBERMAN, has as well, and I am a cosponsor of the legislation. This is a real help to small business. It not only does not stick it to small businesses, it recognizes the importance of getting capital in the hands of small business.

With regard to small business, only partnerships, proprietorships, and subchapter S corporations that are going to pay more taxes are those with incomes of more than $180,000 for married couples, and $140,000 for individuals. If you are a small business out there, taxed at the personal rate, and you make more than those levels, yes, you could pay some more. But only 4 percent of small businesses fall into those categories. Most small businesses, the overwhelming majority, actually fall short of those kinds of numbers.

So, again, people screaming about what happens to small business in this package should consider the expensing provisions, and the targeted capital gains provisions.

Mr. President, as I noted before, this is not to say the President's plan is perfect. I strongly dislike the retroactive application of increased income

tax rates, for example. I am not a member of the Finance Committee. I can only tell you what I heard happened there. Others around the committee maybe can speak categorically and specifically as to what happened.

But what I gathered happened was this: If you want to reach deficit reduction of around $500 billion, then you have to have a gasoline tax or a Btu tax. No one wanted a Btu tax apparently. So we got rid of that, and put in place the gasoline tax. If the gas tax had gone to 7 cents a gallon, we could have made the changes in rates effective at the time of passage or on the date of enactment. But if you wanted to keep the gas tax at 4.3 cents per gallon, and still reduce the deficit by $500 billion, you had to make the changes take effect retroactively.

I would have argued for a few more cents per gallon in gasoline taxes, in order to eliminate the retroactivity, but I think I would be in the minority on that point of view. It is one of these situations in which there are no easy solutions. If it were easy, we would not be sitting here debating it and spending as much time as we have on it. So I do not like that.

I also do not like the idea that we are not providing more empowerment zone components here. These are smaller cities that could use the help; there is not enough in this legislation in this regard.

But, Mr. President, if I sat here and said, "Because you did not do more in the empowerment zones and because this is a retroactive application, that's it, I am taking a walk, I am against it," if every Senator did it, we would never get anything done around here. Being involved in the process and being concerned about a major implication is fine. But to tear it apart because it does not satisfy every Senator on every point and every section, that is the height of irresponsibility in my view. It is the height of irresponsibility at a time when the American public is asking us to do better. We will have a chance in the next couple of days to do better without ripping this program apart point by point, detail by detail.

Listen to the plans of the critics. You would think the President's plan suffers in comparison to the alternatives. Let me tell you about the alternatives. People ought to be aware of what the alternatives were that were proposed to us.

In the Senate, the so-called Republican alternative would have reduced the deficit over 5 years by $359 billion—$359 billion. That is substantially less than what we are asking, $137 billion less—big deficit reduction. Despite their best desire to cut spending first, that same Republican alternative did not contain one single specific spending cut beyond those included in the plan that we will vote on in the next 2 days. The alternative proffered a series of numerical targets of future cuts but declined to make the tougher choices that must be made now.

Mr. President, and despite their professed concern over the middle class, the Republican alternative would have slashed $90 billion more in Medicaid and Medicare cuts beyond the $60 billion already in the President's plan. Those cuts could easily have translated into increased out-of-pocket expenses for Medicare beneficiaries of $350 in 1994, and $850 a person in 1998.

So, consider the alternative—far less deficit reduction, no different spending cuts at all, except that they would have done more in Medicare. We already did a lot with Medicare, about $60 billion, but we do not affect the beneficiaries—we go after the providers. Under the alternative, if you are a middle-income person that needs Medicare, then you would have paid an awful price. That is a major difference, and still falls short of major deficit reduction.

Then consider the fellow from Texas, Ross Perot. Here is a guy who shows up on national television last Sunday, who says the whole message is "I have a better plan out there." He was asked what his plan was, and he says "I forgot my charts." If Ross Perot said that to a chief executive officer in a business, he would have lost his job, would have been fired. What does he think he was invited on the show for—to talk about his microchip business? He was asked on the show because he says he has an alternative plan. Then he gives the anemic, pathetic excuse that he forgot to bring his charts.

You know, I feel for the people who supported him because their frustrations are real. Their anger is real. They are worried about their country, about their kids. They are worried about the future. They deserve better. If you are going to be a leader of people like that, then you ought to have a better performance when you show up on a national show on an issue like this, and not say to the reporters, "I did not bring my charts. I did not bring my statistics with me." That is a pathetic performance, in my view, when the country is demanding some real answers. And if you have a better idea, then let us hear it. He did not do it.

In fact, when Clinton presented his original deficit plan, he said I ask two things of those of you who may be opponents out there—two things: to achieve the same net deficit reduction, roughly $500 billion, and be specific about your cuts. That was not a lot to ask. That is, in effect, what was being asked of the opposition—be specific. And the answer "I did not bring my charts" or "our cuts are no different than yours," and "we do not come anywhere close to deficit reduction" are the alternatives we are being asked to accept.

So I could vote "no," I guess, like anybody else in the next couple of days. But if I were a constituent of mine, I would say: What are you for, Senator? You tell me you are not for this package. Did you not bring your charts, your statistics? Why do you not stand up and be for something, be for something, for God's sake, instead of lining up with the naysayers and tearing everything apart. Any jackass could kick down a barn door. It takes an architect to build one. This place is in desperate need of architects, because God knows we have enough jackasses in terms of what needs to be done.

When I hear people going on shows with empty rhetoric, tearing things apart and not offering alternatives, you get what you see. You can run, but you cannot hide on these issues. Who can blame the American people for being concerned and frustrated? The time for naysaying, in my view, is over. Gridlock is in the past and should have been long ago.

In fact, interestingly, we are proving that it can become a thing of the past. The national service legislation—which passed 58–41—was a bipartisan effort. So were direct student loans. I worked directly on both of these bills. We would not have gotten them done without good bipartisan support; without people like Senator KASSEBAUM and Senator JEFFORDS and Senator DURENBERGER, and others. Family and medical leave will go into effect tomorrow, and it never would have become the law of the land without the support of Senator DAN COATS of Indiana and Senator KIT BOND of Missouri. I can get out a list of where we have worked together for the betterment of our own country.

Unfortunately, this issue seems to defy our ability to do so in the sense of having the opposition come forward and offer to be a part of a constructive solution. So it can work, and we can be effective. I regret, however, that we are not doing it on the single most important issue: The overall economic needs and the future of our country.

So, Mr. President, this is an opportunity, and there will be a lot of talk in the next several days about it. When you hear the talk and speeches, ask yourself these simple questions of those who would tear this apart: Are their criticisms bigger than the overall goal to be achieved here? Second, are they being specific about an alternative that can help us get on track? As viewers across the country watch the debate, that is a simple test to apply to those who stand up and oppose this effort. My hope is that there will be enough Members here to support this package.

I will end, Mr. President, where I began. I do not like the package. There are parts of it I think are pretty good, such as the earned income tax credit. I also mentioned the small business pieces. But, overall, this is deficit reduction, and this is raising taxes and

cutting spending. It would be a lot more fun to stand here and talk about cutting everybody's taxes and spending more money. You can make yourself a real hero in any community in America that way. You can say: Folks, I have cut your taxes, and I have raised the spending.

Frankly, those days are over. Now we are faced with the choice of how do you try to reduce the deficit intelligently, and in real terms. If there were a perfect or an easy package, we would have adopted it long ago, Mr. President.

I think every person in this country knows there are no easy solutions, and there are no perfect solutions. We have come up with the best that we can put together here. We think it is a good alternative, a good package that does what it says it will do. There are real numbers, real deficit reduction that I hope will make a difference. I do not think it is going to solve every economic problem for our future, but it puts us on the right track, a glidepath of deficit reduction that future Congresses should be challenged to try to meet.

If we do that, I think, quite frankly, that this Congress will go down in history as a good Congress. In fact, we will be able to borrow some additional lines from Winston Churchill and say, "This could become one of our finest hours."

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. BOND. Mr. President, I would like to describe an amendment which is not ready yet, but which is in the process of being cleared.

Last night when we first began discussion of this emergency disaster relief bill, I showed a picture of the devastation that has been caused on one of our short-line railways in the center of Missouri. This was a railroad bed which, as I said, I walked along about 6 days before. This rail line has been knocked out.

The devastation along that railway, the Gateway & Western, has been significant. You get an idea about the losses that have occurred on this short-line railway when you look at the bridge which connects to that rail bed. This bridge, obviously, has been totally wiped out and destroyed by the floodwaters on the Missouri. A little further down, the railway looks like this, where, once again, flood waters have undercut the approach to the railway bridge and have caused very significant damage.

When the Appropriations Committee reported out the disaster assistance legislation, it provided some $16 million for assistance for flood relief through the Local Rail Freight Assistance Program. The LRFA was created to preserve rail service to small towns and communities by providing financial assistance needed to rehabilitate lines that otherwise might be abandoned.

I can certainly tell you that this short-line railway provides a vital link through the center of Missouri. It is vitally important not only for agriculture, but for significant other commerce that travels on its rails. At the time I walked across this now destroyed railway bridge, this was the only remaining open link between St. Louis and Kansas City. All of the major railways serving our State, running east and west between St. Louis and Kansas City, were routing their trains over this bridge. This was the only link remaining in commerce.

Well, the Local Rail Freight Assistance Act, as the authorization is provided in this bill, is for railways with up to 5 million gross tons of commerce each year. The Gateway & Western is slightly over that.

Therefore, I will shortly be offering an amendment, along with my colleague, Senator SIMON of Illinois, which will enable the Secretary of Transportation to provide assistance in circumstances such as this, and what I understand is an equally important short-haul railway in the State of Iowa.

The estimates right now are that the damage to Missouri's railroad is over $17 million already. At least $8.5 million of that has affected the Gateway & Western which, as I have indicated earlier, is a regional railroad with 300 miles of track, running trains from Kansas City, MO, and Roodhouse, IL.

Clearly, the $8 million is beyond the financial capability of this railroad. If it does not receive assistance under the Local Rail Freight Assistance Act in this appropriations bill, there will not be the money to rebuild this bridge and to restore the levees that are a vital link in commerce in our State.

This railroad has been devastated. Since it is a small railroad, it does not have the resources that the larger railways have in our State.

I will urge my colleagues to support the amendment. When the amendment has been drafted and when we have had an opportunity to ascertain on both sides of the aisle that there is approval and clearance for it, I will be offering that amendment.

I take this opportunity to explain the amendment while there seems to be a lull in the proceedings, because there are very, very many important matters to deal with on this disaster relief measure, and I wanted to give my colleagues who may still be watching an opportunity to learn the importance of this measure.

Mr. President, the amendment has not yet been cleared, so I am not offering it at this time, but I appreciate the Chair giving me the opportunity to address my concerns and to inform my colleagues of the important needs in this area.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BYRD. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The question is on the amendment numbered 759, offered by the Senator from West Virginia.

Mr. BYRD. I thank the Chair.

Mr. President, this amendment adds $123 million to the bill. But it constitutes the request of the administration, which, as I said before, indicates that the administration is very sensitive to the needs of the distressed areas and is making new assessments from time to time and is so informing the Congress.

Senator HATFIELD and I are supportive of this amendment, as we have been supportive of the requests today, heretofore on this bill, and heretofore on other bills of a similar nature, whether under a Republican administration or a Democratic administration. We have supported measures, worked them through our Appropriations Committee, managed them on the floor. Never have we sought, to my recollection, to cut one dollar from an administration's request for a matter of this nature.

So, we are joining in this amendment to comply with the request of the administration. And again for the record, it would add $11.1 million in contingent appropriations for title III of the Job Training Partnership Act, which authorizes assistance to dislocated workers; it would add $2 million in contingent appropriations for the Commission on National and Community Service; it would add $100 million in contingent appropriations for the Department of Commerce, Economic Development Administration; and it would add $10 million in contingent appropriations for the Small Business Administration Disaster Loan Program account.

And it also stresses that in accordance with the request by the administration, each of these requests that I have enumerated,

* * * would be available only to the extent that the President subsequently submits an official budget request to the Congress that designates the entire amount of the request as an emergency requirement, pursuant to the Balanced Budget and Emergency Deficit Control Act, as amended.

Mr. President, I do not know what better evidence one could submit that is clearly indicative of the administration's support for whatever is needed in dealing with the disaster. I do not know of anything more clear than the joining of Mr. HATFIELD and myself in the offering of this amendment to indicate our desire to be helpful, to be prompt in helping people of the stricken States.

The Senator from Oregon and I have a responsibility. We have a responsibility to try to get this legislation passed in the Senate, take it to the conference, if there is a conference, and do everything we can to expedite final action on this bill.

It is my hope that if we can keep this bill clear of amendments, the House—I say it is my hope that the House will accept the bill as enacted by the Senate without a conference, thus sending the bill to the President for his signature. That is the way to do business. That is the way to save time. That is the way to get assistance to the people in the stricken areas as quickly as possible and clear the way for the Senate to act on other important matters which have to be acted upon before the Senate goes out for the recess.

Why do we take the time to add amendments to this bill, which put it in danger of a conference and at some point, possibly subjecting it to other votes in the House? If in the course of events this legislation winds up in the House with other votes being taken on it, it is entirely possible under the House rules for the House to add its own amendments to the bill. If the House Members see the Senate playing a game of adding amendments that Senators want to offer over and above the expressed needs by the administration, the House may get into that game also.

So, as the chairman of the committee, I want to do my duty. I intend to do my duty. It is my duty to try to get this bill through and ready to send to the President for his signature—quickly.

What could give the people in the stricken areas greater hope and greater confidence in their elected representatives than that we act quickly? The best way to expedite this whole matter is to leave this bill clean now.

The amendment Senator HATFIELD and I have pending is an amendment requested by the administration. I would have every reason to believe that if that amendment is agreed to the House will accept it because it is an amendment that is based on the best estimates of the administration which is in the best position to assess what the needs are. To me that is the way to proceed, and to assure the quickest action on this bill.

Does my friend from Oregon agree with me in what I said?

Mr. HATFIELD. Mr. President, I wholeheartedly subscribe to the analysis made by the chairman of the Appropriations Committee. That is what I oftentimes fear, that we are not looking far enough ahead to what is yet to be accomplished through the processes of the legislative branch of Government in order to make these resources incorporated in this supplemental appropriations bill available to be transmitted to meet the needs of those people out there in the Midwest.

This is a major step in that process, but one yet to be fulfilled.

If the chairman would indulge me for just another minute or two. Even if this current amendment the chairman and I are cosponsoring is disposed of, the amendment offered at the request of the administration, and the Harkin amendment is disposed of, I pointed out before but I do not think we are really that much aware as a body that on the Calendar of Business, page 2, we have yet listed, if they are all brought up and all debated and discussed—we have listed 40 additional amendments to be disposed of on this bill before this bill could even go to a conference.

Let me direct the chairman's view here to a rather simple sounding amendment of Senator DANFORTH, the Senator from Missouri, relative to flood prevention in St. Genevieve, MO.

That is a very interesting one because I would imagine there would be 100 votes in the Senate for it under these circumstances. On the other hand, it could be very controversial, for it does as I understand lift the local funding formula requirement for the repair of those facilities under the direction of the Corps of Engineers.

As the chairman knows, there is a local cost-sharing formula that is in law. And there will be an attempt to lift it because this is the only historic designation of a French settlement in the State of Missouri. I think all of us are very concerned about that. And it happens to have a very low income. Those people do not have the resources to come up with the cost-sharing part of it.

Yet, when you begin to deal with the fundamental formula set in law, that is going to elicit a lot of discussion, not only on this floor but I am sure as between the House and the Senate. I have served on that Subcommittee on Energy and Water, of the chairman's Appropriations Committee, and we have hardly a year that goes by that there is not some local community that has some very legitimate reason to ask for an exemption from that cost-sharing formula.

I use that just as one example.

Mr. BYRD. If the Senator will allow me, I have some in West Virginia right now that have written to me—the correspondence is in my office—wanting that requirement lifted.

Mr. HATFIELD. Yes. I would say I have one that has been verbally presented to me on the basis that the commitment made for the local cost sharing was at a $3 million estimated cost and that the corps now has escalated that to $10 million. These small port districts along the Columbia River do not have the capacity to triple their local cost sharing and are asking some kind of relief. I am sure there are others as well.

I also direct the chairman's attention to one from the Senator from Pennsylvania [Mr. SPECTER], "Relative to Sense of Senate on Bosnia."

Need I say, for the purpose of history, I have been here long enough—not as long as the chairman—to know we have expended literally days on the sense-of-the-Senate resolution which in some ways has no power of law, has no implementation, has no further action except to express an opinion at one particular moment in history of the U.S. Senate on a particular issue.

I am not saying they are irrelevant, but that sense-of-the-Senate resolution does not carry with it other than just a statement, an expression of opinion.

Knowing the complexity of Bosnia, knowing the emotions that run high on Bosnia and the potential of Bosnia exploding into a worldwide problem, as it already is moving that way, we could spend hours on our views as to whether we should bomb targets around Sarajevo or whether we should participate in United Nations expanded peacekeeping activities and all sorts of things.

Here we are 10 minutes of 2 on Wednesday, August 4. As the chairman has indicated, we have a long way to go on this bill in order to make it a reality and present it to the President for his signature.

I just mention those two items to support the chairman's thesis and his urging that we move on with it, get it accomplished and hopefully without conference with the House, for if we carry things like this to the House, the chairman has indicated it could be very, very difficult.

I would go so far—and I accept the fact we are in speculation because nothing is determined yet—but I could see the possibility of a stalemate in that conference lasting beyond Friday. We know that when that happens and everybody else has gone home, it does not make much difference whether the committee is sitting there trying to resolve this bill or not. It cannot be acted upon unless the Senate is in session and the House is in session.

Mr. BYRD. Yes; I agree with my friend. Relative to the sense-of-the-Senate amendment on Bosnia—the Senator has mentioned that one—I think it would be probably a good idea to debate that subject matter because much is being said in various quarters about taking some action vis-a-vis Bosnia: bombing or whatever. It seems to me that is a matter that should be thoroughly debated in the Senate.

Before we go too far under the aegis of the United Nations and commit ourselves to too much, it seems to me we ought to have some debate on that subject. But this is not the place or the time. The appropriations bill is not the appropriate place for debate on Bosnia. Not at all.

May I add to what the distinguished Senator has said relative to the number of amendments? We have been almost 4 hours now on this amendment, as modified, and now on the amendment which is no longer modified by the amendment proposed by the distinguished Senator from Mississippi [Mr. COCHRAN]. The majority leader has indicated that we ought to finish action on this bill before we go home, before the close of business today. He has good reasons for making that statement and for taking that position. He has other legislation that the Senate needs to act upon, one way or the other, before the Senate goes out for a recess.

So it seems to me that we ought not spend more time on this subject matter. The distinguished Senator from Iowa [Mr. HARKIN] is to be lauded for his dedication, for his efforts. He had this amendment when he came before the Appropriations Committee, and he did not offer it before the Appropriations Committee because the distinguished Senator from Oregon and I urged members not to call up controversial amendments before that committee when those amendments were going to have to be debated on the floor anyhow.

So he very kindly, and with his characteristic consideration of the chairman and the ranking member's wishes, did not call up the amendment. We spent now almost 4 hours today on that amendment and the amendment, as modified, earlier.

If the Senate adopts that amendment, how are we going to be able to withstand the pressure to add other amendments? If we are going to open it up with a billion dollar addition—and that is what it would be—if the amendment by Mr. HARKIN is adopted adding $1 billion, how can we explain our opposition to amendments that are waiting in the wings to add less money? "Well, you have already accepted, the Senate has already adopted an amendment adding a billion dollars." They would then say, "Why not my amendment? My little 'ole amendment only adds $100 million or $50 million, or whatever, can't you take that amendment?"

So it puts us in a difficult position if we start——

Mr. HATFIELD. Will the Senator yield on that point?

Mr. BYRD. Yes.

Mr. HATFIELD. To illustrate the validity of the Senator's position on this, let me just refer to another pending amendment, if it is offered. And it says, for the Senator from the State of Washington [Mrs. MURRAY] relative to federally impacted Northwest forests. I would say that coming from that part of the world that we in this basic committee amendment are making some declarations of emergency. The President will exercise his role in that emergency declaration for some accounts and some of these dollars. This could well be an amendment asking the Congress to declare an emergency for those thousands of working families that have been excluded from their jobs and their jobs wiped out or in the process.

I might say that one of the fastest growing parts of our homeless population today are families with children. And that we are not only talking about the numbers of jobs that are being removed or exterminated, we are talking about potential candidates for the streets—mothers and fathers and children.

We have people displaced from their homes in the Midwest because of floods, and it is a terrible disaster. Is it less a disaster to the individual, to the individual family that may be excluded from his or her home for economic and other such forces, other than flood forces? To those individuals, that is a disaster and to most of us looking at their plight, we would agree it is a disaster. We need a formula for the declaration of emergency. I do not know what the wording of the amendment of the Senator from Washington is to address this problem in the Northwest, but I know a case can be made for the need of people.

So, the Senator is quite right that we are opening this to a whole series of additions. And every addition we make to this is not a question of dollar addition, it is a question of whether the House will accept the Senate bill and reduce the timeframe normally that a conference would require and put us beyond the date of finalizing this bill before the recess.

I do not think either the chairman or I are intending to use scare tactics or any other thing but talk in very strong facts of reality as to the process of moving an appropriations bill to the President's desk for final signature. I just keep raising this point. We are at the risk level of losing any bill, having no bill before the recess and saying, "Well, we will have to do it when we come back after Labor Day." I do not think that risk factor is being helpful, or if that risk factor is taken as a gamble and lost, I do not think that is helpful to the people out there waiting for the emergency support that the administration is ready, willing, able to provide with our action on this bill.

Mr. BYRD. Mr. President, I thank my friend and colleague and agree with him completely.

The question on this amendment by Mr. HARKIN is the same question that the Senate made a decision on earlier. It is not in the same amount.

But if the amendment by Mr. HARKIN would be agreed to, it would add $1 billion to the bill and add $1 billion to the deficit.

Now, I am as compassionate as I think anyone can be with respect to those who are suffering from this act of God and as willing to add to the deficit as is anyone else at such time as the administration has taken the occasion to reassess it, with its myriad agencies—FEMA, HUD, Corps of Engineers, et cetera.

That is the time to discuss adding moneys for this purpose. As a Senator, I do not have at my fingertips the agencies which are at the disposal of the President. I cannot, with the snap of my fingers, ask this agency or that agency to do this and so and do it right away, and then put all these things together and make a request to the Congress that is based on substantial assessments.

When the administration is able to do that—and I am sure this is not going to be enough money, the money that we are voting on in this bill today. Anyone who has been living over the past few weeks knows that to be the case. There will be additional requests. When those requests come before my committee, they will be acted upon just as judiciously and compassionately, and with as much sympathy as I can possibly show.

I urge my colleagues not to support an amendment now that will add $1 billion to this bill. It just opens up the way for additional amendments. I assure the distinguished Senator from Iowa that I will be the first to line up in support of the requests of the administration for additional moneys for this purpose. And they will come. Those requests will come as sure as the Eastern Star shall rise tonight and again tomorrow night and again the next night and the next night and the next night.

So I urge my colleagues not to support this amendment.

Mr. HATFIELD. Will the Senator yield for just a second?

Mr. BYRD. Yes.

Mr. HATFIELD. The chairman has very correctly pointed out the increase in the dollars. But will the chairman not agree that in this amendment we are also changing the formula as to the last emergency disaster relief which we passed for Hurricane Andrew—not as against the authorized legislation on the books, but as against what our last disaster relief was for the victims of that hurricane that swept through a

number of States, as to the victims we are now trying to assist in the Midwest, so that there is additional consideration for the complexity of this amendment that adds not only the $1 billion but does address the formula change?

Mr. HARKIN. If the Senator will yield——

Mr. BYRD. Madam President, I yield for the purpose of a colloquy.

Mr. HATFIELD. I would just add one last point. In fact, that was the reason for the modification of the Senator from Mississippi, who wanted to address that discrepancy between the last disaster relief bill and this one as proposed in the original Harkin amendment that added $1 billion. I believe I am correct on that.

Mr. HARKIN. If the Senator will yield so I may respond, I find that an interesting argument, that somehow we cannot——

Mr. BYRD. Madam President, I retain the floor.

The PRESIDING OFFICER (Ms. MOSELEY-BRAUN). The Senator is correct.

Mr. BYRD. I yield with the understanding that I retain my rights to the floor.

The PRESIDING OFFICER. For the purposes of a colloquy.

Mr. HARKIN. I thank the Senator.

I find this argument by my friend from Oregon interesting. Let me see if I understand it correctly. We should not change the formula now to help the victims of the flood in the Midwest because the victims of disasters in 1990, 1991, and 1992 were paid at a different rate, and if we now change the rate, farmers in this flood will be getting a different compensation than those who suffered disasters in 1990, 1991, and 1992. It seems to me that is the argument the Senator is making.

Mr. HATFIELD. Will the Senator yield?

Mr. BYRD. I yield.

Mr. HATFIELD. I am merely stating the complexity of this amendment leading to a difficulty in conference with the House. I am merely making a statement of facts. And I assume the Senator from Iowa agrees that my facts are correct.

I am not arguing the judgment or the morality or the ethic or the lack of ability to make a change in formula. I am just saying we have in this amendment changed the formula as to the payments offered to those who were sufferers in the last disaster relief supplemental on Hurricane Andrew, which led the Senator from Mississippi to ask for a modification to make it retroactive, to bring those victims up to the same level as in this amendment.

I am not arguing the rightness and the wrongness. I am just saying those seem to me to be the facts of the case, and therefore lead to a greater difficulty in a conference situation with the House of Representatives and a greater delay in finalizing this particular bill.

Mr. BYRD. Madam President, the pending amendment is the amendment offered by the Senator from West Virginia and the Senator from Oregon and the Senator from Iowa; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Madam President, I ask unanimous consent that the vote on this amendment occur at such time as—Madam President, I suggest the absence of a quorum.

Mr. BOREN. Madam President, while my colleagues are discussing the pending amendment, I ask unanimous consent that I might be allowed to speak as if in morning business for not to exceed 3 minutes.

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

NOMINATION OF JOYCELYN ELDERS

Mr. BOREN. Madam President, this week, as everyone knows, we have had an opportunity to vote on four very important nominations, but we have not yet had the opportunity to vote on another extremely important nomination still pending before us, and that is the nomination of Dr. Joycelyn Elders to be Surgeon General of the United States. The nomination was reported out from the Labor and Human Resources Committee last Friday by a very strong bipartisan majority, of the members of that committee.

There has certainly been enough time to evaluate whether or not Dr. Elders is qualified and suitable for the job of Surgeon General of the United States. She was named on December 4 by the President—exactly 9 months ago today. Her original confirmation hearing was delayed to allow further time to evaluate her record. Over 200 questions have been submitted and have been answered about Dr. Elders, and the original FBI report on Dr. Elders has been available for over a month. The additional questions submitted by Senators KENNEDY and KASSEBAUM have been available since her confirmation hearing.

Madam President, it is time to allow the Senate to work its will and to act on this nomination. As I said to the members of the committee when I had the honor of helping to present Dr. Elders for her confirmation hearings, coming from Arkansas' neighboring State, I have had the opportunity to view the work and the record of this very remarkable person—the first African-American woman ever to graduate from the University of Arkansas School of Medicine; one of the most outstanding, widely recognized leaders in the field of pediatrics in this country; named director of the health department of her home State of Arkansas; endorsed by over 150 medical associations across this country to be the next Surgeon General of the United States; regarded by people in her profession as among the most highly qualified choices available in this country for this important post.

Above all, Dr. Elders has had the strength and the courage to speak out on controversial issues of the day. She has had the courage to open our consciences to the problems of teenaged pregnancy and many other health and social problems confronting this country; problems that are easily swept under the rug, problems that we do not like to hear about because they are painful and difficult. Yet, they are challenges which we must confront.

Madam President, unfortunately, the state of our politics has come to the point that, when a person takes stands on controversial issues, instead of debating those issues, we begin to attack that individual personally, we begin to distort his or her views, and we begin to treat that individual unfairly as a fellow human being.

Dr. Elders is a person of moral courage. She is a highly qualified person for this position. As I have already said, she has an outstanding record. She deserves to be considered on the basis of those qualifications and her record for personal courage and integrity.

I do not agree with every single thing that Dr. Elders has ever said. I do not agree with every single policy that she has advocated. But that is not the point. The point is that she is well qualified for this position. The point is that we need the Surgeon General of the United States to be a spokesperson to awaken us to the crises, both social and medical, that we face in this country. Above all we need our Surgeon General to have the courage to speak out on these issues and to bring them to the public's attention.

Dr. Elders has demonstrated time and time again that she has that courage. She has also demonstrated, in spite of what some who have criticized her have said, that she believes in local control and in parental control of the ultimate decisions that affect children in this country. While she has advocated school-based clinics, for example, to help young people in need of help, she has always maintained that the final decision about whether those clinics should be in a school should be made by the local school boards at the school district level. She has always felt that, whatever services were available to children, parents should have the right to determine ultimately whether those services are made available to the individual child of that particular parent.

There are many children in this country who are in terrible trouble—and we see the results of it: the high teenaged pregnancy rate, the fact that in some of this country's large inner cities last year 80 percent of the infants born were born out of wedlock, the fact that in 10 percent of the births of infants in the 10 largest cities in this country, both parents were gone within a week of the birth of that child. Coming into our statistical language for the first time is the term "no-parent children" because neither parent was available to help raise that child.

We have children at risk, children in danger in our country. We are not taking adequate care of them, and many of them do not have the family units to fall back upon. Dr. Elders has become the forceful advocate for the well-being of these children in our country. Surely she should not be penalized for having the courage to speak out about the needs of these children as they grow toward adulthood.

Madam President, it is time to allow us to vote on this nomination, to let us bring the nomination of Dr. Elders to the floor and to let us have a chance in the Senate to express our views about her nomination. And when that happens, I am convinced that the vast majority of the Members of the Senate will vote to confirm her to be the next Surgeon General of the United States, and I am convinced that there will be a significant number of votes for her nomination from both sides of the aisle.

The time for delay is past; the time for action is now. The serious problems that she has talked about will not go away. They need to be addressed. The American people need to be brought into the dialog. We need a Surgeon General of the United States on duty confronting these challenges. I urge my colleagues on both sides of the aisle to allow the nomination of Dr. Elders to come forward. Let us not break for the long recess without acting on this nomination. Let us give this good, well-qualified nominee a chance to have her rightful decision day before the U.S. Senate before we go into recess.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I have discussed the Harkin amendment with the author of that amendment. He is agreeable to limiting debate on the amendment. He is willing to agree to 20 minutes on his side.

I ask unanimous consent that the time on the amendment be limited to 20 minutes under the control of Mr. HARKIN and 10 minutes under the control of Mr. HATFIELD and myself; that the vote on the pending amendment, the pending Byrd-Hatfield amendment, occur at the conclusion of the time for debate on the Harkin, et al., amendment; and that the vote on or in relation to the Harkin amendment then occur following the vote on the pending Byrd-Hatfield amendment, as modified.

Mr. HARKIN. Madam President, reserving the right to object, and I might object, I want to get a handle on this on the time. As I understand it, we have an amendment right now that is pending that is offered by the chairman. I have some things I want to say about that. Is there a time limit on that amendment?

Mr. BYRD. There is no time limit on it. But, Madam President, I ask unanimous consent that there be a time limitation on the amendment of——

Mr. HARKIN. I would like to talk for a little bit on this.

Mr. BYRD. Only the pending amendment?

Mr. HARKIN. I believe so. I want to understand. The request was that at the conclusion of debate on this amendment that is pending, that then we would go back to the amendment that has been set aside?

Mr. BYRD. No. I did not ask for any additional time on the pending amendment. I do now recall that the Senator has discussed that amendment with me and would need to have a few minutes because he seeks to make a modification on that amendment, to which I am agreeable to his making.

I ask that the time on the Harkin amendment be limited to 30 minutes, 20 minutes to Mr. HARKIN, 10 minutes to Senator HATFIELD and myself, and that at the conclusion of that time, the Senate then vote on the Byrd amendment, on which the yeas and nays have already been ordered, and then follow that with a vote on or in relation to the Harkin amendment, because by then all time for debate on that amendment would have expired.

Mr. HARKIN. Madam President, further reserving the right to object, I wonder if we could, since the Harkin amendment is the preceding amendment, the amendment before, I am wondering if we could perhaps have the vote on that amendment first and then have the vote on the pending amendment at the conclusion of the vote on the Harkin amendment.

Mr. BYRD. Very well. We might be able to do that.

Mr. HARKIN. We would have the debate of 20 or 30 minutes, then we would go to a vote, and then after that, we could have the vote on the amendment.

Mr. BYRD. I will be very happy to consider that. That was a reasonable request.

Let us get on with the modification of the pending amendment, because our time is running. We have not disposed of one amendment today. What does the Senator wish to do with respect to the pending amendment? What modification does he suggest?

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President——

Mr. BYRD. Madam President, I have the floor. I will yield to the Senator for a question.

The PRESIDING OFFICER. Has the Senator from West Virginia withdrawn his unanimous-consent request?

Mr. BYRD. I will withdraw the request temporarily, yes.

The PRESIDING OFFICER. Does the Senator from West Virginia yield for a question?

Mr. HARKIN. This Senator does not have a question, but I have remarks I would like to make on the amendment, and then I would like to get in a colloquy with the chairman about a modification of the amendment.

Mr. BYRD. He wishes to discuss the now pending amendment?

Mr. HARKIN. Very briefly.

Mr. BYRD. I yield the floor.

Mr. HARKIN. I will not take much time, because I agree that we have to move on with the bill.

The pending amendment before us, which I put my name on as a cosponsor, had a provision I was not fully cognizant of at that time. It deals with a provision of the Small Business Administration raising the loan limitation. I wish to discuss that for a couple of minutes to make the record clear as to what I am about.

I have an amendment that I was going to offer—one of the listed amendments—that would have removed the $500,000 cap and raised that to $1.5 million for the victims of this Midwest flood. The reason I was going to do that was because the $500,000 cap that is now in law was set in 1980, but it was administratively used since 1970. So since 1970, we have had a $500,000 cap on SBA disaster loans. Well, if you just factor in inflation over those years, if it was fully adjusted, the loan limit would be over $1.7 million.

So if we wanted to respond to small businesses hurt in this disaster, like a small business would have been hurt, let us say, in 1970, we would have a loan limit of over $1.7 million.

Madam President, I met with business people around Iowa that have been very severely hurt by these floods. Many of their businesses are not likely to reopen—or to reopen without significant reductions in employment—without SBA disaster loan assistance. Frankly, $500,000 just will not do the job.

I want to talk about a few of those cases. One company has been making automobile accessories for 70 years.

The company employs 102 people. On July 10, the Des Moines Water Works flooded. Now this company is not on a flood plain, and the owner was told he would be OK; he was three-quarters of a mile from the water plant. But, by that evening, the Raccoon River had filled the first 5½ feet of his business. His inventory and business losses are estimated at over $2.1 million. He has incurred over $850,000 in lost business. He needs help. Forty-two of his employees are out of work. This company believes it needs a $2 million loan to cover its need and get its employees back to work. It is going to be difficult for this company to get other assistance.

This amendment does not give businesses a grant to make them whole or give them a loan to meet their full needs, but it gives some help—a lot more than what only $500,000 will give.

Here is another example: A firm that has been in business for 34 years, and could face bankruptcy without help. The firm laid off its 18 employees—18 employees, I might add, all with families whom they must support. The company is now operating on a very limited basis with borrowed equipment. They had 12 feet of water in their warehouse and 9 feet of water in their office. Insurance will only cover some of the trucks and the computer equipment. They lost over $1 million in inventory and uninsured equipment. I understand that $500,000 will not provide the capital that will allow this business to get going again. An extra $500,000—which I might add is not a grant, only a loan—could allow this company to get back on its feet and get those employees back to work.

I talked personally with the President on Monday evening. I told him about the plight of these small businesses. I told him about the fact that this $500,000 had been in existence since 1970 and had never been raised, and that many of the hundreds of small businesses in Iowa—and I am sure in other States also—need more than $500,000 to get back on their feet. I do not mean a grant, I mean a loan. So all we are asking is to try to bring this level up close to what it would have been if we had factored inflation into that $500,000 limit begun in 1970.

The President expressed his concern. He wrote a letter, which I will take the liberty of reading here. It is to the chairman of the Appropriations Committee.

It says:

DEAR CHAIRMAN BYRD: The administration has requested that the pending emergency supplemental appropriations bill for disaster relief for victims of flooding in the Midwest be amended to lift the ceiling on SBA disaster loans to $750,000 from the current $500,000 figure.

We have also requested an additional $10 million in credit subsidy budget authority for that loan program. We understand that Senator Harkin may offer an amendment that would instead raise the loan amount limit to $1.5 million and provide $20 million in credit subsidy budget authority.

We also understand that the higher loan amount limit would apply only to loans related to the 1993 Midwest flood disaster.

The administration would support such an amendment. Once again, we thank you for your continued leadership on this urgent legislative task.

I think part of the mixup came because, as I was told in a telephone call, the director of OMB did not understand that I had spoken with the President personally about this figure and that figures were discussed. In light of that, he sent that letter with that paragraph in it.

I do have that amendment, but the amendment offered by the chairman incorporates the change cited in the first paragraph of the letter. I will ask the chairman for a modification of his amendment that would incorporate the provisions of my amendment, which would raise the limit from $500,000 to $1.5 million and provide the $20 million in budget authority to cover such loans.

Again, I point out that to raise the limit on these loans from $500,000 to $1.5 million will ensure that a lot of these businesses, hundreds of businesses, could get a decent loan to get back on their feet.

So I ask the chairman if he could modify the amendment to take that into account.

I yield the floor.

AMENDMENT NO. 759; AS MODIFIED

Mr. BYRD. Madam President, this is a request by the administration, and it is contained in a letter to me dated August 3. I believe a similar letter went to my colleague, Mr. HATFIELD. It comports with the statement by the distinguished Senator from Iowa, Mr. HARKIN.

I am willing, by unanimous consent, if I may gain it, to modify the amendment. I ask unanimous consent that my amendment be modified, and I understand that Mr. HATFIELD is in agreement with this, as is Mr. HOLLINGS, chairman of the subcommittee of jurisdiction.

Mr. HATFIELD. I understand it is raised $10 million, the SBA loan extension, which raises the total of the amendment 133.3; is that correct?

Mr. BYRD. I am advised that the figure would be 133.1.

Mr. HATFIELD. 133.1.

The PRESIDING OFFICER. Is there objection?

There being none, the amendment is so modified.

The amendment, as modified, is as follows:

Before the period at the end of the first excepted Committee amendment, insert the following: "*Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for Economic Development Assistance programs under the heading "Economic Development Administration" shall be $200,000,000 of which $100,000,000 shall only be available to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for the Disaster Loan Program account under the heading "Small Business Administration" shall be $80,000,000, of which $20,000,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of law, the $500,000 limitation on the amounts outstanding and committed to a borrower provided in paragraph 7(c)(6) of the Small Business Act shall be increased to $1,500,000 for Presidentially-declared major disasters for recent Midwest flooding: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein under the heading "Employment and Training Administration" for part B of the title III of the Job Training Partnership Act shall be $54,600,000 of which $11,100,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for programs and activities of the Commission on National and Community Service shall be $4,000,000, of which $2,000,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That all of the above amounts are designated by Congress as emergency requirements pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended"

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BYRD. Madam President, if the Chair will momentarily indulge me, I ask unanimous consent that I may add to the list of cosponsors the distinguished Senator from Minnesota [Mr. WELLSTONE].

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

Mr. HARKIN. Madam President, I thank the chairman for modifying the amendment and the distinguished ranking Republican on the Appropriations Committee for accepting this amendment.

Mr. BYRD. I thank the Senator.

Now, Madam President, that brings us back to the pending amendment which I had hoped we could delay the vote on until such time as the vote is taken on the amendment by Mr. HARKIN.

Has the request been agreed to with respect to a time limitation on the Harkin amendment?

The PRESIDING OFFICER. There has been no agreement with regard to time on the amendment.

Mr. BYRD. I thank the Chair.

I ask unanimous consent there be a time limitation on the Harkin amendment as follows: 20 minutes to be under the control of Mr. HARKIN; 10 minutes to be under the control of Mr. HATFIELD and myself; and that at the conclusion of the time on the amendment, a vote occur on, or in relation, to the amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BYRD. Madam President, the pending amendment is the Byrd-Hatfield amendment.

Is it agreeable to the Senator and his colleagues that we vote on the Byrd-Hatfield amendment now or just preceding the vote on the Harkin amendment? I would hope to save time.

Mr. HARKIN. We would like to vote on the amendment right now.

Mr. BYRD. I was going to suggest that we vote on the one after the other, the Byrd amendment and then the Harkin amendment at the conclusion of the time on the Harkin amendment so that both votes will be taken together and save the time of the Senate.

Mr. HARKIN. I hope we can have a vote on the Harkin amendment at the conclusion of the debate on the Harkin amendment, and either then go to the vote on the Byrd amendment or have the vote on the Byrd amendment right now, if we want to get Senators over here. As a matter of fact, I would hope we can have a vote on the Byrd amendment now. That is what the people are here in the Senate for and that is to vote.

Mr. BYRD. Very well.

Mr. CONRAD. Madam President, reserving the right to object.

The PRESIDING OFFICER. There is no unanimous-consent request pending.

Mr. CONRAD. Has the unanimous-consent been agreed to on the time limitation on the Harkin amendment?

The PRESIDING OFFICER. Yes, it has. That agreement has been reached.

Mr. CONRAD. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CONRAD. The time agreement that was agreed to then is 20 minutes for the Senator from Iowa and 20 minutes divided between the Senator from West Virginia and——

The PRESIDING OFFICER. No. Ten minutes for the Senator from West Virginia and divided between himself and the Senator from Oregon.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. CONRAD. I object.

Mr. BYRD. I hope the Senator will not object.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. There is objection.

Mr. CONRAD. Madam President, I was asked by the Senator from Iowa to register objection until he is able to get a response that he is seeking and return to the floor.

Mr. BYRD. Madam President, I ask unanimous consent that the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. CONRAD. I object.

Mr. BYRD. Madam President, in case the distinguished Senator from North Dakota has not learned it yet, I am not a Senator who will cut a Senator behind his back, and I am not a Senator who will take advantage of a Senator behind his back.

I did not intend to call off the quorum in order to take some advantage of the Senator from Iowa.

As a former majority leader in this body, as a former minority leader in this body, as a former majority leader again in this body, and as a President pro tempore in this body, I have yet to act behind the Senator's back to take advantage of him.

I simply wanted to make a statement of about 30 seconds duration when I requested for the quorum to be called off.

The Senator from Iowa does not need the Senator from North Dakota to protect him. I will protect the Senator from Iowa as well as anyone else would. I will protect any Senator on this side of the aisle.

I was simply going to point out how much time we have been on this bill today, and we are still taking time in quorum calls when we have other Senators who have amendments that they may feel are as important as the amendment by Mr. HARKIN. They have not had a chance to offer their amendments.

That was all I was going to do—call attention to the passage of the time and put back in the quorum call to protect the Senator.

The PRESIDING OFFICER. Does the Senator object? The Senator from North Dakota.

Mr. BYRD. I yield the floor.

Mr. CONRAD. Madam President, I want to make clear to the Senator from West Virginia——

The PRESIDING OFFICER. The Chair must advise the Senator from North Dakota the quorum call remains in progress.

Is there objection to rescinding the quorum call?

Mr. CONRAD. I ask unanimous consent that the quorum call be rescinded.

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

Mr. CONRAD. Madam President, I want the Senator from West Virginia to know that in no way was I concerned that he was going to do something that would jeopardize the rights of the Senator from Iowa.

Mr. BYRD. Will the Senator yield?

Mr. CONRAD. If I might complete the statement, then I would be happy to yield.

I have been here 7 years. I know the Senator from West Virginia is a man of honor, that he protects other Senators' rights, that he has deep respect for this institution.

I hope the Senator from West Virginia would know that I was asked by the Senator from Iowa to raise objection if anyone put in a move to go out of the quorum call. I made that commitment to him and I felt honor bound to honor that commitment. And that is what I did.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I hope we can get on with action on this amendment.

I somehow doubt that the distinguished Senator from North Dakota would have objected if the majority leader had come in and asked that the quorum call be called off, even in the face of his promise. Perhaps I am wrong, but I doubt it.

Mr. DURENBERGER. Madam President, I rise to support the amendment by Senator BYRD which, among other increases, increases the appropriation to the Commission on National and Community Service from $2.0 to $4.0 million.

This $4.0 million would be on top of $455,000 in previous appropriations that the Commission is already making available to conservation and other service corps in several States and communities most affected by recent flooding.

I am pleased that the administration chose to include additional disaster relief funding for the Commission in its flood relief package—accepting the suggestion I first made to the President when he met with a group of Members from flood States several weeks ago.

At the same time, I also contacted the leaders of conservation corps in Minnesota and several other States to encourage them to prepare a detailed proposal on using young people to help communities respond and recover from the terrible damage they're now experiencing.

Proposals were generated from not just Minnesota, but also from Wisconsin and Iowa. And, the President and others in his administration quickly

saw the value of demonstrating what well-organized and highly motivated young people can do—not just in the short-term, but over the many months that these communities will need to fully recover.

I want to make it clear, Mr. President, that this additional funding is not intended to be a traditional short-term public jobs program. The kind of program that the Commission is prepared to fund will do much more than simply put young people to work on a temporary basis.

The conservation and other service corps that will apply for these funds are highly disciplined programs that provide an experience for young people that includes not just employment and service to their communities.

These programs also include an educational component—both basic classroom education and training in marketable job skills.

And, these programs are intended to make a positive contribution to the communities they serve for a period beyond addressing the most immediate needs those communities now feel.

The Commission intends to use some of the funding it awards to provide coordination and support for the infrastructure under volunteer efforts in these States.

And, the Commission's plans include not just young people in service and conservation corps, but also National Guard volunteer college students, school-based programs, and volunteer organizations like 4-H, the Red Cross, and the Salvation Army.

Finally, at least some of these programs will offer a post-service education that offers a real incentive to attend or return to college or another higher education program that these young people might otherwise not be able to afford.

I realize, Madam President, that this is a relatively small amount of money in a much larger response to the tragedy that is still unfolding all through the heartland of America.

But, I can think of no better way to demonstrate the value of national and community service, than to provide these additional resources to a program that has already demonstrated its value during previous times of crisis in Los Angeles and South Florida.

The Senate has just completed action on the National and Community Service Act. And, as the original Republican cosponsor of that important initiative, I believe the amendment now before us is an excellent way to demonstrate the value of national service in a timely and highly visible way.

I intend to support this amendment, Madam President. And, I urge my colleagues to do the same.

Thank you, Madam President. I yield the floor.

VOTE ON AMENDMENT NO. 759, AS MODIFIED

The PRESIDING OFFICER. Is there further debate on the Byrd amendment? The Chair hears no request for debate.

The question is on agreeing to amendment numbered 759, as modified, of the Senator from West Virginia [Mr. BYRD].

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER (Mr. AKAKA). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 86, nays 14, as follows:

[Rollcall Vote No. 239 Leg.]

YEAS—86

Akaka	Feingold	Metzenbaum
Baucus	Feinstein	Mikulski
Bennett	Ford	Mitchell
Biden	Glenn	Moseley-Braun
Bingaman	Graham	Moynihan
Bond	Grassley	Murkowski
Boren	Gregg	Murray
Boxer	Harkin	Nunn
Bradley	Hatch	Pell
Breaux	Hatfield	Pressler
Bryan	Heflin	Pryor
Bumpers	Helms	Reid
Burns	Hollings	Riegle
Byrd	Inouye	Robb
Campbell	Jeffords	Rockefeller
Chafee	Johnston	Roth
Coats	Kassebaum	Sarbanes
Cochran	Kennedy	Sasser
Cohen	Kerrey	Shelby
Conrad	Kerry	Simon
Coverdell	Kohl	Simpson
Danforth	Lautenberg	Specter
Daschle	Leahy	Stevens
DeConcini	Levin	Thurmond
Dodd	Lieberman	Wallop
Dole	Lugar	Warner
Dorgan	Mack	Wellstone
Durenberger	Mathews	Wofford
Exon	McConnell	

NAYS—14

Brown	Gorton	McCain
Craig	Gramm	Nickles
D'Amato	Hutchison	Packwood
Domenici	Kempthorne	Smith
Faircloth	Lott	

So the amendment (No. 759), as modified, was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, the pending amendment now is the Harkin amendment; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. And there is a time limitation.

The PRESIDING OFFICER. The Chair will state, under the previous order, the time remaining on the Harkin amendment is limited to 30 minutes: 20 minutes under the control of the Senator from Iowa, and 10 minutes controlled by the managers.

Who yields time?

Mr. BYRD. Madam President, while there is a fairly good attendance in the Senate, I would like to take this opportunity to state that the pending amendment by Mr. HARKIN is the amendment that he started out with, and he was willing to modify that amendment by some suggested verbiage by the Senator from Mississippi.

Mr. SIMPSON. May we have order?

The PRESIDING OFFICER. The Senate is not in order. The Senate will be in order.

The Senator from West Virginia.

Mr. BYRD. I thank the Chair.

Madam President, the distinguished Senator from Iowa was willing to modify his amendment by accepting the verbiage offered by the Senator from Mississippi [Mr. COCHRAN]. And I assume Mr. HARKIN did that because he thought that would gain some votes. Well, it did not. I do not know what it did. The only thing I know is that the Senate registered its opinion as being in opposition to the amendment as modified.

Now the Senator goes back to his original amendment. He brought that amendment before the Appropriations Committee and very agreeably withheld or restrained the urge to call it up at that point and elected to bring it to the floor, which was the right thing to do because it was controversial, as we see. But what it does is add $1 billion to the deficit. You can cut it any way you want to, thick or thin, or grind it up in the mill. It adds $1 billion to the deficit.

We are being asked later this week to vote on a deficit reducing bill, the reconciliation bill, and it is going to have matters in it that will not please everybody. As I understand it, the administration is working hard to try to help get the votes to enact that bill.

Now why add with the left hand and take away with the right, or take away with the left and add with the right? That is what we are doing here; a reconciliation measure that is supposed to reduce the deficit by some almost $500 billion. Now we are being asked in the pending amendment to add $1 billion to the deficit.

Madam President, my sympathy and compassion with and for those who are suffering from the floods has no bottom, no width, breadth, or height. There is no limit to my compassion for them, but there is a way to do things. We have an appropriations process in this Senate. The Appropriations Committee wants to be supportive of the administration's requests because we take the administration's requests, having been thoroughly and carefully assessed, and we have stated time and time again that the administration will undoubtedly be requesting more moneys. We just voted on an amendment that comports with the administration's request to make an addition in connection with this disaster.

The distinguished Senator from Oregon and I quickly threw our support to that and we offered the amendment. That is how fast we get things done if you will leave us alone. When the administration sends up further requests, we will act quickly on those requests.

Let the administration send up their requests to both Houses. That is the

way it is done. They generally send up a request to both Houses. The matter is presently in the Senate. And they generally send up a request to the Republican manager and myself. Now we are hearing it from other Senators. They want to call up an amendment.

That is not the way to do things. That will open up the real floodgates, if I may use the pun. Everyone is going to want his amendment agreed to. That is why we have to take a stand against an amendment like this. I have a heart for it. My heart says fine. But I also, after 35 years in this Senate, have finally come to the conclusion that somebody has to take a responsibility around here once in a while to say no to the heart and say, now hold on, wait a minute. We will take care of the heart later.

So I urge Senators not to support this amendment. I want to get this bill through. I wish to get it through quickly. I wish to get it through tonight. And I hope it will be the kind of bill, when we finish action on it, the House will accept it, it will not go to conference, and it will go to the President.

If we add amendments, if we add one, why not add two, why not three, and take it back to the House. And then the other body will want to add some amendments. They like to get into that game, too: Look at those Senators. They added amendments on this. I have an amendment.

A billion here and a billion there, and it adds up where it will wipe out whatever gains are made in the reconciliation bill at some point. So I think we have to draw the line. I say draw the line where the administration put it. And when the administration requests more money, then we will take that into consideration.

So I make that plea with Senators and I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I yield 5 minutes to the Senator from North Dakota [Mr. DORGAN].

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 5 minutes.

Mr. DORGAN. Mr. President, I understand from time to time on legislation the desire of Members to protect the President's mark or to protect the President's request, but that is not what this debate is about.

We have a letter from the President, from the President's Director of OMB on this specific amendment. Here is what the Clinton administration's position is on this amendment:

> The administration will not oppose the amendment because it is limited to 1993 crop losses.

This is not about protecting the President's mark or protecting the President's request. This administration has no opposition to this amendment. It will not oppose this amendment. Here is the letter.

Now, this is not about protecting a kernel of corn or a kernel of wheat. This is about families. It is about people who have lost everything, and it is not about sending an enormous amount of money from the Federal Treasury that far above that which is requested. This is about how much should we provide in disaster assistance to family farmers who have lost everything. That is the issue.

Now, we have a formula, and the formula says if you have lost 35 percent of everything you have, then you get 65 percent of the target, and then that is divided by 50.04.

What a goofball computation that is. It makes no sense. It is arbitrary. It is not grounded in any kind of mathematical or judgmental sense. It is just there because it happened 2 years ago. It is not the way it happened in 1988 and 1989 with the drought. Nobody said we are going to give you a helping hand, but you are only going to get half a hand. We are going to throw you a rope, but you just get half a rope. That is a not what happened in 1988 and 1989. In 1988 and 1989 the disaster formula for families who lost everything was, if you had a 35-percent loss, you got 65 percent of the expected deficiency price on that loss.

Now it is 35 percent, 65 percent, and half of that. This makes no sense. Now, we say restore it by getting rid of that 50-percent limitation. Even then, those family farmers will still only receive 40 cents on the dollar and many will still go broke. But the issue here is a survival of families who have lost everything through a vicious act of nature—certainly nothing of their making.

The question is what are we going to do. It has been said here this will radically increase the deficit. I have heard numbers thrown around this floor that are flat out wrong. You know what the consequence of this flood is, among other things? Less grain is going to be produced. The price of grain is going to rise. And this Government will have fewer outlays for deficiency payments and we will save money on deficiency payments we otherwise would have been required to make.

That is where this money comes from. We are not suggesting a raid on the Federal Treasury. We are not saying let us break the bank. We are saying we are going to save money on deficiency payments. Let us get rid of this arbitrary formula and at least provide 40 cents on the dollar for families out there that otherwise are going to go belly up.

So, Mr. President, again, I know this is all very arcane. It is about complex Byzantine formulas. But in the end, it is about a family. Is this family going to keep operating or is it going to discover the helping hand of the Government is only half a hand and withdrawn at the last moment, and say you have $1 loss, you get 20 cents, my friend, and smile because it is plenty. It is not what you got before. We were able to do 40 cents because we saved billions on deficiency payments we did not have to make.

I just ask this, that we amend this legislation the way the Senator from Iowa asks, do it in a way that is compassionate and right. Let us do it the right way the first time. Let us not say, yes, we will have another supplemental. We will come back and do it later.

If we are going to do something, let us do it the right way. On behalf of families who have lost everything, the right way is this way with this amendment right now.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I yield 5 minutes to the Senator from Minnesota [Mr. WELLSTONE].

Mr. WELLSTONE. I thank the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, when President Clinton traveled and met with people out in the Midwest, he talked about providing disaster relief. People understood him to say 50 cents on the dollar. The President could not have possibly known then about this formula about which the Senator from North Dakota just spoke.

This is not an abstract debate, and in all due respect to colleagues here whom I deeply respect, this discussion about process is so abstract. People right now are saying to us, we will not be able to get back up on our feet and farm if the only compensation we are going to get is 20 cents on the dollar. So please, Congressmen and Senators, do not pass a disaster relief bill and pretend like you are really responding to a disaster, in this particular case in agriculture, when you know by definition you are not even providing anything more than 20 cents on the dollar for those farmers, especially the young and beginning farmers. They will not be back. Then if you want to talk about running up the deficit, just think about the cost of that. Where are they going to go? What is going to happen to them? We are talking about homelessness; we are talking about unemployment benefits; we are talking about people forced off the land.

I say to my colleagues, we came out with one amendment and a number of people said to us, we cannot vote for that because it goes back to 1990, 1991,

1992. Well, now we have an amendment that deals with this flood, the worst flood in this century, and I cannot believe that on the floor of the Senate we cannot do better for people. The most horrible flood seen in this whole century, and we cannot even provide some relief for people?

I hear the discussion of the deficit. I have to say to my colleagues, the bottom line to me, and I thought it was the bottom line for Senators of all regions—and I hope we will get support from Republicans and Democrats alike—if there is a role for the Federal Government, it is to respond to people who find themselves in dire circumstances, in time of emergency where people reach out—in this particular case many of them are rural citizens—and say you need the assistance; you need the disaster relief.

That is what you are there for, Federal Government. Please respond to the pain and the concerns and circumstances of our lives.

I think that is what this amendment is about. I hope our colleagues will support us.

Mr. DURENBERGER. Mr. President, I wonder if my colleague will yield me 2 minutes.

Mr. HARKIN. Mr. President, I yield 2 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 2 minutes.

Mr. DURENBERGER. Mr. President, I appreciate the comments that have been made. I rise in support of the amendment by my colleague. I supported their prior amendments.

I have been listening to the debate quite intently since about 5 or 6 o'clock last night. I would like to make a couple of observations for my colleagues who might be in doubt. The debate here is not about real need because it is very difficult from an individual farmer or an individual community standpoint to know right now what the real need is. If anybody thinks we are actually meeting people's needs, forget it. I think we know the emergency need, $622 million of this, that is important.

What the debate has turned into is a debate about spending, and a debate about the deficit, and a debate about income laws. What is important about this amendment is that farmers need some predictability as to unemployed factory workers on unemployment comp, as to what kind of a replacement income they can expect. I think that is what this debate is all about. We are learning from the experiences of the last 2 or 3 years what happens to OMB-driven formulas. We are trying to inject some predictability even though there is not a dollar amount in it.

Mr. President, I have also been listening to my telephone today. I have to tell you out there in America, the four things that are on people's minds are similar to discussions here. It is about spending, it is about taxes, it is about the deficit, and it is about increase in personal income.

It is going to be very, very difficult to resolve this issue in favor of farmers unless we can concentrate on the real issues and the real needs that are here. I agree with everything that I heard as do the people on the telephone about the need to cut spending, cut taxes, raise the income level of Americans, and cut the deficit as well.

I will have an amendment shortly to give everybody an opportunity to respond to what you are listening to on the telephones right now by at least 3, 4, 5, and 6 and in some States 10 to 1 and to meet the needs that all of us from the flood States—from the depth of his heart what the chairman of the Appropriations Committee would like to see done—hear and to inject some predictability into the promises that we need to make to the American farmers.

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

The PRESIDING OFFICER. The Senator from Iowa has 9 minutes 30 seconds.

Mr. HARKIN. Mr. President, I just wanted to speak for a minute on what the Senator from Minnesota just said. There are a lot of people who want to cut spending. I do not think anyone here does not want to cut the spending, cut the fat and waste out of Government. But I would say to the Senator from Minnesota, I would say to any other Senator who is interested in cutting spending here, we all are, I will bet you if you went to every one of those persons who called you on the phone and said do you think that in cutting spending we ought not respond to the victims of the flood, they would say no, meet our obligations. That is not what they are talking about. They are talking about the wasteful kind of spending that goes on around here—things like Star Wars, things like that; spending money on crazy schemes; and things that waste taxpayers' money. But when it comes to this flood and responding to the real human needs, the American people want us to respond. They want us to help. They are willing to pay for it. I believe our children and grandchildren would be willing to pay for a part of it, too, to make sure they have a better life.

Let us not get confused on what we are and are not spending money on. I will make this point repeatedly. I will make one other point repeatedly that the Senator from North Dakota earlier made; that is, because of the crop losses, the price of crops for those lucky farmers that are going to have some crops in some places of the country will be high enough that the Government will save up to $2 billion, perhaps more, in deficiency payments. What this amendment that I have now before the Senate asks for is $1 billion—half of that—back in to help these farmers who have been hurt in the disaster.

Mr. President, I yield 3 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 3 minutes.

Mr. CONRAD. I thank the Senator from Iowa. I thank the Chair as well.

I just hope my colleagues understand that this amendment is substantially different than the previous amendment we voted on. The previous amendment had a reachback provision that would have allowed the Secretary discretion to provide for increased disaster assistance to farmers in 1990, 1991, and 1992. That is not part of this amendment. That amendment was voted down. It is dead.

Before us now is an amendment that says for 1993, we will give farmers the same level of disaster relief that we gave in 1988 and 1989. If we fail to enact this amendment, we will give farmers one-half as much as we gave in 1988 and 1989. That is the issue.

Just so colleagues understand, the authorizing committee passed this formula in 1988, passed this formula in 1989, passed this formula as part of the 1990 farm bill. The authorizing committee made a judgment. Their judgment was this is the appropriate level of relief in an agricultural disaster. That was changed by administrative action—cutting it in half for 1991 and 1992.

Now we are revisited with a major agricultural disaster. And what we are asking for is the same treatment we gave farmers in 1988 and 1989. It is not 50 cents on the dollar. It is 40 cents on the dollar.

If we fail to enact the Harkin amendment, we will give farmers 20 cents on the dollar of their losses.

Mr. President, there is an enormous human tragedy that is playing out in the heartland of this country. People who are on the brink of losing everything deserve our support. Always in the past we have dealt with emergencies differently than other appropriations measures. I hope we do that again.

I thank the Chair.

I yield the floor.

Mr. HARKIN. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Iowa has 4 minutes 40 seconds.

Mr. HARKIN. The other side?

The PRESIDING OFFICER. The other side has 3 minutes 50 seconds.

Mr. HARKIN. Mr. President, I yield 2 minutes to the Senator from Missouri [Mr. BOND].

The PRESIDING OFFICER. The Senator from Missouri is recognized.

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

We are back here again trying to get simple fairness for farmers. I had hoped that our discussions earlier today would make it perfectly clear to the Members of this body that what we are asking for is action by this body to say to farmers as we say to everybody else affected by the floods that you are going to get what the law authorizes you to receive in terms of assisting you in recovering from this disaster. I talked about the hardship, the hard work and the dedication of the people in my area and throughout the Midwest. They are hurting and hurting very severely.

Because of, I think a misunderstanding or miscommunication, the administration initially set up a proposal saying for you farmers, we are going to cut you in half. We are going to give you half of what is authorized. But for small businesses, small communities, airports, railroads, transportation infrastructure, the unemployed, everybody else, we are going to give you 100 percent of what is authorized.

I regret that the administration has not come out clearly and said that we should restore 100 percent because I think we could avoid a vote. But, nevertheless, the Members of this body have the opportunity to correct an inequity when we have farmers in our States who are not only out of production this year, probably many of them out next year because of the disaster, and possibly even the year after. The least we can do is to give them the full measure of the disaster assistance authorized in law passed by this body and signed by the President of the United States.

This is a question of simple fairness. We do not treat farmers like we treat every other affected by the flood unless we get rid of the arbitrary 50 percent reduction in the aid that they will receive.

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

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa has 2 minutes remaining.

Mr. HARKIN. Mr. President, I had 2 minutes 40 seconds, and all of a sudden I lost about 40 seconds.

Mr. President, I yield myself a minute and a half. Again, let us set the record straight. There is $1.4 billion approximately in the bill right now for the disaster payments to farmers. This amendment adds $1 billion. That brings it to about $2.4 billion. The amount we are going to save in deficiency payments this year, conservatively estimated, is around $2 billion.

So when people talk about adding to the deficit, this does not. What it does is, as so many have said before me, it responds to a real human need. That need is to ensure that those farmers who have suffered the biggest losses are able to get through this year and get into next year.

Mr. President, again, the administration has written a letter saying they will not oppose the amendment. I must say, in all candor, Mr. President, I thought the administration would support this amendment. I am getting different stories from different sources in the administration. I am sorry to hear that.

I know that the Senator from West Virginia has a big heart, and I know he wants to respond. I just wish the administration would respond clearly in favor of this amendment.

Mr. President, we need this amendment badly. I would not have taken the time of the Senate today—none of us who have been here all day doing this would have done it if we did not think it was absolutely crucial to our farmers.

Do I still have 30 seconds left?

The PRESIDING OFFICER. The Senator's time has expired. The managers have 3 minutes 20 seconds remaining.

Mr. HARKIN. I ask Senator BYRD, may I have 30 seconds?

Mr. BYRD. I ask unanimous consent that Senator HARKIN have an additional minute and that I have an additional minute.

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

Mr. HARKIN. Mr. President, I was saying that I was getting crossed signals from the administration. I wish I perhaps had some time stamps on these letters.

We now have received a letter that says:

DEAR MR. CHAIRMAN: I appreciate your support this morning in opposing the amendment that would have permitted the Secretary of Agriculture to make retroactive payments to farmers who suffered crop losses from 1990 to 1992 in order to receive payments up to 100 percent of their eligible claims. That amendment would have increased the cost of disaster payments by $3.4 billion.

It is my understanding that a compromise amendment may be offered which would eliminate the 50 percent pro rata for agricultural disaster payments for the 1993 crop losses.

This amendment is estimated to add $1 billion in costs to the $1.4 billion crop disaster assistance program requested by the President and contained in the committee bill. The administration supports this compromise amendment because it is limited to the 1993 crop losses.

Sincerely,

LEON PANETTA.

The last word, Mr. President, is that the administration supports the amendment that is now before the Senate.

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

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HARKIN. I ask unanimous consent for 4 additional minutes for a question and for the chairman.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HARKIN. And then I will yield the floor.

Mr. DORGAN. I appreciate the Senator yielding briefly.

The letter now says the President supports this amendment and wants this amendment to be added to the flood aid bill; is that correct?

Mr. HARKIN. That is correct. It says the administration supports the compromise amendment because it is limited to the 1993 crop losses.

Again, I just say that I think obviously the administration has been very wrapped up in the reconciliation bill. I understand the President is focused on that. They have been working on it all day. I know that their time is taken with that and getting the budget through. There probably have been some miscommunications around the Hill and downtown. I understand how those things go when you are dealing with matters like this.

But because of our conversations with the White House and because they now have the clear knowledge that my amendment has no retroactivity whatsoever, and that it is only for the losses from the 1993 crop losses; it is only $1 billion, added onto it; and I am sure because of the fact that we are going to save money in the deficiency payment, the administration now supports the amendment.

Mr. DORGAN. Mr. President, this is an enormously helpful step. I, for one, and I think others, especially appreciate the position of the President. I hope the body will now embrace that, and that this becomes part of what the President is requesting; add it to his proposal. This is important, and I hope we will proceed to support the Senator's amendment.

Mr. HARKIN. I, too, want to express my gratitude to the President for his support for this amendment. It is vitally important, as I have said earlier, to the people in the Midwest.

I cannot begin to tell you how much this is going to mean to the farmers and to the small business people in the communities out there knowing, just knowing, that they are going to get disaster payments at the level that was put in the farm bill in 1990.

I can tell you that this is a shot in the arm to the farmers and the people in our small towns and communities all over the Midwest, whose anxiety level is very high because they do not know if they could get a crop in next year, or whether farmers will be able to pay their bills and buy equipment and supplies, or whether the rural economy would be strong enough to let people live like they have lived in the small towns and rural communities.

Mr. President, I am deeply grateful to the President of the United States for his support for this amendment.

I reserve any remaining time I may have.

The PRESIDING OFFICER. The Senator from Iowa has 1 minute 20 seconds remaining. The managers have 6 minutes 40 seconds.

Who yields time?

Mr. HARKIN. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 1 minute 20 seconds.

Mr. HARKIN. I will reserve a little time in case there are any questions.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, again, I will use up my time. I will close again by saying—and I am sure I speak on behalf of all of the Senators who have on both sides of the aisle fought so hard to get this disaster payment back to where it was in the 1990 farm bill—that we are grateful to the President. I hope the body will respond and that we will adopt the amendment.

Again, I cannot begin to tell you what this is going to mean in the Midwest—a sigh of relief, a collective sigh of relief, again, among farmers and people in the small towns and communities. There will be the knowledge that they will be able to get their lives going again, rebuild, recover, and move ahead into the future.

The people who have fought the flood in these States have shown a great resiliency. They have bound themselves together, and neighbor has helped neighbor. They have done everything that anybody can ask of them. I believe it is our turn now to fulfill our obligations and make sure that the provisions of the 1990 farm bill are fully lived up to.

If this body adopts this amendment now, believe me, I cannot begin to tell you the collective good it will do in the upper Midwest.

I yield any time I have.

The PRESIDING OFFICER. The time of the Senator from Iowa has expired.

The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank the Chair and I thank the distinguished Senator from Iowa for the spirited and able effort that he has made on behalf of his amendment.

He is a valuable member of the Appropriations Committee, a member of whom I am very fond, and a member who has always given to me, as the chairman, the utmost cooperation, courtesy, and consideration.

Mr. President, I intend to support this amendment now that the letter from the administration has been received.

Let me just say few things before I do that. There have been some statements here today that might be interpreted as meaning that the Appropriations Committee has not responded to the needs of the people in the areas that have been flooded.

May I say to the distinguished Senator from North Dakota, this Senator, not in anything he said, is attempting, to use that Senator's word, to protect the administration. I have never said anything about protecting the administration. I have been talking about protecting the taxpayer and at the same time delivering the help that the administration, through its vast machinery of agencies and departments, has been able to evaluate the needs and to present them to the Congress. I have that responsibility. It is not a matter of protecting the President. He can very ably do that himself.

Also, there have been those who said we ought to respond, that the American people expect us to respond. What have we been doing? We brought a bill here that is $4.8 billion; that is $4.80 for every minute since Jesus Christ was born. That is a lot of money, and I support every penny of it.

So the Appropriations Committee has been responsive and, as I have said, we will be responsive the next time. Four dollars and eighty cents for every minute since Jesus Christ was born is not chicken feed, and that is no failure to respond.

The Senators who are pleading today for more money are going to look to this Senator for help in the future, and they will get it when it is requested by the administration for this matter.

So let us not leave any impression that this Appropriations Committee is a Scrooge committee, hard-hearted, does not respond to the needs of the people. But we have to have some orderly way of going about this process.

I hope, Mr. President, that once this amendment is disposed of Senators will not attempt to make a Christmas tree out of the bill.

Now that we have a letter from the administration saying that the administration supports the amendment by Mr. HARKIN, I am sure that the other body will be the recipient of the same request, and I still have the hopes that we can take this bill, take it to the House, and the House will accept it after the Senate completes action on it and it will be sent to the President so we can expedite the effort on the bill. That is what the Senator from Oregon and I have been attempting to say and do all along.

Let me plead to Senators, now that we have this amendment, or presume we will have it out of the way, that we restrain ourselves from offering the amendments that are listed on this calendar. Let us not attempt to make this a Christmas tree, and let us not attempt to make it a vehicle of which we would try to take advantage in a moment in extremis.

This is an emergency. We are trying to deal with a disaster. I hope Senators will not attempt to use this vehicle now to get their pet amendments on. I have a lot of pet amendments. I have a lot of things I would like to have, but I restrained myself because this is needed by the people in the Midwest.

Mr. President, I ask unanimous consent to print in the RECORD the letter that was just received as of the hour of 2:29 p.m. today, a letter from Mr. Panetta, stating "The administration supports this compromise amendment because it is limited to 1993 crop losses."

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, August 4, 1993.

Hon. ROBERT C. BYRD,
Chairman, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I appreciate your support this morning in opposing the amendment that would have permitted the Secretary of Agriculture to make retroactive payments to farmers who suffered crop losses from 1990–1992 in order to receive payments up to 100 percent of their eligible claims. That amendment would have increased the cost of disaster assistance by $3.4 billion.

It is my understanding that a compromise amendment may be offered which would eliminate the 50 percent pro rate for agriculture disaster payments for 1993 crop losses. This amendment is estimated to add $1 billion in costs to the $1.4 billion crop disaster assistance program requested by the President and contained in the Committee bill.

The Administration supports this compromise amendment because it is limited to 1993 crop losses.

Sincerely,

LEON E. PANETTA,
Director.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the yeas and nays—have they been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. BYRD. Very well. I am not going to request them. Other Senators may wish to. They are within their rights to do it. But as far as I am concerned we can accept the amendment, take it to conference, and save the time of the Senate.

The PRESIDING OFFICER. All time has expired.

Mr. DOLE. Mr. President, I wonder if I might be permitted to speak for 1 minute.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, I do not see the need for the yeas and nays. I think that will save time.

I agree with the distinguished chairman of the committee. Hopefully, this bill will move along very quickly, and obviously the letter from the President changes everything.

There may be an amendment later on to pay for some of this in the bill, and I think I will support that amendment because I am concerned about the very thing raised by the distinguished chairman of the committee.

But I believe it is because of a close vote this morning that we now have a compromise, and I want to thank the administration.

This is very important, and again I would say this is not trying to make anybody whole. This is going from 21 cents to 42 cents. It is not a lot of money, but it may mean a lot of farmers in North Dakota, Kansas, Minnesota, Iowa, Missouri and other States in that ten Midwestern States area will be back on the farm again next year, and overall that will save money.

So I commend the administration for agreeing to this compromise and for those who were able to work it out.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, I do not rise to oppose the amendment. I will support the amendment. But I think when we are explaining $1 billion we do not need to worry about the 10 minutes the Senate spends in taking a rollcall vote.

I, therefore, ask for a rollcall vote. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment of the Senator from Iowa.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER (Mr. KOHL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 68, nays 32, as follows:

[Rollcall Vote No. 240 Leg.]

YEAS—68

Akaka	Exon	Metzenbaum
Baucus	Feingold	Mikulski
Bennett	Feinstein	Moseley-Braun
Biden	Ford	Moynihan
Bingaman	Glenn	Murray
Bond	Gorton	Nunn
Boren	Grassley	Pell
Boxer	Harkin	Pressler
Breaux	Hatch	Pryor
Bumpers	Heflin	Reid
Burns	Hollings	Riegle
Byrd	Inouye	Robb
Campbell	Jeffords	Rockefeller
Chafee	Johnston	Sarbanes
Conrad	Kassebaum	Sasser
Coverdell	Kennedy	Shelby
Danforth	Kerry	Simon
Daschle	Kohl	Stevens
DeConcini	Leahy	Thurmond
Dodd	Levin	Warner
Dole	Lieberman	Wellstone
Dorgan	Mathews	Wofford
Durenberger	McConnell	

NAYS—32

Bradley	Domenici	Kempthorne
Brown	Faircloth	Kerrey
Bryan	Graham	Lautenberg
Coats	Gramm	Lott
Cochran	Gregg	Lugar
Cohen	Hatfield	Mack
Craig	Helms	McCain
D'Amato	Hutchison	Mitchell
Murkowski	Roth	Specter
Nickles	Simpson	Wallop
Packwood	Smith	

So, the amendment (No. 758) was agreed to.

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

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

The motion to lay on the table was agreed to.

Ms. MIKULSKI. Mr. President, I rise in strong support of this important legislation which will help the thousands of victims of the devastating floods in the Midwest.

The bill provides a total of $4.7 billion, including funds for temporary housing, crop insurance, flood control activities by the Corps of Engineers, community development grants, and many other important programs.

These funds will be available to help those who have lost their homes, property, and communities begin to rebuild their lives.

Mr. President, I traveled to the Midwest with the President a few weeks ago. What I saw was devastating. Hundreds of homes submerged under water, millions of acres of cropland destroyed, community water systems contaminated. The damage is so widespread that President Clinton has declared nine States major disasters.

We have been so pleased to see FEMA respond so quickly to this disaster. FEMA has been in every State, working hand-in-hand with the National Guard troops and the Governors. We commend the new FEMA Director, James Lee Witte, for his good work.

It has been heartwarming to see the American people's good will shine during this calamity. Neighbors have helped neighbors, thousands of volunteers from across the country have filled sandbags, volunteer organizations like the American Red Cross have provided over a million meals to disaster victims.

Now it is time for the Congress to respond to the devastation by ensuring that needed funds are available for recovery.

Let me say, Mr. President, once the flood waters recede, we know the estimates on the damage will be revised. As chair of the Appropriations Subcommittee which funds FEMA, I'm committed to doing everything I can to ensure that the fiscal year 1994 appropriation for FEMA disaster relief includes adequate funds for flood victims.

Mr. President, while the rains continue in the Midwest, the Southeast has been stricken by drought. The drought has resulted in enormous crop loss up and down the east coast. So I'm very pleased to note that the bill will also aid farmers in Southeastern States. In my own State, farmers on the Eastern Shore have lost many acres of corn and soybean.

In closing, I thank the distinguished chairman of the Appropriations Committee for quickly moving the President's request for this vital legislation. I urge its speedy adoption.

Mr. LIEBERMAN addressed the Chair.

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

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

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

A VOTE FOR CHANGE

Mr. LIEBERMAN. Mr. President, this Friday we will vote on President Clinton's economic plan, a decision that will affect the direction in which our country will go for at least the next 5 years. As we approach this decision——

Mr. BYRD. Mr. President, will the Senator allow me to interrupt him? And I apologize.

Mr. LIEBERMAN. Certainly.

Mr. BYRD. Would the Senator be willing to put a time limit on his statement?

Mr. LIEBERMAN. I certainly would. I ask for up to 10 minutes and hope I do not use it.

Mr. BYRD. I thank the Senator.

The PRESIDING OFFICER. The Senator is recognized for up to 10 minutes.

Mr. LIEBERMAN. Mr. President, as we approach this decision this Friday on President Clinton's economic plan, the American people know and I think we, as their representatives, must show that we cannot afford to just keep on going down the same old road of inertia and inaction.

Our economy has been in recession for too long and too many jobs have been lost. Our budget has been out of balance for too long and too much of our economic strength has been sapped. The American people are right not to want more of the same. They want and need change. They want less Government spending, they want us to eliminate the deficit and, most of all, I think they want us to get our economy moving again to protect the jobs of those who have them and create new jobs for those who do not.

So, Mr. President, after a careful review of President Clinton's economic plan, as reported out by the conference committee yesterday, I have decided to cast my vote for change. This is certainly not a perfect plan, but I am convinced that it is as good a plan as we are going to get out of this Congress, and that is why I will vote for it.

In that sense, if we pass the President's plan, we are not, to paraphrase Churchill, at the beginning of the end of our work, we are at the end of the beginning of our work to restore America's strength and balance.

When I voted for the Senate version of the economic plan a few weeks ago,

I did so very reluctantly, and only after I received the commitment from the President and the majority leader that they would fight in conference for the kind of job-creating incentives that were absent from the Senate bill. To the best of their ability, I am pleased to say they have fulfilled their commitment.

The economic plan before us includes many of the incentives I have been working for since I came to the Senate in 1989. For example, the plan now contains, one, capital gains tax cuts for investments in new businesses that will create new jobs; a special deduction for small businesses that buy new equipment that will protect or create new jobs; a research and development tax credit to stimulate the investment that will sustain the competitiveness of our businesses and also create new jobs; and enterprise zones which will bring businesses and jobs to our suffering poor cities and rural areas and will get people off welfare and put them back to work.

All of these incentives, I believe, will produce jobs in my State of Connecticut where they are desperately needed and throughout the country, and all of these incentives, supported now by most congressional Democrats, show that we have come to understand that you cannot be projobs and antibusiness; that if we want to create jobs in this country, we need to help business do it, and tax incentives are one good way to make that happen.

Mr. President, the economic plan also contains real and substantial deficit reduction. Unlike previous budgets, this plan will cut spending by $250 billion, including 100 cuts in domestic programs. Cutting the deficit will also create jobs and stimulate the economy because it will help keep interest rates low and give the private sector and people around the world the confidence that America is moving at long last in the right direction toward a smaller Federal Government and a balanced Federal budget.

To achieve job-creating incentives and deficit reduction, we are being asked to swallow some painful tax increases. I appreciate the fact that the vast majority of tax increases will not fall on the middle class. But like everybody else here, I hate to raise taxes, particularly when our economy is so fragile. Although there are more spending cuts than tax increases in this plan, I wish we had cut even more spending to avoid raising the gas tax at all. That is why I supported the Presiding Officer in voting to cut the gas tax out of this plan when it was before the Senate.

To get the kind of job creation and deficit reduction we desperately need, I am prepared to make that tough choice. I must say I am grateful that the conferees at least kept the increase in the gas tax from going above 4.3 cents a gallon.

Sacrifice is clearly required of many Americans in this plan, particularly higher income Americans, and some older Americans, higher income older Americans. But I hope all who are affected by this bill will recognize that their sacrifice today will reduce the burden of the deficit that will otherwise fall on their children and grandchildren tomorrow and that their sacrifice today will create more and better jobs for their grandchildren and children tomorrow.

Mr. President, I would also like to note in this regard my displeasure at the decision to make the income tax increases in this plan retroactive to last January. I personally believe that that is grossly unfair, and I hope that we can do something to alleviate and eliminate this unfairness.

Finally, I go back to my quotation from Winston Churchill about this being only the end of the beginning of our work. If we merely pass this plan, go away and do nothing else, that is obviously not enough. We must recognize that we are imposing taxes at the same time we are trying to stimulate economic growth in an uncertain economy, and that is a difficult and perilous balancing act. That is why our work will not be done this week, why we must come back and get to work again on more growth, more investment, and less spending. That is why I have joined with several of my colleagues, under the leadership of the Senator from Nebraska, BOB KERREY, in calling for a special session of Congress after Labor Day devoted exclusively to cutting more Government spending. We have discussed this idea at length positively with the majority leader and others, and I hope the details of a plan to hold such a cost-cutting session can be worked out and announced in the next few days.

Mr. President, I also believe we need to recognize that the Federal bureaucracy must be reorganized; that our Government must be reinvented by eliminating outdated and redundant Federal agencies and by streamlining the Government in a way that dramatically lowers its cost while increasing its effectiveness.

Some of us in the Senate are now hard at work under the leadership of the Vice President and his National Performance Review to get this kind of reorganization underway. I hope that some of the fruits of those efforts could become the focus of this special cost-cutting, reinventing-government session that many of us would like to see occur after Labor Day.

The bottom line for me is that this economic plan, as imperfect as it may be, represents today our best hope for change, our best hope for a break with the status quo, for a chance to show that we can get something done in Washington, a chance to grow our economy, to create jobs, to eliminate waste, and to get our governmental books back in balance. President Clinton was elected to bring about that kind of change. I believe he deserves the opportunity that passage of this bill will give him to make that change happen.

I thank the distinguished Presiding Officer and the President pro tempore and chairman of the Appropriations Committee for his graciousness in allowing me to proceed at this time.

I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Mexico, Mr. DOMENICI.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. DOMENICI. Mr. President, I rise to speak on the bill, after which time I will ask for about 3 or 4 minutes in morning business. First, let me talk about the bill that is before this Chamber.

Mr. President, in the early 1970's, I had just come to the Senate, and a big disaster hit the country. It was not as big as this one, but it had the name of Hurricane Agnes. For some around here, it was much worse in these parts, traveling all the way up into New York and Pennsylvania. I was on the Public Works Committee, which had jurisdiction over disaster relief. Quentin Burdick, now deceased, was the chairman of that subcommittee. Actually, I think they put me on that subcommittee because it was the subcommittee no one wanted to be on, which will be part of my discussion here with the Senate today. I was the most junior member.

Well, the hurricane hit, and Senator Quentin Burdick and Senator PETE DOMENICI became very important because we were called upon to travel all over the Eastern United States to see whether the existing laws regarding disaster relief were workable, whether they did the job, and whether we could come out of the disaster with a minimum amount of taxpayers' dollars and with maximum relief for those who needed it.

Let me suggest that it turned out that even for that hurricane, which maybe—I do not remember in scale, but I am going to just speculate that maybe it was about one-fifth or one-fourth the size of this disaster. It was a big, big mess.

What we found was that the laws were not worthy of the problem; that we did not have laws on the books that would address it correctly; that if we would have just poured money into existing programs, we probably would

have spent billions of dollars and would not have gotten help to the people who needed it, to the businesses that needed it, or we would have been immersed in a series of arguments, perhaps lasting years and years, about whether the law even applied here, there or elsewhere.

Now, yesterday and today, we have been discussing a flood of far more serious proportions than Agnes as a hurricane with attendant floods. It may be, as many have said, biblical in size. Clearly, it is, indeed, America's worst ever, both in terms of damage and in terms of how we get out from under the mess, because the problems that we are going to have to solve we have not entirely fathomed yet.

So I rise today to suggest that if we want to help the people, the economy, the children, and the various communities stricken by this flooding, and we want to do that correctly, then we better not count on the existing laws to do the job.

I am willing to predict for the Senate tonight that if we do not set about to see whether our laws fit the needs of this disaster—and if they do not, change them—we may find that we do not even have laws on the books to help part of these communities get out from under this disaster and bring vitality back. If we do not get with it and go out and find out what is needed, we are probably going to stretch existing laws and existing relief. When you do that, you can end up with another disaster because nobody is happy; you do not get the programs where they ought to be; bureaucrats are accused of all kinds of things such as, "You are not helping us; you are delaying things." Much of that is because the laws are not tailored to a disaster of this proportion.

Now, today, there was a request for $200 million in additional appropriations for the Economic Development Administration.

Mr. President, I did not vote for that amendment, I say to my friend, Senator BYRD. I did not vote for it even though in that case it fits the chairman's criteria that the administration asked for it.

I am absolutely convinced that if we take 6 weeks, and if our authorizing committees will join together and go out to the Midwest and see what the problems are on an ongoing basis, we will do far more with $200 million than EDA is ever going to do in the area. We will find some areas of need, and we will find some ways to really get to them without all the conditions of an EDA program which may or may not fit the disaster situation, and which is going to have to be moved around to fit the needs of the disaster victims. It is a worry that you do not get anything done very fast under EDA. In fact, I believe it is one of the Federal programs with the slowest spend-out rate. I am not sure of that, but I think for the $200 million, normally we would not spend out very much money—only 10 percent or so in the first year.

Now, that does not mean I am against aid. I am merely suggesting here tonight that this may be a $10 billion or $20 billion disaster. I do not know. I do not believe this bill is enough, and on one score I do not agree with the chairman, for whom I have the highest regard, my friend, Senator BYRD. I do not think the administration can just go out there and take a look and send funding requests up to Congress, because for the most part they will try to see how it fits with existing laws.

I think it is incumbent upon the Congress to send their authorizing committees into a commitment stage where they will start having hearings on that disaster and see what we can do to take our taxpayers' money, which we are all willing to spend for this disaster, and spend it better, help more people, and get programs that are more apt to work than straining those that we currently have on the books.

Let me assure you that even with Hurricane Agnes, the laws then on the books—and that is not an ancient event—were not adequate. It was during the early 1970's, and we had disaster relief laws on the books. Let me suggest that we had to come back from Hurricane Agnes as authorizers and rewrite the whole law. The whole public works law for disasters was rewritten about that time to solve the almost incredible problems of Hurricane Agnes.

Now, 20 years have passed, and instead of Hurricane Agnes we have these extensive floods. This disaster may be tenfold bigger. It is an agricultural area, and Hurricane Agnes was only partially agriculture. Incidentally, it closed down a lot of businesses, I might say to the Senator. A lot of manufacturing was closed down, including big companies. I remember Corning. I did not know that much about the east coast then, but at Corning, the water went right in the front of this big facility that hired hundreds and hundreds of people. I can remember the front end of it; all of the rocks and bricks were torn away. Corning did not know where they were going to begin to rebuild. We had a hearing right in that town to talk about public works and matching grants, and how to use the cities and the States in the massive cleanup effort.

I think it is incumbent upon us, for the people of this disaster area, and the people who are going to pay the bill—because we want to pay the bill for them, we want to help them—I think it is incumbent upon us to get with it quickly and start hearings about how we better solve this problem even if it means changing existing laws.

I want to close by saying that we ought to even be considering some flexible money, some money that is not so tied in strings and knots by the ongoing programs of this Nation. It may very well be, within limitations, that there ought to be a sizable amount of money that can be made available to the Governors in conjunction with the President to do the kinds of things that can be done quickly, that make sense.

I predict, if we do not do this, we are going to have the flood victims waiting 2 and 3 years for things that we ought to be doing in 6 or 8 months.

Now, that does not mean I have the answer to agriculture either. I voted in the Appropriations Committee for everything that was asked for by the President. I have not voted for the add-ons here. I frankly do not think that many people really know exactly what we are doing. I stand ready to add more funding to the agriculture relief effort, but, frankly, I think we ought to have somewhat of a better game plan and know a little bit more about what we are doing for the farmers, and what we can do best for the taxpayers of the country.

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

Mr. DOMENICI. I will be pleased to yield.

Mr. BYRD. Mr. President, some reference has been made to my—I do not know just how to say it—reference to my supporting the administration's requests. I have to say that I have been a little disturbed today.

Today and yesterday, I received four letters from the administration concerning the amendment by Mr. HARKIN, or amendments by Mr. HARKIN. Four letters I received. Three of them today, one at—well, three today.

I find it very difficult to work hard on a bill and get it through the Appropriations Committee—we have 29 members of that subcommittee—and try to persuade my colleagues not to offer amendments in committee.

And they are very good about that. Both Republicans and Democrats are very good about honoring that request. I think it is a sensible one. We do not fight there and then come up here and fight here.

But it takes a lot of time. It takes my staff. They spent hours in the evenings and the nights, early mornings. I was here in my office this morning at 8:03. I will be here late tonight. The ranking member, I am sure, spends a lot of time himself.

So we come out here shoulder to shoulder to try to defend an administration's request on a matter of this kind. I try to support the administration on a matter of this kind because as I explained earlier today—I do not need to repeat it—they are in a better position to know. I am in no position to assess the damages. We do want to help those people.

But I have been 35 years in this Senate. I was not made chairman of that

committee by any President, Republican or Democrat. And I am no President's man. I said that when President Carter was President and I was the majority leader. I am nobody's man. I do not wear any man's collar but my own. I am not bragging. But that is just the way it is.

I do not take it lightly when I get all kinds of signals. I am here trying to support the administration's request for reasons I will state later.

I do not like to be whipsawed. I have a certain amount of honor. And I have a certain amount of responsibility to my colleague here, the ranking member. I take a stand, he takes a stand, and we get different signals.

Well, he may not be supporting a particular proposition for the same reasons that I am. I felt a little badly when, by my criteria, I said OK, I am going to support that. But the Senator from Oregon never laid out those particular criteria. He has his own.

What we did is we still added $1 billion to the deficit. But we also changed the formula that had been used for disasters for the past 3 years. We made it 100 percent instead of 50. Right? So its effect was to treat the victims of these floods differently than we have treated the victims of hurricanes and droughts.

These are the kinds of things that ought to be determined by the authorizing committee, as the Senator from New Mexico said, working with the administration. It should not be done in these appropriations bills. But I am a little bit tired of being whipsawed, having this Senator, that Senator, another Senator, and another Senator come in and say: I have a letter now. It makes me wonder what this appropriations bill is being used for. Is it vulnerable because there is a tougher bill coming down the track? A reconciliation bill? Is that it?

I hope that decisions on this appropriations bill are not being made downtown on the basis of what will secure the most support on the reconciliation bill.

I live by my own credo, Mr. President. I am a Democrat. I always have been a Democrat, and I expect to be a Democrat. But the party does not come first with me. It never has.

I just hope that somebody will get a message that this is one chairman that takes the other person for his word, depends on him to stand there until he has a good reason to change his mind and then he explains it to me. And I do not like to be whipsawed.

I like to give a man my word and keep it. If I see I cannot—I have heard many people say: "I support the Cochran amendment." Well, the amendment was not the Cochran amendment that they committed to. The amendment had been modified by Mr. COCHRAN's amendment.

So if a man says, "I will vote for your amendment, your amendment A," and then I come back later and find out that you have changed that amendment A and included B in it, I did not make any commitment to support A and B. I made a commitment to support A. And the Senators came to me and said, "I committed to support Mr. COCHRAN's amendment." But the amendment we were voting on was not the Cochran amendment. The amendment we voted on was the Harkin amendment as modified by the Cochran amendment. That is a different matter.

So I guess I just came up the old fashioned way, taught to know what I was committed to, what I was saying, and to stick to it when I said it. That is the way I have to be dealt with by any Member.

I thank the Senator for yielding the floor.

Mr. HATFIELD. Mr. President, will the Senator yield for a moment?

Mr. DOMENICI. I am pleased to.

Mr. HATFIELD. I will just follow up on the chairman's comments.

As the chairman indicated, we had a good agreement between the majority and the minority on the committee. We came to the floor with that kind of partnership. The chairman and I have cosponsored a formal request to add another $33 million more to this from the administration. We did so.

The chairman and I, in effect, took the cue from the administration on the Harkin, pure Harkin amendment, and it was based in part, as far as I was concerned, on a letter sent to me, a copy of a letter addressed to Chairman BYRD, sent at 1321, Navy time for 1:21, and signed by the Director of the OMB, that the $1 billion Harkin amendment would not be opposed.

Well, that is not a request, Mr. President. One hour later, at 1429, from the same source, the Director of the OMB, addressed to Chairman BYRD:

> The administration supports the compromise amendment of adding $1 billion.

Mr. President, I ended up voting against that. The chairman supported it on a final vote, not that we were divided on the matter.

Let me make it very clear merely from the standpoint the chairman felt that the administration is saying it now supports the amendment, which constituted a request. And we had both said we would respond affirmatively to the administration's request.

But in the context of that 1 hour, I had I think legitimate reason to question the evolution of this particular issue as not really evidence of thoughtful policy.

Therefore, I voted "no." But I want to focus on the matter that these mixed signals did not in any way impair the partnership role the chairman and I have been playing on this bill at this time in trying to respond to the administration's requests, as representing the needs of the people and continue to do so for the rest of this period.

I thank the Chair.

Mr. DOMENICI. Mr. President, let me repeat that I do hope the Senate and House get themselves together with the authorizing committees and work on how we ought to solve this disaster.

I compliment the chairman and ranking member for the way they handled this bill.

Senator BYRD, I have the utmost respect and admiration for you, and I hope nobody thinks the Appropriations Committee is not going to grant the victims of this disaster everything we can to get them out of the problems they are in and move them ahead. But it will happen. If we split on some of these votes, we are for doing what Americans want us to do to help the region.

I yield the floor.

Mr. DOLE. Mr. President, I take the floor primarily to urge Members who have amendments to get over here and offer them. As I understand it, we agreed yesterday that we would finish this bill today, and it is now 4:40 p.m. and the last time I counted there were at least 25 to 30 amendments, or more, to be dealt with. I understand many may not be offered, and some are in the process of being compromised, and others will be offered.

I just say to my colleagues on this side of the aisle that we have a lot to do yet in the next 2 days if we are going to leave here on Friday. One commitment we made is to finish this legislation today, and perhaps maybe if we can get an agreement, even try to work on Interior appropriations. But I understand that there are a couple of issues here that may prevent that. Hopefully, it will not take long to work out an agreement on those two issues.

So I urge my colleagues—since most of these are Republican amendments—to come to the floor, if nothing else, as a courtesy to the managers who are prepared to do business. I make that request of my colleagues.

I have two amendments on this list to offer, and I will offer the relevant amendment which would, in effect, say you should not have retroactive taxes on any flood victims. It is a sense-of-the-Senate resolution that would not have any impact on the law, but maybe it would change the minds of the conferees who are still conferring on certain parts of the economic package, and not have a retroactive tax policy.

I pointed out today that in article 57 of the draft constitution now being set in the Russian Republic, there is a constitutional amendment against retroactive taxes. We did this once during the Vietnam war crisis. I was a Member of the House at that time. We had a temporary 2-year surtax at that time, but that was far different than what we have today. We did not extend the rates and make them retroactive. It was just a surcharge on income. That is the only time I can think of. It

was much different because we were in an economic crisis and because of the drain on the Treasury from the Vietnam war. That was later eliminated in 1970.

In any event, I say to the managers that we want to do all we can to cooperate. We would like to finish early this evening because we have other matters to deal with.

Mr. DOMENICI. Will the Republican leader engage me in a colloquy on the reconciliation bill? Has the entire bill been filed, to your knowledge? Do we have the bill we are supposed to be studying?

Mr. DOLE. As far as I know, the bill has not been filed. It is going to make it difficult. The House is supposedly going to vote tomorrow. A number of Members on each side of the aisle and their staffs would like to look at this massive piece of legislation. So my understanding is that, as recently as an hour ago, some details were still being worked out.

Mr. DOMENICI. I thank the Senator.

The PRESIDING OFFICER. The Chair reminds the Senator from Oregon that the first committee amendment is now pending and needs to be set aside.

Mr. HATFIELD. I ask unanimous consent that it be set aside.

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

AMENDMENT NO. 760

(Purpose: To make certain amendments regarding Local Rail Freight Assistance)

Mr. HATFIELD. Mr. President, on behalf of Senator BOND, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for Mr. BOND (for himself, Mr. SIMON, Mr. DANFORTH, Mr. HARKIN, Mr. WELLSTONE, Mr. DURENBERGER, and Mr. PRESSLER), proposes an amendment numbered 760.

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

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

The amendment is as follows:

On page 18, line 10 through 14, restore the matter stricken.

On line 14, strike the numeral.

On line 25, strike "$6,000,000 of".

Mr. HATFIELD. Mr. President, I offer this amendment on behalf of Senator BOND. This amendment has been cleared on both sides. It deals with the Local Rail Freight Assistance Act and support program. All this amendment does is bring it in conformity with the House provision, both in terms of language and in terms of the level of funding. The House funded this at $21 million. We in the Senate have funded it at $16 million.

So this now conforms to the House figure on the funding level. We have added one bit of new language, and that is the mandate that this be expended by the end of fiscal year 1994. That was done on the basis of recognizing the emergency character of this and how it should be utilized.

This has been cleared by the chairman of the Appropriations Subcommittee on Transportation, Senator LAUTENBERG of New Jersey, and has been cleared by the ranking member on the subcommittee, the Senator from New York, Senator D'AMATO. It had an implication as well in the authorizing committees, and this as well has been cleared by both the chairman and the ranking member, I am told, of the authorizing committees.

I have a letter from Leon Panetta, Director of OMB, indicating that the administration supports this amendment. So I think it has been cleared throughout.

Therefore, Mr. President, I urge its adoption.

Mr. BYRD. Mr. President, the amendment is as has been described by the distinguished Senator from Oregon [Mr. HATFIELD]. The administration has written a letter saying that the administration supports such an amendment and, therefore, I believe that, with the administration's support, the House might be inclined to accept it and not make us go to conference.

Therefore, I have no objection to the amendment.

Mr. BOND. Mr. President, last Friday, the Senate Appropriations Committee reported H.R. 2667, legislation to provide emergency supplemental appropriations for flood relief assistance.

The flood assistance bill approved by the Appropriations Committee last week included $16 million for rail flood assistance through the Local Rail Freight Assistance [LRFA] Program. The LRFA was created to preserve rail service to small towns and communities by providing financial assistance needed to rehabilitate lines that might otherwise be abandoned.

I appreciate my colleagues' prompt attention to the critical situation affecting an important segment of our transportation system. The need is clear. Early estimates show railroad flood damage of $17.4 million in the State of Missouri alone. At least $8.5 million of Missouri's railroad damage affects Gateway Western Railway, a regional railroad with 300 miles of track running between Kansas City, MO, and Roadhouse, IL.

Ironically, Gateway Western, which is the hardest hit railroad in the Midwest, would be ineligible for assistance under the bill approved by the Senate Appropriations Committee because, last year, it carried slightly more freight per mile than the 5-million-ton-mile eligibility limit allowed.

During the Appropriations markup, Senator LAUTENBERG, the chairman of the Transportation Appropriations Subcommittee, indicated that he would be willing to consider an amendment to ensure that railroads like Gateway Western receive the help they need. The amendment that I am offering, Mr. President, would replace the Senate language with the rail assistance provision included in the House-passed emergency flood relief bill.

Briefly stated, the amendment provides assistance to repair and rebuild rail lines damaged by the flood. Through the LRFA, $11 million would be available for smaller non-class I railroads, that carried 5 million gross ton miles or less per mile during the previous year, and $10 million would be available for other railroads, including Gateway Western, at the discretion of the Secretary of Transportation.

Mr. DANFORTH. Mr. President, I support Senator BOND's amendment to ensure that emergency assistance is available to railroads like the Gateway Western, which has sustained $8.5 million in flood damages to date.

I appreciate the work completed by the Appropriations Committee, which included $16 million for rail flood assistance through the Local Rail Freight Assistance [LRFA] Program. I understand that both the Administration and the Senate Appropriations Committee leadership support this amendment, which increases the total funding available through LRFA to $21 million. Also, it makes up to $10 million in rail assistance available, at the discretion of the Secretary of Transportation, to rail lines that carried over 5 million gross ton-miles-per-mile last year.

Early estimates show flood damage to railroads in the State of Missouri approaching $18 million. $8.5 million of Missouri's railroad damage affects Gateway Western Railway, a regional railroad with 300 miles of track running between Kansas City, MO, and Roadhouse, IL.

Gateway Western's total economic losses are now approaching $13 million, including detour expenses and losses of revenue. This legislation addresses only the physical damage sustained by the railroad, including the need to rebuild 2,100 feet of collapsed embankment and a major bridge at Glasgow, MO. The best help we can give them is assistance to rebuild and get back into business.

Mr. President, I urge my colleagues to support this important amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

The question is on agreeing to the amendment.

The amendment (No. 760) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I hope Senators will come to the floor and offer their amendments. Mr. President, other Senators and I, and the floor staffs, have been trying to encourage Senators to let us take their names off the list in the event they do not plan to call up their amendments. I hope Senators who do not intend to call up amendments will let us know so that we can remove their names. If they intend to call them up, they should come to the floor.

The leader indicates that action on this bill should be completed before the close of business tonight. I think that is a perfectly legitimate request, and I intend to do what I can to help bring it about.

I will say that if Senators are lax in not calling up their amendments, at some point I will give them a frank notice that I intend to move to third reading. I will tell them when I intend to move to third reading, and if they are not here to call up their amendments, I will move and get the yeas and nays on the motion.

I am not going to take advantage of any Senator, but I do not think the Senator from Oregon and the Senator from West Virginia should have to spend the day here and a good bit of the night waiting on amendments that never materialize in the Senate.

The PRESIDING OFFICER. The Chair recognizes the minority leader.

Mr. DOLE. Mr. President, I ask unanimous consent to proceed as if in morning business to introduce a bill.

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

The Senator from Kansas is recognized.

Mr. DOLE. I thank the Chair.

(The remarks of Mr. DOLE pertaining to the introduction of S. 1356 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The first committee amendment is still pending.

The Chair recognizes the Senator from Minnesota [Mr. DURENBERGER].

AMENDMENT NO. 761 TO FIRST COMMITTEE AMENDMENT

(Purpose: To reduce the amount declared to be emergency spending and offset the resulting nonemergency budget authority through reductions in fiscal year 1994 discretionary spending)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER] proposes an amendment numbered 761 to the first committee amendment.

At the appropriate place, add the following:

FUNDING SPENDING THROUGH SEQUESTERS

SEC. . (a) REMOVAL OF EMERGENCY DESIGNATION.—Notwithstanding any other provision of this Act to the contrary, all the amounts designated in this Act as emergency requirements for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be treated as not being emergency spending under the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) It is the sense of the Congress that spending reductions required by this section shall be achieved through reductions in administrative expenses rather than in the expenses of underlying programs or assistance.

Mr. DURENBERGER. Mr. President, I allowed the amendment to be read so that particularly the chair of the Appropriations Committee, who has labored so hard to do this bill in the most appropriate way, could hear it and so could all of my colleagues.

It is not as great of an amendment as I once proposed. I was thinking, as the flood developed, starting in Minnesota, which is at the head of the Mississippi—some time early in May you could see this disaster developing very slowly. Of course, in early May we had no idea of the dimensions of this, and we did our usual thing, those of us who represent Minnesota. At some point in time when it became clear that farmers were going to have difficulty planting, we went to the President to ask for emergency declaration for six counties. At that point in time, in late May, early June, that was about all anybody knew or cared about what was going to be visited on us and what brings us to the floor today.

As June went on, the problems kept getting worse, and prayers were not being answered. The rivers started filling up, and the watershed started filling up, and the problem became greater for all of us. I began to think back on the votes that I cast starting way back when I first got here on Mount St. Helens and working its way through all the eighties and the period of the early nineties—in fact, 1991-92 I think was the last year we did Chicago, Los Angeles, Florida, and so forth.

It was not until the last year, or so, that I began to consider whether or not the disasters with which I was dealing, even though they were quick disasters like Hurricane Andrew—they sweep in from the coast and cover the southern tip of Florida and leave in 24 hours and leave behind tragedy and billions of dollars of loss—or one that went as long as this one that begins in May and is still going on. It is still wrecking havoc. I began to think several thoughts. One was how long do we in Congress continue to react the same old way to this process?

Second, I thought about it in the context of, well, suppose this gets to be $5 or $10 or $20 billion. You know, are we just going to add that to the deficit?

I recall that last year I voted three times against very large appropriations for emergency relief to Los Angeles, Chicago, and Florida because we did not take the time to determine exactly what it was we were trying to do, for whom, what it would cost, and then say to the rest of America, "We have decided that the national solution to this part of the problem is the most appropriate solution and we are also going to ask all Americans to contribute to it." We did not take the time to do that.

In fact, I recall being right about here in 1980 watching the then-chairman of the Appropriations Committee, Senator Magnuson, of Washington, standing right down in the well and spending. Spending, Mr. President, hundreds of millions of dollars, and I remember that he just did it—unlike our chair now who has stood out here for almost 24 hours now, with the exception of 6 hours to sleep or something, defending principle. I recall the then-chairman of the Appropriations Committee standing down there ignoring the rules of the Senate and spending hundreds of millions of dollars.

And that impression has not left me to this day, and it really has not so much to do with Mount St. Helens or disasters as it has to do with the way in which one person at this point in time could spend a whole lot of money meeting a lot of people's needs, but he was the judge of what those needs are.

I think things have changed. All of us are now involved in that process. All of us have to take responsibility for doing something about it.

But the fact of the matter is the way in which we go about it has changed from Senator Magnuson standing down there making decisions to now, when all are involved in making the decision. It has also gotten much more difficult to be chairman of the Appropriations Committee because that was before big deficits.

I think the deficit that year—or I do not know what the deficit was—maybe $30 billion, but the national debt was like $876 billion, which was an unheard of figure at that time. We thought it was a lot. And every year we would debate in the Finance Committee and here on the floor whether we should raise the debt ceiling from $876 billion to $877 billion or from $888 to $900 billion, or something like that.

And here we are at $4.1 trillion, going to $5.3 or $5.4 trillion, and we no longer debate raising the debt ceiling.

A lot of pressure has been put on the appropriations process as a result of that. As we all know, the implications of Gramm-Rudman-Hollings and the implications of the budget resolution process, and so forth, have not been fair to the kinds of spending that is done by this body through a process of authorizing and appropriating and decisionmaking and categorical programs and specific spending programs to meet specific needs around America. It has not been kind to that kind of process.

The process has been very kind to these programs invented in the thirties

and forties. Those are the programs that automatically take from payroll and put moneys into a fund and then transfer moneys to people because of retirement or disability or ill health, or something like that.

It has been an unkind process, as you view it, if you are an appropriator or even an authorizer. The authorizers around here are having difficulty spending the kind of money that they used to spend. The appropriators are having to make incredibly difficult decisions, balancing a variety of competing interests that have built up in programmatic responses over 25 or 30 years of a National Government trying to deal with these problems.

So, I come to the floor with this particular amendment. The amendment itself, if you want to reduce it to its simplest terms, says that the amount of money that finally gets spent meeting the needs of people in the States that are suffering from this disaster, the amount of money that we decide to spend will, in effect, come out of next year's or the fiscal 1994 budget and will come out of the 1994 budget, as you know, the first dollars out, if you will, at the top.

I think in next year's budget the discretionary account will be something like $539 billion in the discretionary spending. I think, as of last count here, we have decided to spend $5.7 billion or projected $5.7 billion in spending.

So, in effect, that means the top 1 percent will be coming off the top of appropriated accounts to go to meet the needs of the disaster victims.

A couple hours ago, that sum was less. That sum was $4.7 billion. Now it is $5.7 billion.

So I could have stood here with a chart and said only eight-tenths of 1 percent. Now it is 1 percent. I suspect by sometime this fall, when we come back to doing the individual appropriations accounts, it will be 1.5 percent. It might even be 2 percent, listening to the speeches here about how serious these problems are.

So I am not particularly comfortable coming to the floor saying that we need to add another burden to the responsibility of the chairman of the Appropriations Committee. I am not particularly comfortable coming to the floor saying we ought to add more of a challenge to the burden carried by my colleagues on the Appropriations Committee.

But, in effect, Mr. President, I personally do not have any other choice. I do not know about the rest of my colleagues, but I do not have any other choice. I took a stand on other people's disasters—that they were not emergencies; they were disasters, but they were not emergencies—the Chicago flood, the hurricane in Florida, the tragedy in south-central Los Angeles. The emergencies were taken care of within the communities, just as they are on this flood. You keep people from drowning in an emergency. You save people, you sandbag, you dike, you feed them, shelter them, this whole series of things.

FEMA has a large fund of $629 million, is the last I saw, that can do things only Government can do by way of putting money into the hands of the people that do not have a home, do not have a way to get to their work, do not have a way to get to their children.

So emergencies are taken care of immediately by local resources—the Red Cross and all these church organizations. And I made this argument last night.

The disaster, on the other hand, takes a longer period of time to determine its depth, its breadth, its quality, its quantity, whatever else. Whether it is Senator Magnuson on the floor of the Senate 12, 13 years ago, or it is all of us today, we have all reacted in the same way. A disaster, an emergency, is a reason to come to the floor and spend money. And in that kind of process, it is very difficult to say, "I now want to send you a bill for the money I have spent," because we are not convinced that that amount of money is really going to solve the problem, but it is the best we can do at a given point in time.

Mr. President, I had looked back to try to find out what happened to the money that went to south Florida, what happened to the money that went to south-central Los Angeles, what happened to the money that went to Chicago. It is pretty hard to find out.

If I cannot find out, how do you think the average taxpayer is going to know where this money goes? Do you think the average taxpayer could follow the debate here on the floor of the Senate over CCC formulas and things like that? I doubt it.

I think it is because all of us have been reacting the way we have always reacted in this place.

Mr. President, if I may be so bold as to say this, I think this is the problem with everything we do. We always seem to react in the same fashion when presented with the same or a similar set of circumstances.

So then I say to myself: Maybe that is part of the reason why, when I came to this body, the national debt was $800 some billion, and it did not make any difference whether Senator Magnuson stood on the floor of the Senate and added a billion here or a billion there. It did not make any difference because debt service was not a problem.

But today, the national debt is $4.1 trillion, and the debt service on it takes 14 percent of our current tax collection or our current spending, or whatever the case may be. And that is money we cannot spend on children and preventive health care and national health care reform, a better educational system, or all the other things that we complain about in this body all the time.

So I just wondered to myself—and I wonder aloud, for the benefit of any of my colleagues who may be watching this—if this is not the time, when everyone is focused on flood waters and the disaster and so forth, for us to make some decisions about how we respond as a nation, as a representative of the people of this Nation, to the problems that are faced by our constituents in Wisconsin, Minnesota, Iowa, and so forth.

And, simply stated, this amendment just says what the little sign I saw last night in the 7-Eleven says, you know. "If you care about the flood victims, send money."

Now, every person in the 7-Eleven that sees that sign on the wall has to go into their pocket like this, you know, and they have to pull out real dollars.

Am I violating some rule by waving money around here?

You have to pull out real dollars. And once that real dollar is gone, you know, it is going to help somebody, but I do not have that dollar anymore.

But that is not what we are doing. We are not sending real dollars. Yes, we will send enough money to relieve some of the problems for some of the farmers in some of the communities, and so forth, even though we do not know how serious the problem is.

But the bill is not going to be paid by me. It is not going to be paid by you. It is going to be paid by my children and grandchildren.

Why do I worry about that? I worry about that for a lot of reasons that we are all concerned about: The burden that we are shifting downward in our generation.

I think we all know that ours, mine—to give you an idea how old I am, I will not tell you exactly, but my wonderful parents are both still alive and yesterday celebrated their 60th wedding anniversary. I am their eldest. So that sort of brackets my generation. My generation is the first that is going to leave its children less well off than it was left by its parents. We have had 13 generations of Americans since the founding of this country, and mine is the first to fail Thomas Jefferson's moral tenet that each American generation leave the next at least as well off as it was left. So that is a problem for me.

I have another related problem, and that is that if we can come to the floor of the Senate for every one of these disasters and we can decide $4.7 billion—no, I guess it was $3.4 billion on the House side a week or so ago, and then it gets over here and it is $4.7 billion and an hour later it is $5.7 billion—if we can do that that cavalierly—and I voted for all of those, because it is going home to Minnesota; at some point in time, it is going to help out the people in Minnesota—but if we can

do it that cavalierly—last year, it was $8.9 billion in total. This year, it is probably going to be $8.9 billion just on one of these events.

But suppose we talked about the same kind of disaster occurring in the year 2000 or the year 2010? What do you think it is going to cost the next generation after that? Do you think they are even going to have the money to deal with these disasters?

So I have another reason for saying, "let us pay for it," and that is I want to be able to protect those who will have the responsibility that I have 10 years from now to be able to meet real needs. Because mother nature is not going to shut off the rains, the melting snows, the tornadoes, the hurricanes, all of these natural disasters. They are going to continue to occur.

But who is going to take the responsibility, and who is going to be able to accept the responsibility for paying for them 10 years from now if we do not change the way we are doing this?

I have a third reason for suggesting this, and it is called prevention. It is something that we do not do anymore, do not practice very much in our American lexicon, because if it is easy come and easy go, then why prevent? We do not do it in health care. We are satisfied.

I was in a hospital in Sioux Falls, SD, about 6 weeks ago. In fact, it was in connection with the visit of the Secretary of Agriculture to our State of Minnesota.

I had an hour while I was waiting for the Secretary of Agriculture's plane, so I went over to—I think it was Sioux Valley Hospital. I met this wonderful doctor who heads up the neonatal care unit of the hospital and he introduced me to 45 little neonatal intensive care units and 38 teeny, little babies in those units. On the average, those kids are costing about $100,000 each to be born before they ought to be born.

I said, "Doctor, if you could name one thing that moms could do that does not cost anything to reduce the number of the severely premature, the low-birthweight babies, what would it be?" And he said—just like that—"I can reduce 25 percent of these if the moms would not smoke." Prevention. Prevention.

Where is prevention in floods? You cannot turn off the sky. Crop insurance. I am going to have an amendment on crop insurance. If we had a decent crop insurance system in this country, if we had any incentive to have one so all these farmers we are spending money on today could be covered by crop insurance—prevention—we would not be here debating the formula that does not pay more than 20 cents, 40 cents or 52 cents. Because we would have a crop insurance system that works. But there is no incentive to reform the crop insurance system because every time we have a disaster that affects our farmers we pay them off, the ones that were insured and the ones that were not insured. Because, we say, "The crop insurance system was defective." This was defective because it does not cover you if you cannot get in your fields because they are flooded.

So, prevention, I guess, is a third reason I use to suggest to my colleagues that they think once again, as they did last year when my colleague from Florida, Senator GRAHAM, had a similar amendment, that we think about the importance of making a decision to pay for this amendment.

I would add a fourth, and that is that after some of our colleagues from Minnesota on the House side went to the floor of the House a few weeks ago and stopped this same bill on the House side for some period of time until the House could make a decision on whether or not to pay for it, the editorial writers back in Minnesota—where everybody is waiting for the money to get there—the editorial writers stood up and said that is not only a brave thing to do, that was a prudent thing to do. That is the word they used, "prudent." Here is the Minneapolis Star and Tribune, "Prudence surely dictates finding a way to pay for relief without piling it onto the national debt."

So the victims of this disaster know several things about it.

One, they know real emergencies, like in an emergency room and so forth, are being taken care of. They do not need us to do that. Second, they know the depth of the disaster will not be known until this fall. You cannot know how serious it is until the water is gone. You cannot know how serious it is until the crops come in. They all know that out there. So they are saying you have plenty of time to deal with this particular issue which is, Are you willing to pay for this or not?

I do not have to be accused of being heartless because I say, "Let us pay for this." I mean, we stood down here now debating, if we have a farmer who is drowning 100 feet from shore, whether or not we are going to throw him a 25-foot rope or a 40-foot rope, and I think we ended up throwing him a 52-foot rope instead of a 100-foot rope.

That is not the way the folks that I represent would like to be represented. If someone is drowning and he is 100 feet from shore and you have a 100-foot rope, throw it to him. That is what they will do. They will put their money in the little pot at the 7-Eleven, because that is their only way of getting some money to Minnesota.

KARE-TV, Channel 11, an NBC affiliate in Minnesota, 3 or 4 weeks ago went on the air one evening with a plea for Des Moines, IA. We in Minnesota make fun of Iowans for some silly reason I do not quite understand. But it has sort of built up over time. It is very unusual for a Minnesota television station to make a plea to help out Iowans. Usually we make fun of them. Anyway, they said, "Can you, Minnesotans, get some fresh water to the folks down in Iowa?" And that night, that night, 75,000 gallons showed up. By 24 hours later, when they started putting the trucks together to go to Des Moines, 250,000 gallons of Minnesota fresh water were on their way, along with people, to Des Moines, IA.

So, you know, when people are confronted with this decision, what should I do? How should I do it? People are willing to make the decision that somehow or other, over the years, we have gotten out of the habit of doing; that is, actually going, to make sure: What is the need? What can I do to help? If it is money, send money. If it is something else, do something else.

Mr. SPECTER. Will the distinguished Senator yield for a question?

Mr. DURENBERGER. I am pleased to yield to my colleague from Pennsylvania.

Mr. SPECTER. Preliminarily, let me compliment the distinguished Senator from Minnesota on his amendment and on his very articulate presentation.

As I note, the thrust of his amendment is to pay for the costs for flood relief, and I certainly concur with the sense of this body and the sense of the House that the flood relief is indispensable. I am hopeful we will pass this bill and have it conferenced and concluded so it can be signed by the President before we adjourn for the August recess. That is a duty on our part.

I think the distinguished Senator from Minnesota is on the right track in looking for a mechanism to pay for these expenses. I think the flood relief does fall in the category of an emergency but it would be preferable for us to pay-as-you-go. My son, who is a conservative young taxpayer, a practicing lawyer, made the suggestion to me several weeks ago as we witnessed the television depiction of the ravages of the Midwest.

I might say in passing, I hail from the State of Kansas and my home area has been very hard hit. But, my son, Shanin Specter, made the suggestion there be a small percentage of a surtax added on to income tax. It might be one-tenth of a percent. And he felt, much as he did not like paying taxes, that Americans would be willing on the demonstrated need for flood relief to have this paid for.

Finding the money is always hard. But I do think the thrust of what the distinguished Senator from Minnesota has said here is right on target. And the question I have—and I know it is hard to quantify —but I wonder if my colleague from Minnesota has any idea more specifically as to where we would look in administrative costs to undertake the payment for the kinds of funds which are involved in this emergency flood relief.

Mr. DURENBERGER. Mr. President, I do not have a specific. I think my colleague from Pennsylvania is a member of the Appropriations Committee. As I said before he came to the floor, I know they have a difficult undertaking. But my colleague would probably be better positioned than I to know precisely where the administrative and overhead expenses might best come from.

Mr. SPECTER. If my colleague would yield, the Appropriations Committee acts not without wonders, but we may not be quite as astute as the Finance Committee, a committee the distinguished Senator from Minnesota holds membership on. So maybe we could find somewhere, one way or another. I do know, in posing the question, it is hard to particularize where the administrative expenses come from. When you talk about this not being declared an emergency, I know there is no intent on the part of the offeror of this amendment to in any way minimize or downplay the seriousness of the event.

So I want to compliment my colleague for offering the amendment. I think the ideas which he is exploring and illuminating here are very important. On some occasions, the better the amendment, the fewer the votes. But I want my colleague to know I intend to support him.

(Mr. WELLSTONE assumed the chair.)

Mr. DURENBERGER. Mr. President, I appreciate the comments of my colleague from Pennsylvania. Just let me say, not wanting to hold him here, I began this by thinking the way the person at the 7-Eleven thought when they put up the little sign that in effect said, yes, we ought to be able to raise the taxes to do this. That literally is what paying for it ought to be.

The more I thought about that, and the more I tried that on people around this place, they said you cannot raise taxes. I started out where what the Senator from Pennsylvania calls his conservative son started out. Today I got on the phone and started listening to some of the calls coming in, because Bob DOLE gave out the 202-224-3121 number last night. I must tell you, most of those people were saying no taxes, no new taxes, no taxes this, no taxes that. I do not know that that necessarily reflects the kind of Americans who have a concern for this disaster. It was sort of the advice I was given.

So I switched to another area that the Senator mentioned. My colleague mentioned the Finance Committee. I said, "Well, it is not fair to ask that all of this money come out of discretionary accounts, the so-called discretionary, the $539 billion, because most of us agree that that is the only place we go to get money and we leave the other, the Finance Committee account—Social Security, retirement funds, so forth—we do not dare touch those."

What I did was say half the money in the original amendment I presented yesterday, half the money would come from reducing some of the overhead and administrative in discretionary; but the other half would come as a small percentage of the cost-of-living increase in entitlement programs.

It turned out—I do not know if we have that chart here—but anyway, it turned out that if I had followed that particular course, it would have amounted to taking one-tenth of 1 percent of the cost-of-living adjustment for all of these entitlement programs if you went across the board.

Mr. SPECTER. If my colleague will yield for a moment without his losing the right to the floor, I think he made the point effectively by looking to administrative costs. Had he looked to entitlements, it would have caused at least a minor furor; that had you looked at the discretionary amounts it would have been extremely promising.

I know as the ranking member on the Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies how tight those funds are.

When our distinguished Republican leader said cut spending first, with the implication that there might be some justification for minor tax increases, maybe he did not mean that, but the spending has to be cut first. I know in 1990 when this body and the Congress were considering the overall budget summit, I used the recess to travel through my State of Pennsylvania, and found that there was a consensus for understanding the need for taxes if it went to deficit reduction. But my constituents were very unhappy about paying taxes into the general fund which gave more money for spending, which my constituents understandably think is excessive, and that is why we ought to be cutting expenses first.

But I think where there was a real value to be served, something which is understood and appreciated, or when there is an emergency like the floods, I think the people can understand a small fraction increase as a matter of percentage on income tax.

Mr. DURENBERGER. Mr. President, I appreciate again the comments of my colleague. Let me say that I have another amendment which I will offer as soon as this one is disposed of, which deals with future floods and which does give us an alternative, gives the President an alternative to recommend to the Congress. In the case of a flood like this, you either go to the discretionary account, entitlement account, or both, to reduce them, or you go to a tax source to get the money. I think that is the kind of thinking we need to continue to develop.

Mr. President, what we are talking about here is a sacrifice of a few pennies by today's Americans. The alternative is a sacrifice of many dollars in interest by our children's generation and by generations in the more distant future. I do not think it is too much to ask that you and I bite the bullet today—so that we do not add to the $5 trillion burden our generation has already piled on future Americans.

Mr. President, let me just say then, given the comments by my colleague from Pennsylvania, that I hope that my colleagues have given some thought to this amendment; that the changes that I have made in it, as far as where we go to pay for it, have struck a responsive chord, if the argument did not, and that we will have an opportunity soon to vote on the amendment and vote on it up or down.

I certainly urge my colleagues who have made all of the speeches that the chairman of the Appropriations Committee said we would make about spending—everybody—he usually looks to this side of the aisle, but I think they have been made on both sides of the aisle, talking about spending, spending, spending; that our colleagues will take a look at that in the context of the debate that has taken place on this amendment and will vote in favor of my amendment.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The President pro tempore is recognized.

Mr. BYRD. Mr. President, I cannot think of a nicer Senator than the Senator who has offered this amendment. He always wears a smile. I can understand the feelings of the barbarian who was sent to execute Gaius Marius; when he went into the prison, Gaius Marius saw him enter with the sword, and, Gaius Marius said, with a fierce look and piercing eyes, in a loud voice, "Fellow, darest thou slay Gaius Marius?" The barbarian threw down his sword and ran. I feel a little like the barbarian when I venture forth to attack the amendment that my friend, the very congenial, amiable, likable Senator from Minnesota has offered.

But as much as I like him, I cannot support his amendment. So if I can, I am going to execute it. I am opposed to the amendment to pay for disaster assistance for natural disasters. Providing emergency appropriations outside the budget caps was contemplated in the Budget Enforcement Act and is provided for in law under section 251(b)(2)(D)(i) of that act. Since the enactment of that provision in 1990, there have been four bills which included an emergency designation for appropriations totaling $8.6 billion in domestic natural disaster assistance.

We did not ask the victims of Hurricane Andrew along the gulf coast how they were going to pay for the assistance they needed. We did not ask the residents of the Island of Kauai in Hawaii, after Hurricane Iniki devastated that island, how they were going to pay for the aid they required. We did not ask the victims of Typhoon Omar on

Guam to pay for the cost of restoring their devastation. And we did not ask the thousands of farmers who have received disaster payments in the last 3 years because of freeze, drought or flood damage, to pay for that assistance. Not because we did not care about the deficit.

We did not ask them to absorb deductions in other programs to pay for that assistance because fundamentally the Congress believes that when part of our Nation is hurting, the whole Nation is hurting and the Nation should respond in an attempt to help put the suffering back on their feet.

That provision was not put into the Budget Act as a loophole.

And that is what I am concerned about in one sense. Some Senators seem to think this is a loophole. It was included because we recognized that there are certain things that man cannot control.

Every one of these emergency designations has been for an act of God. Man cannot control these—small, finite, little man.

"What art man, that thou art mindful of him?"

Every one of these emergency designations has been for an act of God. There was not a thing that any of the victims could have done to stop them. There was not a thing that anyone could have done to stop the hurricane, or the typhoon, or the cyclone, or the freeze, or the drought. There is not a thing that anyone could have done to stop the rain in the Midwest over the last month or so.

There is a legitimate need to address national disasters in a way that does not penalize other unrelated Federal spending.

I also know there is the possibility for abuse of the emergency designation spending provision, and I do not want to discredit the provision by proving its critics right and by turning disasters into spending opportunities. Therefore, I have opposed amendments which would increase the cost of this legislation beyond what the administration has requested.

I believe there are meritorious uses of the emergency designation provision in the law, but I certainly do not favor exploiting that provision. I hope we will not let our fervor to reduce the deficit cause us to apply a new standard to natural disaster emergencies.

How can we go to those who have lost their homes, their jobs, and maybe their businesses, and say that we are going to reduce those discretionary items that might have helped them to get back on their feet? As if that were not enough, we are going to reduce the mandatory programs like unemployment compensation and veterans' benefits that they may be counting on to put food on the table and keep a roof over their heads until the water recedes and they can put their lives back together. We cannot put these people back where they were before. We cannot take away the water. We cannot put back their crops or their homes or their businesses. We cannot make them whole. That is not within our province or within our means to do. But we can offer some hope and incentive to hold together, keep going, and to have faith in the future.

Mr. President, if this amendment were to be agreed to, we would have to absorb the outlays in future years—$2 billion in 1994, $1.1 billion in 1995, and $527 million in 1996. One small effect would be that the Agriculture Subcommittee, which has just completed conference, would have to go back and cut $1.154 billion in outlays from their 1994 bill. How is that for a joke? Nobody is going to laugh, especially the Agriculture Subcommittee.

When the other 1994 bills that are affected by this bill are marked up, they will have less to work with: Commerce, $59 million. Tell that to Senator HOLLINGS; Energy and Water, $146 million. Tell that to Senator JOHNSTON and Senator HATFIELD, who is the ranking member; Labor-HHS, $30 million. We might get Senator HARKIN's attention on that; Transportation, $56 million. Senator LAUTENBERG will be casting his vote on this matter shortly; and VA-HUD, $511 million. Somebody get word to Senator MIKULSKI as to what this will do for her; Interior, $36 million.

Mr. President, surely we do not mean to say that we expect these disasters that result from acts of God—was it Job who said, "What art man, that thou art mindful of him?"

Well, man is beginning to wake up to the fact that there is a God, that there are some things that man cannot do. He cannot stop the water. He cannot put back the homes. He cannot restore lives of human beings or livestock. Do we expect to help those people? If we do, do we expect to give it with one hand and take away with the other?

In other words, zap it to the veterans' programs, to the health programs, to the parks, to the Forest Service programs, to education, research, environmental programs. It has to be paid. It is going to go on the deficit one way or the other. Discretionary spending, especially domestic discretionary spending, has been zapped all too many times in the past few years. And it is going to be worse. Wait until this reconciliation bill passes and then we see the freeze on discretionary spending that will result from that.

We have an alternative. I suppose we could resort to sequester from time to time—sequester all programs: Defense, military, domestic, and so on, just cut them all equally. How long will the American people stand for that?

Mr. President, I do not question the good intentions of my colleague on the other side, but I urge Senators to defeat this amendment, and I am prepared to move to table it.

Does the Senator wish to say anything else before I move to table the amendment?

Mr. DURENBERGER. Mr. President, just a couple of minutes.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. BYRD. No. No. This Senator has the floor.

The PRESIDING OFFICER. The Chair apologizes.

Mr. BYRD. How long would the Senator like to speak?

Mr. DURENBERGER. Mr. President, I would speak for probably 3 minutes.

Mr. BYRD. Mr. President, I ask unanimous consent that I be permitted to yield to the distinguished Senator for 3 minutes and that I retain my rights to the floor with my intention to move to table the amendment.

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

Mr. DURENBERGER. Mr. President, I appreciate very much not only the comments of my distinguished colleague but the demeanor, and I certainly do appreciate very much his compliment.

He indicated early in his comments that we did not ask last year's victims to pay for damage repair, and that is true. There is also nothing they can do to stop the rain or the hurricanes and there is very little they can do to pay for it themselves. But the fact is the Nation can, and the Nation should. It should have last year.

Last year, on the L.A. riot emergency supplemental, which also sent money to some islands in the Pacific and to Chicago, my colleague from Florida, Senator GRAHAM, a Democrat proposed a similar amendment, only he said you cannot spend the money in Chicago, L.A, or those islands until you have capped the spending. I do not do that. But on his amendment, there were 45 yeas—31 Republicans or 74 percent of the Republicans, and 14 Democrats, 25 percent of the Democrats—45 to 52 last year said we ought to pay for it.

For every $1 billion we add to the national debt, the cost is about $70 million a year. For $5.7 billion added to the debt, the cost will be $400 million a year.

Mr. President, our colleague, JAY ROCKEFELLER, had a little piece in the Washington Post today with regard to the President's economic package, which is an effort to stabilize spending and taxes in this country. He said:

> If the measure fails, America's $300 billion deficit will double within a decade. Twenty cents of every tax dollar will go to pay interest. Long-term interest rates will spike up, bringing higher mortgage and car payments. Stock prices will slump, economic growth will stall, and business investment will dry up in an already withering job market.

And he went on to make some caustic, uncalled for remarks about Republicans, but in the end, he said:

I realized then we had become lost in a maze of refracted personal perspectives—

With regard to the deficit and what we are going to do about it—

hopelessly separated from our original objective. On this path, there will always be one more objection.

The right product? A vote for the perfect product would be easy—if perfection were ever possible.

I am still quoting our colleague:

This is not about a product. It is about a process that begins to repair the damage and pay the debt from more than a decade—

He says. It goes a lot further back than that—

of national neglect. This was never supposed to be easy.

This is not about what we can get out of the deal. It is about what we will give.

Still quoting my colleague, the junior Senator from West Virginia:

This is not another political painkiller. It is long-overdue honesty—and it requires some courage.

What more can I say? If we do not have the courage on this, we will not have the courage when it comes to reconciliation. We will not have the courage on Russian aid. We will not have the courage on sending aid to the Northwest to buy out the spotted owl. We will not have the courage to spend money for base closures. We will not have the courage on any of these things. Let us start with something we can all understand. It will have a lot of meaning to people in Minnesota if we have the courage to pay for this. So I urge my colleagues to support my amendment and to oppose the motion to table.

Mr. KOHL. Mr. President, I am tempted to vote for this amendment. It is clearly motivated by a desire to exercise fiscal discipline and that is a motive which I share and support. But while I applaud the intent of the amendment, I find fault with the way it seeks to achieve its goal.

Philosophically, I do believe in the concept of emergency spending which should be exempt from the normal budget discipline we have established. When the Nation faces a disaster—as the floods in the Midwest clearly are—we have to respond. The budget law allows us to do that. Our own experiences as individuals proves that we need to do it. If a furnace fails in the winter, we replace it—even if we have not budgeted for that expense. If a car breaks, we repair it—even if we have not budgeted for that expense. If a child needs health care, we make sure she or he gets it—even if we have not budgeted for that expense.

We can disagree about whether a specific situation should be treated as an emergency or not, but once we decide it is an emergency, a disaster, we have to respond to it.

Earlier this year, I offered an amendment to the supplemental bill requested by the President which would have required us to pay for half of the funds he was requesting. Even though my amendment was identified as a pay for it alternative, it recognized that there was at least a quasi-emergency and we ought to respond to at least part of it outside the scope of the budget constraints.

The pending amendment, while well motivated, does not recognize the fact that we can and should respond to some situations—true emergencies outside the control of human beings—by going beyond the normal budget process.

The flooding in the Midwest is such a situation. I have seen the pain and the fear in the faces of the farmers of Wisconsin. I know they are facing a disaster. I know they need relief. And I know they need it now. This bill will provide some of that relief and we need to deliver it to them now.

Mr. BYRD. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Will the distinguished chairman object if I had 2 minutes of morning business before the rollcall starts.

Mr. BYRD. Mr. President, I have no objection.

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

RETROACTIVE TAX INCREASES

Mr. DOLE. Mr. President, we have talked about retroactive tax increases, and I think the White House has gone ballistic. They have gone way back to 1917 to show that we had a wartime surtax or surcharges in World War I, World War II, the Korean war, and even the Vietnam war. But that does not make the policy any better, and it is a little different. I am going to explain that very quickly.

The Treasury Department is even pointing to other tax increases, as far back as 1917, that they claim were retroactive. That is pretty desperate—going back to 1917. Most, if not all of these, were temporary, wartime surtaxes imposed during the critical times America faced during World War I, World War II, the Korean war, and the Vietnam war.

Now, the Clinton administration may like you to believe otherwise, but there is a big difference between a temporary wartime surtax, and a permanent peacetime tax rate increase which was made retroactive. This is not a surtax.

But the Clinton administration's spin control cannot change the fact that its permanent, retroactive tax rate increases are a terrible idea—it is bad policy, whether it has been done before or not. It is such a bad idea, that even article 57 of the new draft Russian Constitution bans retroactive tax increases. And let me tell you, if there is one thing that has infuriated callers to my office—and I understand to other congressional offices, as well—it is this unfair retroactive provision, not only on the living, but on the dead. Nobody can escape this tax plan, living or dead. And they do not like it, whether they are affected by it, or not.

But, if we are going to split hairs, let me add my 2 cents' worth. The President last night claimed that the National Association of the Self-Employed supports his plan. Today, the NASE spoke up for itself, and said that it "does not support the bill." And a coalition of small businesses also came forward today to make it clear that they do not support the Clinton tax plan. These are the businesses that are creating most of the new jobs in America—they are the last people we should be hitting with the new taxes in America.

I ask unanimous consent to have printed in the RECORD the release from the NASE, which says very quickly that the NASE does not support this bill. President Clinton said last night they did.

So these are the latest people who have learned that they are going to be hit by the bill. I also ask unanimous consent to print in the RECORD a list of the others who oppose this bill; hundreds of business groups opposing this bill representing small business.

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

CLARIFICATION OF THE NATIONAL ASSOCIATION FOR THE SELF-EMPLOYED POSITION ON THE BUDGET RECONCILIATION BILL

Last night, August 3, President Clinton named the National Association for the Self-Employed (NASE) as an organization supporting the conference agreement on the budget reconciliation bill. The NASE does not support the bill.

On July 20, the NASE issued a public position statement stating that although it supported a number of provisions in the House and Senate versions of the Bill, it opposed other provisions and was awaiting the results of the conference report. We have issued no further statements.

The NASE hopes that when the budget reconciliation process is completed, a bipartisan group of small business supporters, including the President and the SBA Administrator, can move forward together to assist the nation's job-generating small businesses as they assist the nation's economic recovery.

The Honorable

U.S. Senate/House of Representatives, Washington, DC.

DEAR SENATOR/REPRESENTATIVE: On behalf of the millions of business we represent and the tens of millions of workers they employ, we urge you to oppose the conference report on budget reconciliation, H.R. 2264, and draft a new package with fewer tax increases and greater spending cuts.

If enacted, the conference report would do severe harm to an already fragile economic recovery without promising much in the way of significant deficit reduction. The dramatic tax increases—exacerbated by their retroactive effective dates—will dampen the recovery and seriously slow economic growth. Slower economic growth will reduce federal tax collections and increase federal outlays, resulting in significantly less deficit reduction than anticipated.

The economics are simple. Higher taxes on successful business owners mean less investment in new employees and equipment. These high taxes will hit particularly hard the small and medium-sized businesses that have traditionally provided most of the new jobs.

Finally, the conference report contains too few spending reductions. Previous attempts to reduce the deficit through higher taxes have been unsuccessful. Hard economic times have forced businesses across the country to tighten their belts and downsize. We believe that the federal government should follow their lead.

Once again, we urge you to oppose the conference report on budget reconciliation.

Sincerely,

Advertising Mail Marketing Assn.
Air Conditioning Contractors of America
Air Transport Association
Air-Conditioning & Refrigeration Institute
American Bakers Assn.
American Chamber of Commerce Executives
American Council of Independent Laboratories
American Cyanamid Company
American Feed Industry Assn.
American Furniture Manufacturers Assn.
American Gear Manufacturers Assn.
American Institute of Merchant Shipping
American International Automobile Dealers Assn.
American Machine Tool Distribution Assn.
American Seed Trade Assn.
American Small Business Assn.
American Society of Travel Agents
American Supply Assn.
American Warehouse Assn.
Arizona Chamber of Commerce
Assn. for Manufacturing Technology
Assn. of the Wall & Ceiling Industries-International
Associated Builders & Contractors
Associated Equipment Distributors
Associated Landscape Contractors of America
Associated Specialty Contractors
Automotive Parts Rebuilders Assn.
Berks County Chamber of Commerce
Birmingham Area Chamber of Commerce
Bureau of Wholesale Sales Representatives
CH2M Hill
Connecticut Mutual Life Insurance Company
Copper & Brass Servicenter Assn.
Dairy & Food Industries Supply Assn.
Door and Hardware Institute
Dresser Industries, Inc.
Florists Transworld Delivery Assn.
Fort Worth Chamber of Commerce
Georgia Chamber of Commerce
Greater Columbia Chamber of Commerce
Greater Knoxville Chamber of Commerce
Greenville Chamber of Commerce
Independent Bakers Assn.
Independent Insurance Agents of America
Independent Insurance Agents of Arizona
Independent Insurance Agents of Georgia
Independent Insurance Agents of Louisiana
Independent Insurance Agents of New Jersey
Indiana Chamber of Commerce
Indianapolis Chamber of Commerce
Industrial Distribution Assn.
Institute of Shortening & Edible Oils
Intellectual Property Owners
International Foodservice Distributors Assn.
International Assn. of Refrigerated Warehouses
Irrigation Assn.
Kamsco, Inc.
Kansas Chamber of Commerce & Industry
Lancaster Chamber of Commerce & Industry
Louisville Area Chamber of Commerce
Mechanical Contractors Assn. of America
Metro Newark Chamber of Commerce
Metropolitan Richmond, VA, Chamber of Commerce
Missouri Chamber of Commerce
Minnesota Chamber of Commerce
National Air Carrier Assn.
National Assn. of Chemical Distributors
National Assn. of Convenience Stores
National Assn. of Hosiery Manufacturers
National Assn. of Mirror Manufacturers
National Assn. of Wholesaler-Distributors
National Beer Wholesalers Assn.
National Club Assn.
National Electrical Contractors Assn.
National Electrical Contractors Assn., Inc. Montana Chapter
National Electrical Contractors Assn., Inc. W. Ohio Chapter
National Fastener Distributors Assn.
National Federation of Independent Business
National Food Brokers Assn.
National Grocers Assn.
National Roofing Contractors Assn.
National School Supply & Equipment Assn.
National Society of Public Accountants
National Tire Dealers & Retreaders Assn.
National Wooden Pallet & Container Assn.
National-American Wholesale Grocers' Assn.
Nebraska Chamber of Commerce & Industry
New Jersey State Chamber of Commerce
New Orleans & the River Region Chamber of Commerce
Opticians Assn. of America
Outdoor Power Equipment Institute
Peanut Butter & Nut Processors Assn.
Pet Industry Joint Advisory Council
Petroleum Marketers Assn. of America
Power & Communication Contractors Assn.
Recreation Vehicle Dealers Assn. of North America
Retail Bakers of America
Rubber Manufacturers Assn.
Screen Printing Assn. International
Society for Marketing Professional Services
Specialized Carriers & Rigging Assn.
Swain Electric, Inc.
Texas Chamber of Commerce
The Greater Washington Board of Trade
Travel Industry Assn. of America
U.S. Chamber of Commerce
Wholesale Florists & Florist Suppliers of America
Wichita Chamber of Commerce
Woodworking Machinery Distributors Assn.

Mr. DOLE. I thank my colleagues. I yield the floor.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The question occurs on the motion to lay on the table the amendment of the Senator from Minnesota.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is necessarily absent.

The PRESIDING OFFICER (Mr. KERRY). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 54, nays 45, as follows:

[Rollcall Vote No. 241 Leg.]

YEAS—54

Akaka	Bond	Bumpers
Baucus	Boxer	Byrd
Biden	Breaux	Cochran
Conrad	Inouye	Moynihan
Danforth	Johnston	Murray
Daschle	Kennedy	Pell
DeConcini	Kerry	Pryor
Dodd	Kohl	Reid
Domenici	Lautenberg	Riegle
Dorgan	Leahy	Rockefeller
Exon	Levin	Sarbanes
Feingold	Lieberman	Sasser
Ford	Lott	Shelby
Glenn	Mathews	Simon
Graham	McConnell	Stevens
Harkin	Mikulski	Warner
Hatfield	Mitchell	Wellstone
Hollings	Moseley-Braun	Wofford

NAYS—45

Bennett	Faircloth	Mack
Bingaman	Feinstein	McCain
Boren	Gorton	Metzenbaum
Brown	Gramm	Murkowski
Bryan	Grassley	Nickles
Burns	Gregg	Nunn
Campbell	Hatch	Packwood
Chafee	Heflin	Pressler
Coats	Helms	Robb
Cohen	Hutchison	Roth
Coverdell	Jeffords	Simpson
Craig	Kassebaum	Smith
D'Amato	Kempthorne	Specter
Dole	Kerrey	Thurmond
Durenberger	Lugar	Wallop

NOT VOTING—1

Bradley

So the motion to lay on the table the amendment (No. 761) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 757

(Purpose: Commending the United Nations on the establishment of an international tribunal to try war crimes in the former Yugoslavia, and calling on the United Nations to select promptly judges and prosecutors for the tribunal, and for other purposes)

Mr. SPECTER. Mr. President I call up amendment No. 757 on behalf of Senator DODD and myself and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for himself and Mr. DODD, proposes an amendment numbered 757.

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

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

The amendment is as follows:

At the appropriate place in the committee amendment insert the following:

The Senate finds: That

Numerous atrocities have been reported on the conflict in the former Yugoslavia;

Such atrocities against innocent civilians and prisoners would violate universally accepted law as embodied in the Geneva Conventions of August 12, 1949, for the Protection of War Victims; the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of October 18, 1907; the Convention on the Prevention and Punishment of the

Crime of Genocide of December 9, 1948; and the Charter of the International Military Tribunal of August 8, 1945;

In October 1992 the United Nations Security Council adopted Resolution 780 establishing a Commission of Experts to gather and evaluate evidence of such war crimes;

The Commission of Experts submitted an interim report dated January 26, 1993 which concluded that grave breaches and other violations of international humanitarian law had been committed in the territory of the former Yugoslavia, including wilful killing, "ethnic cleansing," mass killings, torture, rape, pillage, and destruction of civilian property, destruction of cultural and religious property and arbitrary arrests;

The Commission of Experts has been hindered in carrying out fully its legal charge because of insufficient resources;

On February 22, 1993, the United Nations Security Council adopted Resolution 808 establishing an international tribunal to try individuals accused of the commission of war crimes in the former Yugoslavia;

On May 3, 1993, the Secretary General of the United Nations issued his report which established the procedures for an international war crimes tribunal;

The United Nations is presently in the process of selecting judges and prosecutors for the international war crimes tribunal;

According to reports, the atrocities in the former Yugoslavia continue unabated; and

There is a dire need to establish promptly the tribunal and commence prosecution of alleged war criminals: Now, therefore, (a) the Senate hereby commends the United Nations for its recognition of the importance and necessity of the rule of law as evidenced by its establishment of an international tribunal for the prosecution of war crimes in the former Yugoslavia.

(b) It is the sense of the Senate that the United Nations should:

(1) expedite the selection of judges and prosecutors for the tribunal in order to begin prosecutions of alleged war criminals; and

(2) provide all assistance necessary to continue gathering evidence for such prosecutions.

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

Mr. SPECTER. Yes.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator will withhold for a moment.

The Senate is not in order. Senators will please take conversations out of the well and into the Cloakrooms.

The Senate is not in order.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I wonder if the distinguished Senator would be willing to enter into a time agreement on this amendment; and would he also be willing to stipulate as to what this amendment is about?

I want to be sure we do not get into a full-blown discussion here as to whether or not we should get involved in Bosnia, either on the ground or by delivering air attacks. As far as that is concerned, I think we ought to have a full-blown debate, but not on this bill.

Mr. SPECTER. Mr. President, if the President pro tempore will yield, I would be willing to have a short time agreement—as I said to the distinguished managers—of 10 minutes, equally divided.

I do not expect this to be controversial. I expect it to be very limited in scope. I do not expect it to involve the question of Bosnia. It is a very narrowly defined sense-of-the-Senate resolution; and that is dealing with the war tribunals only, not with any military action or not with Bosnia or Yugoslavia generally.

It commends the United Nations for steps taken so far and urges the United Nations to go forward with resolutions which have already been adopted by the United Nations for the appointment of judges and prosecutors, a mechanism for the war tribunal for prosecutions, and it is just that. It does not involve any broader issues at all.

Mr. BYRD. Mr. President, I thank the distinguished Senator.

If we could stipulate that the amendment has to remain within those narrowly defined limitations, we could have 10 minutes, equally divided, but if it gets beyond those limitations, that the time limitation comes off and the amendment comes down.

Mr. SPECTER. Mr. President, I have already discussed with the distinguished President pro tempore my willingness to do that. I do not think we will go beyond those limitations. I do not intend by this amendment to get into any far-flung debate which would tie up this important bill. It is very narrowly circumscribed, and this Senator will keep within those limits. I will just take a few minutes to speak.

Mr. BYRD. Does the Senator wish to have a rollcall?

Mr. SPECTER. I do not. I would take a voice vote.

Mr. BYRD. Mr. President, I now ask unanimous consent that there be a time limitation on the amendment not to exceed 15 minutes, 10 minutes for the Senator from Pennsylvania and 5 minutes for the opposition, if opposition develops; and that if the debate gets beyond the narrow confines as delineated by the distinguished Senator, a call for regular order will pull the amendment down.

The PRESIDING OFFICER. Is there objection to the unanimous consent request? Hearing none, it is so ordered.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair, and I thank the distinguished President pro tempore and the ranking member of the Appropriations Committee.

Mr. President, I can be very brief. There have been reports of atrocities in the fighting in Yugoslavia. Those atrocities are prohibited under international law.

The U.N. Security Council has established a commission of experts to gather evidence. Those experts have reported that there are serious crimes. The United Nations has adopted a resolution to establish an international tribunal to try individuals accused of war crimes.

I believe that this sense-of-the-Senate resolution will give impetus to what the United Nations is now doing, commending them for action taken thus far, and asking them to move ahead as promptly as possible with the mechanics of the appointment of judges and prosecutors and moving expeditiously to try the cases.

If I may have the attention of the distinguished President pro tempore, I have stated the essential factors. If there is no opposition, I am prepared to yield back the remainder of my time and to move the adoption of this narrow resolution.

The PRESIDING OFFICER. Is there further debate?

Mr. BYRD. This is a sense-of-the-Senate resolution, is it not?

Mr. SPECTER. It is.

Mr. BYRD. Mr. President, I know next to nothing about this particular matter. It is a sense-of-the-Senate resolution and the Senator has certainly kept to his word, as he expressed it earlier. I have no objection.

The PRESIDING OFFICER. Is there further debate?

Mr. HATFIELD. Mr. President, I have no objection.

Mr. SPECTER. Mr. President, I ask that the sense-of-the-Senate resolution be agreed to.

Mr. DODD. Mr. President, I rise in strong support of the pending amendment and I urge its immediate adoption. I also want to thank Senator SPECTER for his initiative on this very important issue. This resolution commends the United Nations for the work it has done so far in attempting to establish an ad hoc tribunal for the crimes committed in the former Yugoslavia and urges the United Nations to move with all due speed in completing this very important task.

Mr. President, over the course of the last year we have all watched with horror as the former Yugoslavia has been torn apart by a tragic and brutal conflict. This tragedy is compounded by the fact that the parties to this conflict, mostly the Serbian and Croatian forces, have engaged in willful and large-scale violations of the laws of war. As this conflict has continued the world has learned with increasing despair and devastation of concentration camps, of mass executions, of senseless slaughter based on ethnic and religious differences.

The atrocities that are being committed in the former Yugoslavia are clear and unmistakable violations of well-established international laws. Many of these are laws that, like the Geneva Conventions of 1949, were adopted by the international community as a response to the Holocaust. If we truly believe that we are a society that value the established rules of the international community—if we truly, believe in the rule and law and not in the rule of the jungle—then of one

thing there should be no doubt: the perpetrators of these crimes must be brought to justice.

Mr. President, since last fall the international community has been hard at work in carrying out this very task. In fact on May 25, 1993, the U.N. Security Council voted to establish and ad hoc tribunal with jurisdiction over all war crimes committed in the former Yugoslavia since the beginning of 1991. The successful completion of this tribunal is essential if our commitment to justice and our support for the rule of law are to be anything more than hollow words and empty statements.

Mr. President, I would also draw the attention of my colleagues to a related matter of even greater importance, in my view: the establishment of a permanent facility to try those accused of international crimes. Rather than establish an ad hoc tribunal every time the laws of war are breached, I believe the international community should move with all due haste to establish a permanent international criminal court. Indeed, this matter has been under the consideration of the United Nations for the last 4 years, in a little-known U.N. agency called the International Law Commission.

On that subject, Mr. President, I would draw the attention of my colleagues to a provision in the State Department authorization bill now awaiting consideration by this body. As reported by the Foreign Relations Committee last month, this bill contains a measure based on a proposal I introduced on January 28 that places the Congress on record in support of the establishment of an international criminal court and urges the Clinton administration to advance this proposal at the United Nations. If such a court is ever to be established by the international community, the United States must make clear its support for this very important concept.

Mr. President, I wish I could say with any confidence that in the future there will be no more Saddam Husseins, that there will be no more Slobodan Milosevics. But I think my colleagues will agree that that is an unlikely prospect. The challenge of establishing an ad hoc tribunal in the former Yugoslavia—indeed, the offering of this very amendment this evening—demonstrates that in the long run we must commit ourselves to the concept of a permanent international criminal court. If we truly believe we are a people ruled by law, there is simply no realistic or effective alternative.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Pennsylvania [Mr. SPECTER].

The amendment (No. 757) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

AMENDMENT NO. 762

(Purpose: To prohibit the use of certain disaster relief payments to satisfy the claims of persons who have twice failed to maintain flood insurance)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Colorado [Mr. BROWN] proposes an amendment numbered 762.

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

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

The amendment is as follows:

At the end of Chapter VIII add the following new section:

SEC. . PROHIBITED FLOOD DISASTER ASSISTANCE.

(a) GENERAL PROHIBITION.—Notwithstanding any other provision of law, no Federal funds made available for assistance under this Act in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property.

(b) AMENDMENT TO THE FLOOD DISASTER PROTECTION ACT OF 1973.—Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a)) is amended—

(1) By striking ",during the anticipated economic or useful life of the project,"; and

(2) By adding at the end of the following: "The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.".

(c) DEFINITION.—For purposes of this section, the term "flood disaster area" means an area with respect to which—

(1) the Secretary of Agriculture finds, or has found, to have been substantially affected by a natural disaster in the United States pursuant to section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. Section 1961(a)); or

(2) the President declares, or has declared, the existence of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.), as a result of flood conditions existing in or affecting that area.

Mr. BROWN. Mr. President, current law, section 4012(a) has a requirement for flood insurance. The amendment that is in the law already reads as follows:

After the expiration of 60 days following December 31, 1973, no Federal office or agency shall approve any financial assistance for acquisition or construction purposes for the use in any area that has been identified by the Director of this area as having special flood hazards in which the sale of flood insurance has been made available under this chapter.

It goes on, under the current statute, to spell out the details of this.

Mr. President, I am concerned about the operation of this provision. What the law appears to say is, we are not going to compensate anybody if they build facilities in the special flood hazard areas. That makes sense. If you are going to build in that special flood hazard area and you do not buy insurance, probably we should not be compensating you for it. That appears to be what the law says.

However, the way this law is now interpreted under the current disaster bill and other current disaster bills is that, if you are within that special flood hazard area and you have not purchased flood insurance and it was available and a disaster occurs, you can still go sign up for flood insurance and get full payment and recompense, even though you did not have insurance at the time the disaster occurred.

Perhaps that is a fair reading of the statute. We do not know the full legislative history.

It does not appear to be a complete reading, as you look at the statute.

In addition, though, Mr. President, there is this phrase: "During the anticipated economic or useful life of the project."

That refers to when you should have flood insurance. The way that has been interpreted is that you are only required to have flood insurance for 3 years.

Mr. President, here is the dilemma. You can have a disaster, have the Federal Government come in and pay you for that disaster, be required by law to get flood insurance, take out the policy, and 3 years later on a building that may last 50 years or 40 years or 36 years, under our tax laws' depreciation schedules, only be required to have flood insurance for 3 years; have a second disaster and the Federal Government ends up paying for the same construction in a hazardous area twice or three times or four times or as many times as that occurs.

In other words, our requirement, under the way this law is construed, is to not have a full commitment to buy flood insurance even though the Federal Government has had to pay for the problem once. I think that is a mistake. I think what we ought to do is say if there is a disaster and the Federal Government steps in to help compensate you in that disaster that you ought to have to have flood insurance. And if a second disaster occurs and you do not have the flood insurance you were required to originally, we should not pay you a second time. That is what this amendment does.

This particular amendment is within an area that other Senators are studying. I believe the Banking Committee is looking at this entire area and will within this session bring forth on this floor a series of reforms in this area. I bring this amendment up because my preference would have been to eliminate paying the second time if someone has had notice and gotten recompense. I do not think they should be paid a second time if they had not maintained the flood insurance they should. I think this statute is being misconstrued.

But at the request of Senators who are active in this area, who are in the process of drafting reforms, I want to withdraw this amendment. But, Mr. President, I want to make it clear that I think, one, this is wrong. This is wrong to stick taxpayers a second time. And, two, I want to serve notice that when this reform measure comes to the floor, I fully intend to make sure that this, I believe, mistaken policy is corrected.

Mr. President, at this point I ask unanimous consent that the amendment be withdrawn.

The PRESIDING OFFICER. The Senator has that right. The amendment is withdrawn.

The amendment (No. 762) was withdrawn.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I would like to take a moment to congratulate the Senator from Colorado for bringing this amendment in the first place and also to thank him for his forbearance in not proceeding forward with it at this moment.

The Senator from Colorado is 100 percent correct. We have an egregious situation on our hands in this country where we have an insurance system that has literally encouraged people to live within floodplains—and floodplains include not just what we see happening in the Midwest, it includes all of the coastline of the United States and other areas.

We have about $220 plus billion of liability we are carrying for properties that people have not insured. We have some, I think it is, 2 million-plus homes that are insured out of the 11 million that are in the floodplain. So the vast majority of homes are uninsured.

Senator D'AMATO and I have been working within the Banking Committee these last months to put together a piece of legislation which we are literally in the last hours of closing on that we believe will provide a combination of enforcement mechanism and fairness and balance to the need to recognize some people live within the floodplain—and there are reasons in certain parts of the country where that is the case—but that there must be some responsible approach to the insurance for those homes in those areas.

The Senator from Colorado has singled out one—and it is only one—of the egregious components of the evasion of responsibility which has characterized our flood program. We have people who go out and get emergency assistance and rebuild immediately right within the area of potential hurricane or beach erosion or storm. Then they turn around and get assistance again from the Federal Government when, indeed, the storm hits or the beach erodes. It is absurd. The only reason they can carry insurance is that the Federal Government is subsidizing it.

We should not be subsidizing people to live in the erosion areas where we know we can predict with certainty their homes are going to disappear. Moreover, we should, obviously, require greater responsibility and accountability with respect to the insurance program in these areas.

So, I thank the Senator from Colorado for his response on this issue, and I can guarantee we will be addressing this in September when we return.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 763 TO THE FIRST COMMITTEE AMENDMENT

(Purpose: To modify the provisions of the Federal Crop Insurance Act governing yield averages and to provide late planting coverage and prevented planting coverage under such Act)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER], for himself, Mr. GRASSLEY, and Mr. PRESSLER, proposes an amendment numbered 763.

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

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

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . FEDERAL CROP INSURANCE FAIRNESS.

(a) LEVELS OF COVERAGE IN EXCESS OF 75 PERCENT OF RECORDED OR APPRAISED AVERAGE YIELD.—Subsection (a) of section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508(a)) is amended to read as follows:

"(a) AUTHORITY TO OFFER INSURANCE.—

"(1) IN GENERAL.—If sufficient actuarial data are available, as determined by the Board, the Corporation may insure producers of agricultural commodities grown in the United States under any plan or plans of insurance determined by the Board to be adapted to the agricultural commodity involved.

"(2) CAUSES.—The insurance shall be against loss of the insured commodity due to unavoidable causes, including drought, flood, hail, wind, frost, winterkill, lighting, fire, excessive rain, snow, wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board.

"(3) PERIOD.—

"(A) IN GENERAL.—Except in the case of tobacco, insurance shall not extend beyond the period the insured commodity is in the field.

"(B) DEFINITION OF FIELD.—For purposes of subparagraph (A), in the case of aquacultural species, the term 'field' means the environment in which the commodity is produced.

"(4) STANDARD YIELD COVERAGE.—

"(A) IN GENERAL.—Subject to subparagraph (B), any insurance offered against loss in yield shall make available to producers protection against loss in yield that covers 75 percent of the recorded or appraised average yield of the commodity on the insured farm for a representative period.

"(B) ADJUSTMENTS.—Average yields established under subparagraph (A) shall be subject to such adjustments as the Board may prescribe to the end that the average yields fixed for farms in the same area, that are subject to the same conditions, may be fair and just.

"(5) LESSER YIELD COVERAGE.—In addition, the Corporation shall make available to producers lesser levels of yield coverage, including a level of coverage at 50 percent of the recorded or appraised average yield, as adjusted.

"(7) ADDITIONAL PREMIUMS.—Additional insurance under this subsection shall be provided for an additional premium (for which no premium subsidy or administrative subsidy may be provided) set at such rate as the Board determines—

"(A) appropriate to reflect accurately the increased risk involved; and

"(B) actuarially sufficient to—

"(i) cover claims for losses on the insurance; and

"(ii) establish a reasonable reserve against unforeseen losses.

"(8) LEVELS OF COVERAGE IN EXCESS OF 75 PERCENT OF RECORDED OR APPRAISED AVERAGE YIELD.—The Corporation may make available to producers on a farm located in a growing area a level of coverage in excess of 75 percent of the recorded or appraised average yield, as adjusted, if the Corporation determines that normal variations in yield in the growing area have not resulted in the payment of claims for losses while the level of coverage is limited to 75 percent.

"(9) MAXIMUM LEVEL OF COVERAGE.—Except as provided in paragraphs (6) through (8), the corporation may not make available to producers any level of coverage in excess of 75 percent of the recorded or appraised average yield, as adjusted.

"(10) PROJECTED MARKET PRICE OPTION.—One of the price elections offered shall approximate (but be not less than 90 percent of) the projected market price for the commodity involved, as determined by the Board.

"(11) UNINSURED LOSSES.—Insurance provided under this subsection shall not cover losses due to—

"(A) neglect or malfeasance of the producer;

"(B) the failure of the producer to reseed to the same crop in areas and under circumstances where it is customary to so reseed; or

"(C) the failure of the producer to follow established good farming practices.

"(12) INSURANCE RISKS.—The Board may limit or refuse insurance in any county or area, or on any farm, on the basis of the insurance risk involved.

"(13) AGRICULTURAL INCOME IN COUNTIES.—Insurance shall not be provided on any agricultural commodity in any county in which the Board determines that the income from the commodity constitutes an unimportant part of the total agricultural income of the county, except that insurance may be provided for producers on farms situated in a local producing area bordering on a county with a crop-insurance program.

"(14) ANNUAL REPORTS.—The Corporation shall report annually to Congress the results of the operations of the Corporation as to each commodity insured.

"(15) PROJECT MARKET PRICE LEVEL.—Beginning with the 1994 crop year, the Corporation shall establish a price level for each commodity on which insurance is offered that shall not be less than the projected market price for the commodity, as determined by the Board.

"(16) PRICE ELECTION.—Insurance coverage shall be made available to a producer on the basis of any price election that equals or is less than that established by the Board. The coverage shall be quoted in terms of dollars per acre.".

(b) DISTRIBUTION OF COVERAGE INFORMATION.—Section 508(m) of such Act (7 U.S.C. 1508(m)) is amended by adding at the end the following new paragraph:

"(3) DISTRIBUTION OF COVERAGE INFORMATION.—The Corporation shall distribute information on Federal crop insurance coverage offered for a commodity to each producer participating in a price support or production adjustment program established for the commodity.".

(c) LATE PLANTING COVERAGE.—Section 508 of such Act (7 U.S.C. 1508) is amended by adding at the end the following new subsection:

"(n) LATE PLANTING COVERAGE.—

"(1) IN GENERAL.—Producers on a farm entering into a crop insurance contract under this Act shall be offered late planting coverage that would permit planting after the final planting date for a commodity by up to 25 days for coverage under the contract.

"(2) REDUCTION OF COVERAGE.—If the producers on a farm purchase late planting coverage under paragraph (1), the yield guarantee shall be reduced by—

"(A) 1 percent per day for each of the 1st through 10th days planting is delayed beyond the normal final planting date;

"(B) 2 percent per day for each of the 11th through 25th days planting is delayed beyond the normal final planting date; and

"(C) such other amounts as can be demonstrated to offset the additional insurer risk of providing the coverage.

"(3) PRESUMPTION OF COVERAGE.—The producers on a farm shall have late planting coverage as part of a basic policy of insurance under this Act unless the producers notify the Corporation that the producers waive late planting coverage.

"(4) RAISES IN PREMIUMS.—If the Corporation determines that late planting coverage would raise premiums to such an extent as to discourage participation in the program established by this Act, the Corporation shall offer late planting as a separate endorsement.".

(d) PREVENTED PLANTING COVERAGE.—Section 508 of such Act (7 U.S.C. 1508) (as amended by subsection (c)) is further amended by adding at the end the following new subsection:

"(o) PREVENTED PLANTING COVERAGE.—

"(1) IN GENERAL.—Producers on a farm entering into a crop insurance contract under this Act shall have prevented planting coverage as part of the basic policy of insurance under this Act.

"(2) COVERAGE.—

"(A) IN GENERAL.—Subject to subparagraph (B), if the producers on a farm are prevented from planting a crop of a covered commodity as the result of excess moisture, drought, or other natural disaster, the producers shall be eligible for coverage equal to 35 percent of the guaranteed level of coverage for the crop.

"(B) OPTIONAL COVERAGE.—The producers on a farm may purchase additional coverage described in subparagraph (A) such that the total coverage for the producers is not greater than 50 percent of the guaranteed level of coverage for the crop.

"(3) SUBSTITUTE CROP.—The producers on a farm shall have the option of planting a substitute crop, in lieu of an insured crop, as part of the basic policy under this Act. The value of the substitute crop shall offset the remaining guaranteed level of coverage of the insured crop.

"(4) PRESUMPTION OF COVERAGE.—The producers on a farm shall have prevented planting coverage as part of a basic policy of insurance made available under this Act unless the producers notify the Corporation that the producers waive prevented planting coverage.

"(5) RAISES IN PREMIUMS.—If the Corporation determines that prevented planting coverage would raise premiums to such an extent as to discourage participation in the program established by this Act, the Corporation shall offer prevented planting as a separate endorsement.".

(f) YIELD AVERAGES.—Section 508A(b) of such Act (7 U.S.C. 1508a(b)) is amended by adding at the end the following new paragraph:

"(4) YIELD AVERAGES.—

"(A) ESTABLISHING A MINIMUM LEVEL OF INSURANCE PROTECTION.—The Corporation shall establish a minimum level of insurance protection for those covered producers who have had reduced yields due to natural disasters.

"(B) NONSTANDARD CLASSIFICATION PROCEDURES.—The Corporation shall make adjustments in the Nonstandard Classification procedures established under subpart O of part 400 of chapter IV of subtitle B of title 7, Code of Federal Regulations, to account for producer yield declines due to recurrent natural disasters.".

(g) DATE OF IMPLEMENTATION.—

The provisions of this amendment will take effect on January 1, 1994.

Mr. DURENBERGER. Mr. President, I rise today to offer an amendment on behalf of myself, Mr. GRASSLEY, and Mr. PRESSLER. This amendment will redesign crop insurance coverage. It will also get the Government out of the business of trying to make income replacement payments to farmers in the Congress whenever we experience a natural disaster, which is what brings us here today.

Today we are considering a bill that will cost $4.7 billion. Eventually the final cost of the Midwest disaster will be more than $10 billion. A large part of this cost is the result of agricultural crop losses.

One reason why the Government will pay disaster payments to farmers this year is because only 70 farmers in the 9 States that have been affected by the heavy rains purchased prevented planting coverage for their crops. Prevented planting coverage would have protected farmers who could not get into their fields to plant a crop. As a result of the heavy rains, farmers throughout Minnesota and the rest of the Midwest could not plant a crop this year.

In Minnesota, 1.1 million acres—or 27 percent of agricultural land was prevented from planting.

I visited the Elmer Petersen farm in Lucerne, MN, with Secretary of Agriculture Espy back in June. The reason we went to Lucerne, which is on the border of South Dakota, is because the airports in Mankato and Jackson and Marshall in the south central area of Minnesota were under 2 feet of water.

The Petersen farm was under water too—and a tractor was stuck in the mud midway through a field. Elmer Petersen is suffering this year.

And so is Richard Peterson of Jackson County, MN, who still has a shed full of seed. Richard could not plant most of his corn this year—and he is suffering the fourth year of significant crop loss since 1986. There are thousands of farmers just like Elmer and Richard throughout the Midwest.

In Minnesota, total crop losses are estimated at $1 billion. Iowa's losses are $1.2 billion, South Dakota's farmers have lost $757 million, North Dakota's crop losses have reached $300 million, Missouri crop losses are estimated to be $2.7 billion, Nebraska has registered $250 million in crop losses, farmers in Kansas have lost $450 million of crops to the floods, and Illinois farmers have lost $565 million.

That's only crop losses. Infrastructure repair and emergency services will send the final cost of this disaster well past $10 billion.

Now the Government has a big financial problem on its hands. And it is not the fault of the farmers either, because most of them—at least in Minnesota—never knew that prevented planting coverage was available to them.

Even representatives at the Federal Crop Insurance Corporation admit that crop insurance agents do not push prevented planting coverage because of the small commission. The option for late planting coverage is not pushed either—despite the fact that it does not raise the farmer's premium.

And what is ridiculous about this is prevented planting coverage is not expensive. A policy for an average corn farmer in Minnesota would only cost $1 per acre and would guarantee him $52.50 in return.

My amendment will make prevented planting coverage part of the basic Federal crop insurance policy. This year's statistics reveal why this change needs to be made; 56,000 crop insurance policies sold in Minnesota and none had planting coverage; 95,000 policies sold in Iowa and only 37 had prevented

planting coverage; 63,000 policies sold in Illinois and only 17 had prevented planting coverage; 66,000 crop insurance policies sold in Kansas and only 13 had prevented planting coverage; 18,000 policies sold in Missouri and only 1 had prevented planting coverage; 68,000 policies sold in North Dakota and none had prevented planting coverage; 57,000 policies sold in Nebraska and only 2 had prevented planting coverage; 8,500 policies sold in Wisconsin, and only 1 had prevented planting coverage; 10,000 policies sold in Kentucky and none had prevented planting coverage; and 31,000 policies sold in South Dakota and none had prevented planting coverage.

So, Mr. President, we need to change the incentives that have landed us in this mess. This amendment will bring some much needed reform to the program, making it more farmer friendly by providing farmers with real coverage. And—through increased participation—these changes will finally put the Federal Crop Insurance Corporation on sound footing.

These reforms will get the Government out of the business of income replacement when farmers are prevented from planting.

My amendment is very simple. It will do four things:

First and most importantly, this amendment makes prevented planting coverage part of the basic Federal crop insurance policy. That means that a farmer who cannot get into his field to plant—like Richard Peterson, and Grant Annexstad, and Sharon Clarke—would be reimbursed for 35 percent of his coverage. Farmers would also have the option to purchase additional prevented planting coverage up to 50 percent of their policy.

Farmers would be permitted to waive the prevented planting coverage. However, if they do, they will be going into the planting season at their own risk. Given the current disaster payment system of about 20 cents on the dollar, most farmers will stick with the prevented planting coverage.

Farmers will buy prevented planting coverage because it makes financial sense. An average corn farmer would receive $52.50 per acre in prevented planting coverage for only a $1 per acre premium.

Second, in case a farmer plants at the last minute because he is delayed beyond the FCIC—The Federal Crop Insurance Corporation—final planting date, this amendment would improve late planting coverage by extending the last planting period by 5 days, from 20 to 25 days. It would also prorate coverage loss by the day rather than by 5-day increments. Farmers currently lose 10 percent of coverage every 5 days. My reform would change the reduction to 1 percent per day for the first 10 days, and 2 percent per day for the remaining 15 days.

The reason for this much needed reform is simple. In southern Minnesota the growing season is a lot shorter than that in Georgia or Florida, as examples. In Minnesota the first frost comes by mid-October, so if you do not have your corn or beans in by July 1—you can be pretty sure that you have lost half your crop.

So, in Minnesota and the rest of the Upper Midwest, Mother Nature is already taking money away from you if you plant after the first week in June. There is no reason why crop insurance ought to be taking a huge grab at 10 percent of your coverage every 5 days.

Third, this amendment directs FCIC to establish a minimum yield coverage floor in order to protect farmers from having a series of diasters artifically lower their yield coverage.

Farmers currently have to provide 10 years of yield data to determine their crop insurance coverage. Some farmers in the Midwest are excellent farmers and during normal weather are averaging yields of 120 bushels an acre and up. However, if they have to work into their average 3 or more years of abnormally low yields—or zero-yield as some farmers will have to do this year—then the insurance will not reflect the true yield that the farmer ought to be covered. Without a minimum yield floor, it would be like insuring a $100,000 house for $70,000.

Fourth, and last, the amendment mandates the FCIC to send information on all available crop insurance to every farmer participating in Federal farm programs.

Farmers are not signing up for the different coverage that the Federal crop insurance offers because they do not know about it and they do not know what it would do for them. In order to fill this information gap, every farmer who participates in a Federal farm program would receive information on available crop insurance.

The Federal Crop Insurance Corporation has made numerous commitments to me during the past 2 years that they would make the changes administratively. I received these commitments in November 1991, March 1992, June 1992, November 1992, and June 1993. In June 1992, FCIC Administrator Jim Cason sat in my office and told me that he was going to make late and prevented planting coverage part of the basic crop insurance policy, and nothing happened.

So, here we are, Mr. President, with one of the largest disasters in a century. And FCIC is still telling me—next year. I do not trust this bureaucracy. The Senate needs to protect farmers from crop losses next year, and the way to do that is to approve this amendment.

The PRESIDING OFFICER. Is there further debate?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. How much time does the Senator wish on this amendment?

Mr. DURENBERGER. Mr. President, I think Senator GRASSLEY may wish to speak, so I would imagine 10 minutes would be an adequate amount of time.

Mr. BYRD. Mr. President, I ask unanimous consent that there be a time limitation of 10 minutes; that there be 10 minutes on the side of the Senator who has offered the amendment and not to exceed 10 minutes on this side.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Reserving the right to object, and I shall not. I wonder if the Senator might accommodate me in that I might have 5 minutes to speak as in morning business prior to the vote.

Mr. BYRD. Yes, I include that in the request.

The PRESIDING OFFICER. Is there objection to the request, as modified?

Without objection, it is so ordered.

Who yields time?

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DURENBERGER. Mr. President, I yield 5 minutes to my colleague from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 5 minutes.

Mr. GRASSLEY. Mr. President, before I speak in support of Senator DURENBERGER's amendment, I want to thank Secretary of Agriculture Espy because he made a decision today to turn a negative into a positive, and that is in regard to whether or not farmers in the disaster areas, because of floods, should be able to make forage, legumes, or what we call hay from their Conservation Reserve Program, the CRP, acres.

Before, the decision had been very difficult for farmers to make because the USDA was requiring 50 percent repayment of the annual payment that the farmer got from USDA for their CRP. So today Secretary Espy announced that he reduced that 50 percent down to 25 percent. He also announced administrative changes that will make it easier for counties to qualify for the release of the CRP.

Whereas, in the past, counties had to demonstrate a 40-percent loss of all crops in the counties, now counties can demonstrate a 40-percent loss on forage only in order to qualify for emergency haying and grazing. Traveling in Iowa as I have—15 out of the last 30 days—I can attest to the need for this change and the fact that it is going to be very helpful to farmers who have had a loss of crop, either from flooding or from excessive winterkill of legumes in our part of the State.

I do now want to speak in support of Senator DURENBERGER's amendment. I am very happy to be an original cosponsor of this legislation. I think this

legislation has broad bipartisan support. But, more important, it enjoys the support of every farm group that I know about. Had this legislation been enacted last year, our task today would be much easier. Had this legislation been enacted last year, farmers who purchase crop insurance would have had protection from the rains which forced them to plant their crops late in the season or who were prevented from planting their crops altogether because of either flooding or just plain old wet weather.

There is no more telling statistic which demonstrates the need for this amendment than this, and it is the fact that in the 95,000 policies for Federal crop insurance written in Iowa, only 37—only 37, 3-7—out of 95 had prevented planting riders written for them. I can tell you that every one of the farmers in my State would have appreciated prevented planting coverage or a more reasonable late planting option.

Had this legislation been enacted last year, the 70,000 farmers in Iowa holding 95,000 policies would now be looking forward to indemnity far and above, higher than the 21 cents on a dollar that current disaster legislation now provides.

To be sure, there will be those who will not vote for this despite the obvious merits. People might be taking shelter behind the notion that, well, let us wait to see what the administration will propose, or let us try the reforms soon to be enacted through the Agriculture Committee budget reconciliation package, or let us take more time to study the problem. But this, my colleagues, has been studied. There is not a person from the President on down—and I have heard him say that—who does not say that Federal crop insurance needs to be reformed. There is not a person in this body who does not believe that.

Well, now you have an opportunity to make some of those very important changes that need to be done to make Federal crop insurance workable so that disaster aid is no longer a necessity. My good friend from Minnesota, Senator DURENBERGER, has ably crafted such a package which will address many of the inequities in the current system.

Reforming the yield calculations, changing the late-planted option, and the prevented-planting riders are all absolutely essential to instilling in the farmer confidence in this program so that more farmers will buy it and there will be less need for disaster aid.

Had the Federal Crop Insurance Program included prevented planting as a standard element of a crop insurance program, the FCIC would today be the hero of the day and many farmers would have been fully covered, and our task today, talking about disaster aid for agriculture and the very important debate we had on Senator HARKIN's amendment, would have been much less needed.

I urge my colleagues to support this much-needed measure. Do not wait. Let us make some changes now so we do not get caught later on and have to apologize for inaction.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I believe I have 5 minutes.

The PRESIDING OFFICER. The Senator is correct. He is recognized for 5 minutes.

BUDGET RECONCILIATION

Mr. DOMENICI. Mr. President, I rise to deliver at least a partial explanation of what the numbers are in the reconciliation bill. We do not have everything, but we think these are pretty accurate.

It is astounding what numbers are being thrown around as to what this reconciliation bill is going to do. So I am just going to read off a few and then put a chart in the RECORD.

First, let me give you what is going to happen in 1994. Believe it or not, in 1994 there will be no cuts—zero for 1994. There will be $31.7 billion in new taxes and user fees. That is an extraordinary ratio—$31.7 billion in taxes to zero, effectively, in cuts.

Now, let us move to 1995. In 1995, Americans are being told we have to sacrifice. We are really cutting. Listen to the numbers: $4.3 billion in net cuts for the entire year of 1994, including whatever the Medicare and entitlement so-called reform or cuts are; taxes for that year, $45.9 billion. That is a whopping ratio of $10.60 in taxes to $1 in cuts for the whole of 1995, the second year of this agreement.

The third year of this agreement, the net spending reductions are finally something, $19.6 billion, and the taxes are $52.1 billion. The ratio in the third year is $2.61 in taxes and fees for $1—for $1—in reductions.

Now, I am not going to give you the next two. They get slightly better. But the net effect of all of this is that 80 percent of the so-called spending cuts occur in 1996, 1997, and 1998. The year the President will be running for reelection and the 2 years following will be 80 percent of the cuts that have been so nicely told to the American people that we are all going to sacrifice; Government is going to get smaller.

And, yes, on the tax side, they go up regularly from $31 billion, to $46 billion, to $52 billion, to $63 billion, to $61 billion, for a whopping total of $255 billion, versus a total cut of $119 billion. The final ratio, therefore, is $2.13 to $1. I might remind everyone, it is taxes first, spending later—maybe.

Now, having said that, there is a dispute over $44 billion. The Congressional Budget Office does not give the President credit for $44 billion which he continues to claim. We are going by CBO numbers. The $44 billion is taking credit for $44 billion of savings that are prescribed according to CBO, the Congressional Budget Office, by the 1990 agreement. They choose to say, since we have to cut them now, we will take credit for them. But the 1990 agreement provided for those cuts.

Therefore, I would like to submit the table for the RECORD. There is nothing in this evaluation that speaks of $500 billion in deficit reduction.

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

Mr. DOMENICI. I am going to finish and then I will sit down.

Mr. SASSER. There will not be any time then.

Mr. DOMENICI. Mr. President, $427.5 billion is what I find in the summary from our staff which I think is absolutely accurate, if not perilously close.

It is 427.5, and included in that is $52.6 billion in interest savings.

I ask unanimous consent that the table be made part of the RECORD, and I would be pleased to explain it to anyone. There are some who want to know about the $44 billion. We will be glad to sit down with them and show them what it is at every opportunity henceforth, now that I have some numbers.

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

CONFERENCE BUDGET RATIOS

[In billions of dollars]

	1994	1995	1996	1997	1998	1994–98
Spending Reductions:						
Appropriations	.....	1.3	−7.5	−22.4	−37.3	−65.9
Reconciliation	−3.3	−7.0	−13.8	−18.2	−22.2	−64.6
Other [1]	3.2	1.4	1.7	2.1	2.3	10.7
Subtotal	(*)	−4.3	−19.6	−38.5	−57.2	−119.6
User fees	2.2	2.4	3.7	3.1	3.3	14.7
Revenue increases	29.5	43.5	48.4	60.7	58.5	240.6

CONFERENCE BUDGET RATIOS—Continued

[In billions of dollars]

	1994	1995	1996	1997	1998	1994–98
Subtotal	31.7	45.9	52.1	63.8	61.8	255.3
Debt management	−0.5	−1.0	−1.3	−1.6	−2.0	−6.4
Debt service	−0.9	−3.4	−7.4	−13.4	−21.1	−46.2
Subtotal	−1.4	−4.4	−8.7	−15.0	−23.1	−52.6
Grand total	−33.1	−54.6	−80.4	−117.3	−142.2	−427.5
Ratio of taxes and user fees to spending reductions	(2)	$10.66 to $1	$2.66 to $1	$1.66 to $1	$1.08 to $1	$2.13 to $1

[1] Assumes $8.4 billion in intragovernmental offsets from future Federal pay legislation and $2.3 billion from the previous enactment of extended unemployment benefits.
[2] Not applicable.
Note: (*) Based on preliminary CBO/JCT estimates.

BUDGET AGGREGATES

[In billions of dollars]

	1993	1994	1995	1996	1997	1998
CBO capped baseline:						
Discretionary	548	539	540	555	570	585
Mandatory	771	815	866	913	983	1,050
Subtotal	1,319	1,354	1,406	1,468	1,553	1,635
Deposit insurance	−7	4	10	(*)	−13	−9
Net interest	199	211	231	251	271	293
Offsetting receipts	−67	−69	−73	−74	−76	−79
Total spending	1,443	1,501	1,574	1,645	1,734	1,840
Revenues	1,142	1,214	1,290	1,355	1,413	1,480
Deficit	302	287	284	290	322	360
Reconciliation conference:						
Discretionary	548	539	541	548	548	548
Mandatory	771	815	860	901	967	1,030
Subtotal	1,319	1,354	1,402	1,448	1,515	1,578
Deposit insurance	−7	4	10	(*)	−13	−9
Net interest	199	210	227	242	256	270
Offsetting receipts	−67	−71	−75	−78	−79	−82
Total spending	1,443	1,497	1,563	1,613	1,677	1,756
Revenues	1,142	1,244	1,334	1,403	1,474	1,539
Deficit	302	254	229	210	205	218

Prepared by SBC Minority Staff, August 4, 1993.
Note: (*) Less than $500 million. Details may not add to totals due to rounding. Preliminary CBO/JCT estimates.

Mr. DOMENICI. My last observation has to do with some of the statements about how many new jobs are going to be produced by this plan.

We have received a copy of a release in the planning and research of the State of California, one of their major departments. What they end up saying each and every year during this package is that the great State of California will lose 351,000 jobs rather than creating any. Over the 5 years, they are planning a job reduction of 1.75 million in the State of California. They put it this way:

This study estimates that the likely compromise deficit reduction plan currently being prepared will cause California to suffer a reduction in economic activity of $5.4 billion in 1994, an average of $13.5 billion over the 5 years, equivalent to two Loma Prieta earthquakes a year. Those are very big numbers, equivalent to three-quarters of California's personal income tax levies.

Noted Richard Sybert of the Office of Planning and Research, the Director.

There is a modification to it because the conferees have lowered the taxes to a 4.3 on gasoline. So there is an addendum to it adjusting these numbers to the ones that are correct.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Who yields time?

The Senator from Minnesota has 5 minutes remaining.

Mr. DURENBERGER. Mr. President, the Federal Crop Insurance Corporation has made numerous commitments to me and to others during the past 2 years that we have been working on this bill. Earlier I indicated the number of times in which they have told me they might take some action, and did not.

As a result, Mr. President, I put this bill together with my colleague, Senator DASCHLE, during the 102d Congress, introduced in March 1993, with Senators DASCHLE, PRESSLER, BURNS, DORGAN, CONRAD, GRASSLEY, KEMPTHORNE, and GORTON.

As my colleague from Iowa pointed out the amendment is supported by the National Corn Growers, the National Association of Wheat Growers, American Soybean Association, the National Barley Growers Association, the American Oat Association, all of their Minnesota counterparts.

One of the central aspects of the Federal Crop Insurance Fairness Act which we introduced was a reform in the way the FCIC determined yield coverage or yield average for coverage of crops. I am proud to say that the importance of using actual production history, was recognized by the Agriculture Committee and was incorporated into the budget reconciliation.

As far as I can tell, that is about all we are going to get in the way of remedial legislation from the process. While I know and I would expect that my good friend from West Virginia is going to raise a point of order on this, I must just say that the reality is that the Agriculture Committee has had an opportunity to deal with this subject and they have dealt with it only to the extent of raising the issue of actual production history.

The administration is not dealing with crop insurance reform in any particular way. Dealing with it in some other place is not going to protect the American farmers against having us debate after the next natural disaster that visits our part of the country—stand here and debate what should be a decision taken by every single farmer across this country.

I applaud the good sense of the Agriculture Committee. I applaud the good sense of those involved in the budget reconciliation. Even if farmers this year purchase coverage based on their actual production history, they did not and will not be able to purchase prevented planting coverage until something is done about it. This is the place

to do it. This is the vehicle, the only vehicle available to us to accomplish it.

I think, Mr. President, that there is no question that we must approve this amendment tonight. The experts have come from Minnesota, they have come from Iowa, from all over. We do not need to hear from any more experts on the subject. We do need action. It is ridiculous to face a situation here where we are talking about a good part of $5.7 billion being expended on the floor of the Senate simply because only 70 farmers out of literally hundreds of thousands in the flooded States purchased prevented planting coverage.

So I urge all of my colleagues to support this amendment. I yield whatever time remains.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BYRD. Mr. President, I understood that someone on the Agriculture Committee was going to come to the floor and oppose the amendment.

The administration intends to pursue, I am told, with the authorizing committees, comprehensive crop insurance reform with less reliance on Federal disaster payments for farmers affected by future natural disasters, and to provide such assistance in a more timely and cost effective manner.

Mr. President, it seems to me that is the way we ought to do business on this subject matter. We ought not be reforming. We ought not be enacting reform in a piecemeal manner on an appropriations bill.

I see the distinguished chairman of the Agriculture Committee coming to the floor.

I yield such time as I may have remaining to him in the event he wishes to speak.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair.

What is the parliamentary situation on time, Mr. President?

The PRESIDING OFFICER. The Senator from West Virginia controls 8 minutes, 27 seconds; the Senator from Minnesota has 1 minute, has yielded his time.

Mr. LEAHY. I would add only this: I have heard the debate and listened to what the distinguished chairman of the Appropriations Committee, the Senator from West Virginia, has said.

I think it would be a tremendous mistake to try to reform this crop insurance program on this bill. I have discussed this matter with President Clinton and with Agriculture Secretary Mike Espy. Both of them agree that this insurance program should be changed. They are working on developing reforms. My authorizing committee, the Committee on Agriculture, Nutrition and Forestry will be working on it. But I am willing to bet that there is not a person in this country who would write the reform of the system tonight, even if they were guaranteed that their proposal would automatically go into law.

I do not doubt the good intentions of the Senator from Minnesota or others. I would like to see the Federal Crop Insurance Program reformed and I am working with this administration on ideas to reform it. But this emergency flood relief package that we are debating tonight is not the right bill for that job.

Reform crop insurance is going to require significant hearings and tough debate. Different States are affected differently under the crop insurance program. In some States, there is very substantial enrollment. In other States enrollment is much less. This factor, as well as the types of crops covered and the use of different insurance options varies from State to State.

Let us have the hearings in the Committee on Agriculture. The President of the United States has assured me that he wants to work on this issue. The Secretary of Agriculture has made it very clear both in public and in private meetings with me and with Senators of both parties that he too wants a solution. I think we should give them an opportunity.

I intend to join with the chairman of the Appropriations Committee, the distinguished Senator from West Virginia, in whatever action he takes. If he moves to table this amendment, then I will join him in that. If he prefers to vote the amendment up or down, then I will join him in that approach. But I would hope that my colleagues would understand that as chairman of the authorizing committee, I intend to vote with the chairman of the Appropriations Committee on this matter, not because I disagree on the need for reforms but because I do not believe that this is the place to adopt them.

We are going to get one real bite at the apple on reforming crop insurance when the administration makes its proposals. Let us do the job right at the right time to do it.

I yield back to the distinguished Senator from West Virginia with the statement that I totally agree with the position he has taken.

Mr. BYRD. Mr. President, I thank my distinguished colleague, the Senator from Vermont.

Mr. President, does the distinguished Senator wish to say anything further?

Mr. DURENBERGER. Mr. President, I might take just 1 minute.

Mr. BYRD. Would the Senator like for me to yield a minute? I would be glad to.

Mr. DURENBERGER. I thank the chairman.

The PRESIDING OFFICER. The Senator is recognized for 1 minute.

Mr. DURENBERGER. Mr. President, I just did not draft this amendment simply because of this year's flood. We have had a whole series of droughts, then floods. And the preventated planting coverage has been an issue for all involved with agriculture for a long time. I found out 3 years ago the seriousness of the problem and found that it prevailed all through our area. I brought a lot of people in; drafted this amendment; and met with the people on the Agriculture Committee staff.

We have been talking about these crop insurane reforms for a long time. We have been in and out of the administrations both Bush and Clinton. I repeated it 100 times. I think if the Agriculture Committee were actually interested in doing this, we would have had a hearing. We have not had a hearing—even though Senator DASCHLE and I have requested a hearing from the Agriculture Committee.

I offered, myself, at various times to various people on the committee to be available to use any amendment as a vehicle.

It is a very bipartisan amendment. It is not all that complicated. It is a very complicated issue, as my colleague from Vermont says, but the bill itself is not very complicated.

I just sense a resistance on the part of both the administrations that we have served with to address the need for crop insurance reform. I appreciate the chairman of the Agriculture Committee coming to the floor. But, we are about to lose billions of dollars because we have not dealt with the issue of crop insurance reform. I do not see any vehicle other than this bill, therefore this is an appropriate vehicle.

This is not one person's idea of how to resolve the problem. It is the result of many people all over this country participating in the process.

So, much as I respect my colleague from Vermont, I just may say to my colleagues we do not have any choice other than the amendment before us if we really care about saving money—and saving our farmers.

The PRESIDING OFFICER. The time of the Senator has expired. Is there further debate on the amendment?

Mr. BYRD. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator from West Virginia has 3 minutes.

Mr. BYRD. I yield 2 minutes to the Senator from Vermont.

Mr. LEAHY. Mr. President, I note for my friend from Minnesota that this is not the only forum to take action. In the reconciliation bill, there is language on crop insurance reported from the Committee on Agriculture that fits within the Byrd rule. This language gives broad leeway to the Secretary of Agriculture to take immediate administrative action to address some of the most serious problems facing the crop insurance program. I am assured by the Secretary that he is going to act under this authority.

I expect that this legislation will pass and will be signed into law this

week. I think we ought to go forward with the reconciliation crop insurance reforms, allow the Secretary to use the new authorities. Then we should try to bring together those regions of the country and those diverse interests that have made reform difficult in the past and bring them together to produce a consensus on money forward.

I hope that the Senator from Minnesota and others will join with the Committee on Agriculture in working to resolve this issue. I think meaningful reform is possible. I would like to see a combination of the administrative actions that the Secretary of Agriculture will be able to take under the reconciliation legislation, plus the new proposals for future legislation forthcoming from the Administration. These two together will result in the best program for the country.

But this emergency disaster relief package that we are debating tonight simply is not the best vehicle to move forward on the issue.

Mr. PRESSLER. Mr. President, I rise in support of the Durenberger amendment No. 763.

The amendment will greatly improve the crop insurance program and enable the program to serve as a better risk management tool for farmers. I urge its adoption.

I was planning on offering a crop insurance amendment. However, I have decided to wait offering that amendment until the Senate turns to crop insurance reform later this Congress.

The amendment is quite simple. I would give producers the option to drop the 1993 crop year from future yield and rate determinations for Federal crop insurance. Without this amendment, farmers and ranchers likely will face higher premiums for less coverage under the Federal Crop Insurance Program. This should not happen.

It is now evident that the administration and Congress will be rewriting our crop insurance laws to provide risk management tools for farmers and producers facing natural disasters. For too long, we have seen the legal problems that exist when the Government provides both disaster payments and Federal crop insurance indemnities. More often than not, it has been the farmer who has suffered.

The Federal Crop Insurance Corporation uses a formula based on a 10-year average in determining a producer's yield and coverage rates. Including the 1993 crop in future yield and rate determinations could have a detrimental impact on thousands of producers in South Dakota and the Midwest in disaster areas. These detrimental effects could last for the next decade. As a result, future Federal crop insurance coverage could be cost prohibitive for many producers.

Though crop insurance is intended to be farmers' main delivery system for disaster assistance, this latest disaster could leave many producers without coverage. It also could raise the need for further disaster payments should new disasters strike. Eliminating the 1993 crop from future yield and rate determinations would make future crop insurance coverage a better risk management tool for producers.

Mr. President, there is growing consensus that crop insurance is the best way for the Government to provide relief from natural disasters for farmers and ranchers. My amendment would adjust the program to ensure greater effectiveness. I am joined by Senators GRASSLEY and DURENBERGER. I will work to see that the Senate adopt this amendment at a later time.

Mr. BAUCUS. Mr. President, I rise today in opposition to the Durenberger amendment to the Supplemental Appropriations Act. This amendment would add automatic coverage for prevented planting to the insurance packages offered through the Federal Crop Insurance Corporation.

On the surface, this amendment is worthwhile. The improvement of the crop insurance program is imperative and the time for reform is at hand. However, this bill is the wrong vehicle for this reform.

We have received assurances that the Clinton administration is committed to crop insurance reform. The authorizing committee for this program, the Senate Agriculture Committee, on which I sit, is committed to reform this program. Change is imminent but we must not confuse reform with relief legislation.

Disaster relief must be approved quickly. Reform of the insurance program should follow the customary procedure. Hearings should be held to obtain appropriate input. Then, this body can reform this vital program.

Mr. President, I support the goal of crop insurance reform. Meaningful reform is desirable but I must remind my colleagues that this is not the correct legislative vehicle. In our haste I am worried that we might cause the average citizen, our farmers, the flood victims, or the Federal Treasury to bear unfair burdens created in our haste.

I urge my colleagues to join me in opposing this amendment and I look forward to working together—soon—toward comprehensive reform in the vital crop insurance program.

Mr. President, I yield the floor.

Mr. BYRD. Mr. President, I yield the remainder of my time and make a point of order against the amendment as being legislation on an appropriations bill under Rule XVI.

Mr. DURENBERGER. I raise the defense of germaneness of the amendment to language already in the bill, and I ask for the yeas and nays.

Mr. BYRD. Mr. President, I move to table the question of germaneness.

The PRESIDING OFFICER. Is there a sufficient second on the motion to table.

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

The clerk will call the roll.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is necessarily absent.

The PRESIDING OFFICER (Mr. BINGAMAN). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 68, nays 31, as follows:

[Rollcall Vote No. 242 Leg.]

YEAS—68

Akaka	Graham	Mitchell
Baucus	Gregg	Moseley-Braun
Biden	Hatfield	Moynihan
Bingaman	Heflin	Murray
Boren	Helms	Nunn
Boxer	Hollings	Packwood
Breaux	Inouye	Pell
Brown	Jeffords	Pryor
Bryan	Johnston	Reid
Bumpers	Kennedy	Riegle
Byrd	Kerrey	Robb
Campbell	Kerry	Rockefeller
Chafee	Kohl	Roth
Cochran	Lautenberg	Sarbanes
Conrad	Leahy	Sasser
Coverdell	Levin	Shelby
DeConcini	Lieberman	Simon
Dodd	Lugar	Simpson
Domenici	Mack	Smith
Feingold	Mathews	Stevens
Feinstein	McConnell	Warner
Ford	Metzenbaum	Wofford
Glenn	Mikulski	

NAYS—31

Bennett	Durenberger	Lott
Bond	Exon	McCain
Burns	Faircloth	Murkowski
Coats	Gorton	Nickles
Cohen	Gramm	Pressler
Craig	Grassley	Specter
D'Amato	Harkin	Thurmond
Danforth	Hatch	Wallop
Daschle	Hutchison	Wellstone
Dole	Kassebaum	
Dorgan	Kempthorne	

NOT VOTING—1

Bradley

The PRESIDING OFFICER. On this vote, the yeas are 68, the nays are 31, the motion to table is agreed to.

The motion to table having been agreed to, the Chair rules that the Durenberger amendment numbered 763 is a legislative proposal offered to an appropriations bill, in violation of rule XVI. The point of order is sustained.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, while several Senators are present on the floor, there were 40 amendments on the list this morning. Out of 40 amendments that were listed under the unanimous-consent agreement—40 this morning—11 amendments remain.

I hope, and have some reason to believe, that some of these will not be called up. I wonder if we could get some indication from Senators whose names are listed as to whether or not they are really serious about their amendments.

The majority leader has indicated that he wanted to finish this bill tonight, and I am hopeful of doing that.

How about Mr. DECONCINI? Does he intend to call up his amendment?

Mr. DOLE?

He just indicated to me he may or may not.

Mr. DURENBERGER has one remaining and he will call that amendment up.

Can we get a time limitation on that amendment?

Mr. DURENBERGER. Mr. President, I am willing to enter into a time limitation. I need only 20 minutes for myself and a colleague on the amendment.

Mr. BYRD. Mr. President, I ask unanimous consent that there be a limitation on the amendment of 25 minutes: 20 minutes to the Senator who is the author of the amendment and 5 minutes to the opposition.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. I thank the distinguished Senator.

Mr. President, Mr. GRASSLEY is down for two amendments. Does he intend to call both amendments up?

Mr. GRASSLEY. Neither one.

Mr. BYRD. Mr. HELMS has two amendments.

Mr. KOHL has one amendment.

Mr. MACK; Mr. METZENBAUM; Mr. PRESSLER.

Very well. I think we made progress. It appears that of the 11 amendments remaining, that possibly we have about 8 left.

I thank the Senator for yielding.

Does he wish to proceed with his amendment?

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

AMENDMENT NO. 764 TO THE FIRST COMMITTEE AMENDMENT

(Purpose: To establish a procedure to offset "emergency spending" on natural disasters by rescissions, sequesters of discretionary and mandatory spending, and taxes if necessary)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER] proposes an amendment numbered 764 to the first committee amendment.

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

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

The text of Amendment No. 764 is located in today's RECORD under "Amendments Submitted."

Mr. DURENBERGER. Mr. President, this amendment is a relatively simple one. It would rewrite our policy on paying for disasters to bring them more in line with the demand of the American people for fiscal responsibility in the U.S. Congress.

I spent a fair amount of time debating a similar amendment as it would apply to the current disaster which has been visited on the Midwest, including my State of Minnesota, so I will not repeat a lot of the arguments both as to why it is appropriate on this bill and why it is just appropriate public policy.

Mr. President, the purpose of the amendment is to set up a procedure for us to deal with the issue which is before us in the future. I see the issue, as expressed in common parlance, as: If you are going to spend money, find a way to pay for it.

Spending in supplemental disaster relief bills after this year and after this particular disaster, except spending on capital expenses, will have to be offset within 1 year. Spending on capital expenses will not be affected by this amendment at all. The offsets in this bill will be recommended by the President, not the mandated offsets that I had in my amendment which came very close to passage here earlier.

These offsets are to be recommended by the President. They can be changed by the Congress. The President and the Congress may choose from rescission, sequestration, or, under certain specified circumstances, a tax.

In our earlier debate, we walked through, with the help of our colleague from Pennsylvania, a variety of these options and a variety of the consequences of the adoption. As a matter of policy, it is declared in this amendment that the President and the Congress should first try to make rescissions, then turn to sequesters, and only resort to taxes in extreme situations. Cuts in discretionary spending are made through the appropriations process in the following fiscal year following the disaster by lowering the discretionary spending ceilings.

Cuts in mandatory spending may be made by Congress and are patterned generally after Leon Panetta's 1992 bill with which the experts on this floor are familiar. Across-the-board, special treatment for low-income programs, retirement benefits, and Medicare. Social Security and Railroad Retirement are exempted.

Sense-of-the-Congress language is included in the amendment directing that administrative expenses should be cut before program muscle is cut. If offsets are not made in the spending bill, the President is required to sequester funds in the next fiscal year. That backup sequestration is from discretionary accounts only and according to the Budget Act procedures. Spending bills for disaster relief get expedited consideration—no nongermane amendments on the bill, no nonrelevant amendments and amendments between Houses or conference reports. And there is a 60-vote rule in the Senate.

No other mechanism is available to pass emergency relief supplementally. Taxes cannot be used to offset spending unless the spending in the bill and prior emergency supplemental relief bills in the current fiscal year exceed 1 percent of funds available for sequestration.

Any tax imposed in an emergency relief bill must expire at the end of the calendar year. Amounts sequestered from mandatory programs do not reduce the baseline for future spending.

Finally, the amendment provides sense-of-the-Congress language should the legislation be passed to have the President make periodic certifications as to the adequacy of preparations for natural disasters in States and providing for disincentives in the disaster relief program for States which have not made adequate preparations.

Mr. President, all of this has been put together both at the behest of experts and with the help of experts. These are not new ideas, new materials, and so forth. They reflect basically the concern of all of our colleagues who have approached the issue of demonstrating a sense of responsibility.

I have said it before and I will say it again: Because we ask people to pay for disaster relief does not mean we do not have heart. It is time to do disaster relief appropriately. It is time to make sure we do not run out of money for disasters in the future. It is time for us to take on the responsibility of preparing ourselves for the next response to a natural disaster.

This amendment will do that. I recommend it to my colleagues.

I will yield whatever time he may require to my colleague from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I am pleased to join my colleague from Minnesota, Senator DURENBERGER, in debating and presenting this amendment to the U.S. Senate. I do believe in the old adage that charity begins at home. I think there is not an American today who has not watched what has gone on in the Midwest and recognized that this country must respond. So I do associate myself with the remarks the Senator has just made, that this is not a question of whether we should or should not have disaster relief.

But I think those Americans who have displayed their concern and their voluntary effort in the contributions they sent in and in the recognition that this Government will respond are also increasingly frustrated by an administration that has just presented the largest tax increase in history, by a Federal deficit of nearly $300-plus billions, the fact that this is borrowed money, and the fact that we are not trying to go back into the budget and find the $4 billion-plus and pay for it, offset it, take care of it.

I said to citizens of my State I would vote for disaster relief. Someday Idahoans might need the same help that Illinoisans, Missourians, and folks from Iowa are needing at this moment. But we do have a responsibility to be responsible in the sense of paying for this. The Senator from Minnesota has now come up with what I think is a reasonable approach—in other words, if you will, to craft into our policy a mechanism by which we approach this. And the ultimate test, of course, after we have gone beyond 1 percent of the discretionary funding—if in fact a disaster were greater than that and the Midwest disaster might well get greater than that by the time all of the expenses, all of the losses are brought forward—that we then ask the American people to do what we should and that is to pay for it by some form of tax that would last only for the period of time of the payment. And that would be a responsible approach.

I have crafted an amendment. I recognize the hour is getting late. It was my plan to offer an amendment that was similar, only it would have sent the appropriators back into the 1994 budget to find the money. A similar amendment dealing with discretionary moneys was proposed and voted on a few moments ago, an amendment by the Senator from Minnesota, and this Senate rejected it on a 54–45 vote, I believe. So I am not at all convinced they would agree to my amendment.

But I do believe it is just very responsible for us to address paying for this issue, showing the charity, showing the responsibility we have, but at the same time saying to the American people we are not going to increase the deficit, we are going to ask those who gain favor by largess of the Public Treasury that they must share, too. Their increase in program or their increase in payment might be down by one-half of 1 percent this year because someone in the Midwest lost all that they owned, lost all that they had worked their lifetime to gain. That is just what this country is made of. That is the kind of stuff that I think all of us recognize is part of what we are about.

What we are not about, and what Americans have never been about, is piling up debt—not taking on the responsibility of paying for that which they owe. Yet we have not been that responsible, and this amendment offers that kind of responsibility that when there is a need and a national disaster we will not just pile it up on the debt side. We will ask the American people to be responsible in sharing with us, in caring for, and then paying for that which we have asked them to participate in.

So I am pleased to join the Senator. I think he has set forth a reasonable approach that suggests the President play an important role in this, that he could choose the rescission or sequestration under the circumstances, or offer forth even a revenue-raising measure, and he would have that kind of prerogative, and the Congress should respond by alternative selections. But it sets forth a clear procedure.

What we are doing now is just piling up debt and that is not responsible. What we are doing, though, is caring. And that is the conflict we find ourselves in. That is a conflict none of us should ask of ourselves or the taxpayers of this country. We ought to be able to cut discretionary spending; we ought to be able to offset and do those kinds of things that clearly are important, yet at the same time, as the Senator does in his amendment, hold whole those programs that are directly life-supporting as it would relate to Social Security and other programs. Those are separate and apart. That, I believe, is also important.

So I do stand in strong support of this and the sense-of-the-Senate legislation that the President make periodic certifications of the adequacy of the preparations for natural disasters in States.

I think it is important that this Senate say to the collective States of this Nation: You, too, must share in this and you ought to prepare. This is the second major and largest natural disaster we have had in a very short time, from the one in Florida that cost the taxpayers and the debt structure of this country billions of dollars, to this great disaster now of the Midwest that will cost the citizens and the debt structure of this country literally billions more.

So when you can stand here and debate a method for paying, it does not mean that you are not in support of participating and it does not mean that this Government is not in favor of doing what it ought to do. What it simply means is that we are only responsible when we put forth a mechanism that provides a payment process, and when we, in fact, offer up a method by which to pay it. I think the American people are asking that at this moment. That is what they expect of us, as their legislators, to do: To come forth with those kinds of reasonable and forthright approaches to resolve these problems, to move toward keeping our fiscal house in order, and why I am pleased to join with the Senator in the cosponsorship and the offering of this amendment.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER (Mr. LEAHY). The Senator from Oregon.

Mr. HATFIELD. Mr. President, I yield myself 2 minutes.

This may or may not be a good idea, but 31 pages—31 pages—that come under the jurisdiction of the Finance Committee, the Agriculture Committee, the Environment and Public Works Committee, the Governmental Affairs Committee, and who knows, I have only glanced through that little of it to identify at least four committees of jurisdiction. And no hearings.

I think it is fine to make our statements on the principle, but I cannot believe this body is ready to write this kind of legislation on an emergency supplemental appropriations bill.

The Appropriations Committee gets a lot of criticism from time to time of reaching out, and yet here we are asking the Appropriations Committee to carry this kind of 31 pages of legislation. It is not just a question of legislation on an appropriations bill; this is a violation of every concept of this body, of having committees of jurisdiction to authorize and an Appropriations Committee to appropriate and a Budget Committee to set standards, and so forth.

It seems to me that this is really—I hate to say it, but I do not think that I can really be serious on this, asking us to do this at this hour of the night on this bill, trying to meet the emergency needs of people out there suffering all through the Midwest. And, therefore, Mr. President, I do hope at the appropriate time we can move this on to a final decision.

I am not saying it is not the right of any Senator to bring this up. But I just want to remind the body, the very thing that oftentimes the Appropriations Committee is criticized for doing, now we are being asked to do it and want to impose it on a supplemental appropriations bill.

Mr. CRAIG. Will the Senator yield?

Mr. HATFIELD. I will be happy to yield.

The PRESIDING OFFICER. The Senator's 2 minutes has expired.

Mr. HATFIELD. On your time.

Mr. DURENBERGER. I am pleased to yield to my colleague how much time he needs.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I mean this in the most positive vein. This is 32 pages of legislation. Within less than 48 hours, we will be asked to vote on 1,800 pages of legislation that most Senators have not seen, nor will they have the ample opportunity to examine.

So you see, we have, in fact, done that before, and we will be doing it before this body adjourns for the August recess. It is not uncommon to establish public policy in the manner that has been proposed by the Senator from Minnesota and, of course, I think we all recognize that if this Senate were to choose to act tonight on this amendment, then the appropriate process would go forward that would allow those committees to participate, as they would under the appropriate authority.

So this form of legislation most assuredly is not unique. We will be deeply

involved in it before the next day is up, and it will be known as, of course, the great budget bill that will be debated on this floor in a very short time.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. HATFIELD. Will the Senator yield for just 10 seconds for me to respond to the Senator from Idaho? Eighteen hundred pages of legislation from the committee of jurisdiction, not on top of an appropriations bill, piggybacking on an appropriations bill.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. May I inquire how much time I have remaining?

The PRESIDING OFFICER. The Senator from Minnesota has 5 minutes 16 seconds.

Mr. DURENBERGER. Mr. President, I yield myself such time as I may need. I express my appreciation to my colleague from Idaho for the gentleness of his response. But it is true that within—and we have all been through this before—within just a matter of 48 hours, hopefully, we are going to see an 1,800, or whatever it is, page bill. I think I heard the first description of some of the basic numbers tonight; we have nothing behind it.

Mr. President, that may come from a committee, but let me say to my friend and colleague from Oregon that it affects the Committee on Agriculture, Nutrition, and Forestry; the Committee on Armed Services; the Committee on Banking, Housing, and Urban Affairs; Budget; Commerce, Science, and Transportation; Energy and Natural Resources; Environment and Public Works; Finance; Judiciary; Governmental Affairs; probably Foreign Relations.

Mr. HATFIELD. Will the Senator yield for a question? All hearings have been held in those committees, have they not been?

Mr. DURENBERGER. I do not know whether hearings have been held on all of these issues. I know there are ERISA waivers coming through—at least one that is coming through—that was never heard in the Senate Finance Committee. I could go through a variety of other legislation that is going to be on this reconciliation bill that will not have had a hearing. I cannot describe it in specific terms because I have not seen the bill.

We all know that it is going to happen and it is going to be there and it is going to be in front of us; it is going to be buried in 1,800 pages and nobody is going to find it. I have presented a long amendment, as my colleague said. I have had it distributed. People have an opportunity to see it before they vote on it. I have stood here, and I have explained it to everyone here.

I do not want to belabor the point of being prepared, but I only, with my colleague from Idaho, contest the allegation of my colleague from Oregon that just because this one happens to violate every rule of this body, that that is going to make a lot of difference to the people out there who are calling on our telephones here all day long. I think the last count I had at 5 o'clock today was something like 1,759 telephone calls on the kind of subject we are dealing with today: The issue of spending, the issue of taxes, and the issue of the deficit.

The people who are on my telephone could care less about the rules of this body or the rules of this place in which we work or at this hour of the night. It is only 10 minutes to 8. I do not know if there is an appropriate hour for us to debate the issue of whether or not this body will continue to spend money that it does not have, and it is not willing to ask people to pay for it.

I have raised the issue, Mr. President, before and I will raise it again: If, in fact, we cannot ask the people of this country to respond financially to the needs of this disaster, how in the world are we going to get them to respond to anything else? A $4.1 trillion debt, 14 percent of our Federal spending going into debt service rather than to meet the needs of this country.

It has to come to an end at some point in time. We came very close on a 54 to 45 vote to end it with regard to a disaster that has cost the people of my State $1.3 billion. I felt an obligation to stand up here and ask my colleagues to ask the people of this country to pay for it.

Now, this amendment that is before us now is not quite that kind of an amendment. The one before us now simply says before the next natural disaster comes, before the next one is visited on us, can we not get ready for it and put in place a system that will be responsive, not only to the needs of the people who are hurt by the disaster but to the next generation of Americans, the people who have to carry the load of meeting the decisions, the financial obligations and decisions that we make here.

The PRESIDING OFFICER. Who yields time?

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I yield myself 1 minute.

Mr. President, I think the point where we are today in this appropriations bill now has resolved itself down to really a simple question. The people may not be interested in the rules and regulations and procedures and processes of the Senate at this particular point, but they are interested in getting the relief to help ease their misery out there in the Midwest.

We are now at the point of whether we are going to go back and redefine the Budget Control Act, whether we are going to redefine procedures and processes not only under that act that involves at least four jurisdictions of this Senate without hearings, without any kind of presentations. At this hour the question is are we going to move this money out to the people in need or are we going to stand here and debate and argue the procedures and the processes of the Senate? That is the question.

The PRESIDING OFFICER. The Senator's minute has expired.

Who yields time?

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, in response to my usually very generous colleague from Oregon, let me simply say that if this amendment passes—and I certainly hope that it does—it will probably take the Appropriations Committee of the Senate maybe 2 or 3 or 4 minutes to persuade their colleagues from the House to agree to this particular amendment. We are not holding anything up. The money will get to Minnesota; it will get to Iowa, wherever, as soon as our colleagues are able to get the House to agree to this particular amendment.

The PRESIDING OFFICER. Who yields time?

Mr. DURENBERGER. Mr. President, do I have time remaining?

Mr. BYRD. How much time remains?

The PRESIDING OFFICER. The time of the Senator from Minnesota has expired. The time of the Senator from West Virginia is 1½ minutes.

Mr. BYRD. Mr. President, I know there is no rule around here, while we are talking about procedure, concerning consistency, but my friend from Minnesota voted earlier this morning to increase the budget deficit by $3.4 billion. He voted twice to do that. So I just say that for the RECORD.

Consistency, thou art a jewel but not the hobgoblin of little minds.

Mr. President, there are those who would belittle procedure. What is the difference between a lynching and a fair trial? Procedure. So it is important.

I yield back the remainder of my time. I make the following point of order. Section 306 of the Congressional Budget Act of 1974, as amended, prohibits consideration of an amendment in the jurisdiction of the Budget Committee unless offered on a measure reported from that committee. This amendment is in the jurisdiction of the Budget Committee, offered to a bill that has been reported not by the Budget Committee but by the Appropriations Committee. Therefore, I make a point of order under section 306 against this amendment.

Mr. DURENBERGER. Mr. President, under the relevant provisions of the Budget Act, I move to waive the point of order and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to waive the Budget Act. All time has expired. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is necessarily absent.

The PRESIDING OFFICER (Mr. FEINGOLD). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 35, nays 64, as follows:

[Rollcall Vote No. 243 Leg.]

YEAS—35

Bennett	Faircloth	McCain
Bingaman	Gorton	Murkowski
Brown	Gramm	Nickles
Chafee	Grassley	Nunn
Coats	Gregg	Packwood
Cohen	Hatch	Pressler
Craig	Heflin	Robb
D'Amato	Hutchison	Simpson
DeConcini	Jeffords	Smith
Dole	Kempthorne	Thurmond
Domenici	Lugar	Wallop
Durenberger	Mack	

NAYS—64

Akaka	Ford	Mikulski
Baucus	Glenn	Mitchell
Biden	Graham	Moseley-Braun
Bond	Harkin	Moynihan
Boren	Hatfield	Murray
Boxer	Helms	Pell
Breaux	Hollings	Pryor
Bryan	Inouye	Reid
Bumpers	Johnston	Riegle
Burns	Kassebaum	Rockefeller
Byrd	Kennedy	Roth
Campbell	Kerrey	Sarbanes
Cochran	Kerry	Sasser
Conrad	Kohl	Shelby
Coverdell	Lautenberg	Simon
Danforth	Leahy	Specter
Daschle	Levin	Stevens
Dodd	Lieberman	Warner
Dorgan	Lott	Wellstone
Exon	Mathews	Wofford
Feingold	McConnell	
Feinstein	Metzenbaum	

NOT VOTING—1

Bradley

The PRESIDING OFFICER. On this vote the yeas are 35, the nays are 64.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The amendment of the Senator from Minnesota contains provisions within the jurisdiction of the Senate Budget Committee. The bill before the Senate was not reported by that committee. The amendment therefore violates section 306 of the Budget Act, and the point of order is sustained.

Mr. BYRD. Mr. President, it seems that we are down to a possible 4 amendments out of 40, and I hope that not all 4 of these will be called up.

Mr. DECONCINI, I understand, will want to call his amendment up, and I understand that Senator DOLE will call up his amendment. So that is two out of the 4.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak for 4 minutes as in morning business.

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

IN-COMING CALLS AGAINST THE PRESIDENT'S BUDGET

Mr. GRASSLEY. Mr. President, last night, President Clinton made an appeal to the American people on behalf of a budget reconciliation conference agreement. He told Americans to let their voices be heard. He said the following:

I need for you to tell the people's representatives to get on with the people's business.

I assume that the President would then abide by the wishes of those who followed the President's advice and called their representatives, lest we feed the growing cynicism and the distrust of elected leaders.

Today my offices in Washington and Iowa have been inundated with calls; they are overwhelmingly against the President's budget. The people of Iowa have made it clear to me that their business is to cut spending first, and this budget fails to do that.

I received nearly 400 calls as of 3:30 this afternoon. They are still coming in. Seventy-five percent reject the Democrats' tax-and-spend budget.

I have talked with several of my colleagues, and their calls are coming in at roughly the same ratio, against the President's budget.

If these numbers hold up, it is very clear that the people do not want us to tax and spend. And in that case, the President has a moral obligation to pull down the bill. And then he should start all over again by cutting spending first.

Mr. President, it was a risky strategy for President Clinton to appeal directly to the people, because now he is obliged to do their bidding.

During the Reagan era, the great communicator that Reagan was—he employed a similar strategy. His was successful. He and the people saw eye to eye, not because he sold the message well or because he was simply a supreme communicator; it was because of the substance of his message. People want spending cuts and they do not want tax increases. It is just that simple.

With this budget, they are getting the opposite. In fact, this is the worst. This is worse than tax and spend, because the taxes are retroactive. So it is tax yesterday, and it is cut spending tomorrow. We tax the past, the present, and the future and we cut spending tomorrow. It is the "manana budget." No wonder the people are saying no.

Mr. President, last night President Clinton called for the "yeas and nays." Today, Americans are voting thumbs down. It is the President's move now. His is a moral obligation. I urge him to consider pulling down the bill and starting over.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

AMENDMENT NO. 765 TO FIRST COMMITTEE AMENDMENT

Mr. KOHL. Mr. President, I rise to offer an amendment in behalf of myself and the Presiding Officer, Senator FEINGOLD.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. KOHL] for himself and Mr. FEINGOLD, proposes an amendment numbered 765.

Mr. KOHL. 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:

Insert at the appropriate place in the amendment:

The Secretary shall implement an emergency forage program under the same terms and conditions used to administer the 1988 Emergency Forage Assistance Program authorized by section 103 of Public Law 100-387, except that it shall apply to pasture damaged by winterkill, excessive moisture, flooding, drought and/or related conditions in 1993. *Provided*, That funds for this purpose shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, is transmitted by the President to Congress. *Provided further*, That the entire amount of funds used under this paragraph is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Mr. KOHL. Mr. President, the administration has indicated its support for

this amendment. Simply, what this amendment would do is provide 50-percent cost-share assistance for reseeding of forage crops in areas with significant losses of forage crops due to this year's disastrous weather.

This program was used in 1988 to provide assistance to farmers with forage losses as a result of the drought of that year. This amendment would simply renew that program for purposes of this year's disaster.

Mr. President, this is a very modest amendment. The Congressional Budget Office has stated that the cost of this amendment would be only $18 million. But this amendment is very significant to livestock producers in the Upper Midwest, who depend so heavily on forage raised on the farms to feed their animals.

In my own State of Wisconsin, we have lost 750,000 of our 2.2 million acres of alfalfa. Other States in the Upper Midwest have also seen significant losses.

It is important to get those acres reseeded, not only from a standpoint of feed, but also for conservation purposes. The more bare ground we have, the more soil we are going to have running off our fields and into our streams.

I have discussed this with the chairman and his staff, and I have also discussed this amendment with Senator HATFIELD.

(By request of Mr. KOHL, the following statement was ordered to be printed in the RECORD:)

EMERGENCY FORAGE RELIEF BADLY NEEDED IN THE UPPER MIDWEST

• Mr. FEINGOLD. I am pleased to join my distinguished colleague, the senior Senator from Wisconsin, in introducing this amendment. Senator KOHL and I have been working on since this disastrous weather began earlier this year. This amendment is quite simple. It merely revitalizes the Emergency Forage Assistance Program which was in place during the 1988 drought and makes it applicable to the poor weather conditions occurring this year in the Midwest.

The Emergency Forage Assistance Program recognizes the devastating impacts of poor weather on livestock producers who grow their own forage. Dairy farmers who produce their own forage, primarily high quality alfalfa hay, are hit several times by this disaster. First, they have lost their forage crops to the poor weather resulting in drastic forage shortages in the Upper Midwest. As a result forage prices are abnormally high—in fact they are nearly double the normal price. This results in an increase in the cost of milk production and a decrease in milk yields. Farmers are either feeding dairy cows low quality forage or they are culling their herds due to the lack of feed. The cumulative effect of this is desperately low cash flow for dairy farmers.

Adding to the problems faced by so many producers is the fact that so many of the alfalfa fields have to be completely reseeded in order to get a forage crop next year and possibly a late cutting this fall. In Wisconsin, there are nearly 800,000 acres of alfalfa hay that must be reseeded. Other flood and disaster States in the Midwest that produce alfalfa hay or other type of forages have had those crops devastated by either winterkill, spring root rot, excessive moisture, and flooding. USDA has estimated that there are over 2 million acres of forage and pasture land that would be aided by this emergency forage program.

The cost of reseeding alfalfa hay can be as high as $100 per acre. During a crop year in which farmers can barely feed their cows, not to mention their families, they can ill-afford to reseed their fields. This amendment simply would allow eligible producers to receive a 50-percent cost share on the expense of reseeding pasture lands used for haying and grazing which were demolished by this year's bad weather. This will enable dairy farmers to reestablish their forage crops for harvest late this year and next year.

This type of assistance is almost as crucial to dairy farmers in my State as the overall disaster payments. If farmers are unable to reseed their fields this year they will suffer from the disaster of 1993 in 1994, when we revisit this devastating hay shortage. Without assistance many farmers in the Midwest be unable to reseed their fields.

So again, I thank the Chairman for his interest in this amendment, and for recognizing the severity of the forage shortage and the need for this very important legislation. I, too do not wish to slow down the process of approving this aid for farmers. So I will look forward to working with the chairman and the administration in the near future to find a solution to this very severe problem.

Thank you, Mr. President.•

Mr. KOHL. Mr. President, I am going to withdraw the amendment itself at this time because I recognize that the chairman of the Appropriations Committee would not want to have this amendment discussed and considered at this time, but I am going to take an opportunity after the recess to find a vehicle to offer this amendment, and I hope that at that time we can get it passed because I really regard it as a very important amendment, very important to my State and other States of the Middle West.

As I said, I simply do not want to complicate proceedings at this time, but I will ask that we find a vehicle and a way to get this amendment done after the recess.

The PRESIDING OFFICER. Without objection, the Senator's amendment is withdrawn.

The amendment (No. 765) was withdrawn.

Mr. BYRD. Mr. President, I thank the Senator for withdrawing the amendment.

I would like to be helpful with the Senator on his amendment and expect to be helpful at some point. It is not the amount of the money that is involved. It is probably a good amendment.

But Senator HATFIELD and I have a problem. We have a bill here that ought to move, and we do not want it to get delayed in the other body or in conference. We do not want to trigger in the other body amendments on the part of Members who would see an opportunity, if the Senate had amendments to this bill, to add amendments that are not supported by the administration in writing, clearly supported.

So we have been able to encourage Senators not to call up amendments today.

I do thank the Senator, and I will certainly try to be helpful to him on another vehicle before this session is out.

Mr. HATFIELD. Mr. President, will the chairman yield?

Mr. BYRD. Yes.

Mr. HATFIELD. Mr. President, I wish to associate myself with the comments made by the chairman as to the amendment of great interest to the Senator from Wisconsin. I do not, frankly, feel that the Senator from Wisconsin wants to have difficulty in finding an appropriate vehicle because I think most of us here, being realists understand that for the period of time that we are in recess the administration is going to be doing a lot of new evaluating, a lot of new assessing of what is going to be required to meet this tragedy.

I imagine the administration would have a vehicle pretty quickly in place or, that is, in mind as another supplemental appropriation.

Certainly, I join with the chairman in assuring the Senator from Wisconsin my commitment to helping in every way possible.

I urge the Senator also that maybe by that time the administration would incorporate the idea, or at least approve of it, so that we could then move ahead with what the administration has requested.

Mr. KOHL. I thank the Senator, and I thank Senator BYRD.

Mr. President, I yield the floor.

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

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

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 766

(Purpose: To provide relief in connection with the Bennett freeze)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Arizona [Mr. DECONCINI] proposes an amendment numbered 766.

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

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the appropriate place, add the following:

SEC. . (a) Notwithstanding any other provision of this Act, in the administration of this Act, $118,000,000 of the aggregate amount appropriated by this Act, from such accounts as shall be determined by the Director of the Office of Management and Budget, in consultation with the Secretary of the Interior, and other appropriate heads of Federal departments, agencies and entities receiving appropriations under this Act, and after consultation by the Secretary of the Interior with the tribal governments of the Navajo Indian tribe and the Hopi Indian tribe, shall be available as follows:

(1) $100,000,000 shall be available only for the purpose of providing relief under this Act to the former Bennett Freeze Area within the Navajo Indian Reservation in Arizona, which funds shall remain available until expended; and

(2) $18,000,000 shall be available for the purpose of providing relief under this Act to the former Bennett Freeze Area within the Hopi Indian Reservation, which funds shall remain available until expended.

(b) For purposes of this section, the term "former Bennett Freeze Area" means that portion of the Navajo Indian Reservation and that portion of the Hopi Indian Reservation for which the restriction referred to in subsection (c)(1) was lifted pursuant to an order of the United States District Court for the District of Arizona on September 25, 1992.

(c) For purposes of this Act—

(1) the 26-year restriction on construction and development on an area of the Navajo Indian Reservation and the area of the Hopi Indian Reservation, commonly referred to as the Bennett Freeze, referred to in section 10(f) of the Act of December 22, 1974 (25 U.S.C. 640d-10(f)) is deemed a natural disaster; and

(2) those portions of the Navajo Indian Reservation and the Hopi Indian Reservation for which such restriction was lifted pursuant to an order of the United States District Court for the District of Arizona on September 25, 1992, are each deemed a disaster area.

(d) No funds made available by this section may be expended on any portion of the Navajo Indian Reservation or any portion of the Hopi Indian Reservation with respect to which there is in effect a restriction on construction or improvement pursuant to the order of the United States District Court for the District of Arizona on December 18, 1992.

Mr. DECONCINI. Mr. President, this amendment directs that $118 million of the funds appropriated for this act be designated for providing relief to what is known as the former Bennett Freeze Area. This is a very parochial matter in my State, but it has significant national implications.

The former Bennett Freeze Area, which is on a map here behind me, is this area of the Navajo Reservation in Arizona. It is 1.5 million acres, located on the Navajo Reservation. It is the home of about 7,800 Navajo Indians.

These Navajos are in dire need of emergency relief assistance now. My amendment declares the former Bennett Freeze Area a natural disaster and thereby makes it eligible for disaster relief.

Mr. President, I am compelled to offer this amendment because I believe that the U.S. Government must own up to the disastrous emergency conditions which it has created for the people of the former Bennett Freeze Area communities.

Nowhere in this country have we ever allowed Federal Government policy to stifle the ability of citizens to lift themselves out of poverty and force them to live with the catastrophic consequences for more than a quarter of a century, as we have done right here on the Navajo Reservation.

Some would suggest that we have our own Gaza Strip in the Bennett Freeze. It is a national disgrace. It represents an ill—conceived effort by the Federal Government to hasten the resolution of conflicting tribal land claims to the 1934 Navajo Reservation.

Instead, the imposition of the freeze only penalized innocent people by suspending all construction and development projects they needed to improve and sustain their livelihoods. As unbelievable as it is, this great Nation denied its own citizens—in this case, Navajo native Americans—the right to make a better life for themselves and their children.

Mr. President, the tragedy is that the U.S. Government has pursued this policy for the past 26 years. It held people in a state of abject poverty. As a direct consequence, families live in substandard conditions which are shocking, trapped by a Government ban on construction and development, and prohibited from improving or building a home.

Mr. President, they were unable to repair a broken window, fix a leaking roof, or build a new home for growing families. Shockingly, the ban did not apply only to federally funded construction or development.

People who had hard-earned money and wanted to improve their house or build a house could not do it on this 1.5 million acres of the Indian reservation. The Bennett Freeze is an unfortunate example of government at its worst—destroying the individual incentive to take care of family and community needs. We denied them the chance to pursue and realize the American dream.

Mr. President, they were denied participation in all Federal poverty and disaster assistance programs. They were left behind while their neighbors and the rest of America enjoyed the benefits of progress, when we were having economic upturns and people could improve their homes and they could apply for Federal programs if they were applicable.

Their families and communities have been fractured. Frail elderly grandparents and parents were abandoned to live in isolation because their children were not allowed to build homes near them. Despite a 65-percent increase in family members since 1966, when the ban was imposed, no new homes were built.

The houses which were in place are now severely overcrowded and in serious disrepair. Ramshackle wood and tarpaper houses are commonplace. Aging structures have collapsed around inhabitants. I will show you some pictures in just a moment.

Many simply live with the daily risk of roofs falling in on top of them. One elderly man lives in a structure which may fall down on him any day. He has no other choice. He cannot improve it.

One other man resorted to living in a cardboard box which he fashioned into a makeshift shelter. That is this picture right here. Actually, an American lives in that house tonight. That is his house. He cannot improve it. He has no light, has no electricity, no running water. The wind will blow it down. He puts it back up.

Ninety percent of the existing housing lacks running water or indoor plumbing. An elderly woman walks 2 miles daily to get water because she does not have any other means of transporting water to her home.

Deplorable and unsanitary conditions caused by the lack of running water and electricity make the communities highly susceptible to the spread of infectious diseases and viruses like the Hantavirus.

Tribal and Indian health officials note a higher incidence of diseases like respiratory infections, skin diseases, hypertension, depression and gastro-intestinal infections among former Bennett Freeze residents.

School children struggled to do homework by candle light or kerosene lamps because 97 percent of their homes have no electricity. Many are forced to leave home for boarding schools at early ages because school buses cannot be driven on the rough dirt roads in their communities.

None of the communities located in the former Freeze area has been able to get roads, electricity lines, water and sewer systems, and other basic community infrastructure built. They must travel rough dirt roads, haul water from distant sources, rely on firewood for home heating and go greater distances to get basic services.

They have had no new schools, clinics or other community facilities constructed. They have been bypassed by

every federally funded construction program which has benefited other communities.

How, in good conscience, can we allow this travesty to continue. I plead with my colleagues to rectify this 27-year injustice by supporting my amendment.

This amendment will make available $100 million for the Navajo portion of the former Bennett Freeze area and $18 million for the Hopi portion of the former Freeze area.

My amendment will not allow the use of these funds for the development or construction of facilities in the area which has been determined by the District Court of Arizona to have been jointly used by both tribes—so only in the area that now has been divided.

This limitation preserves the modified freeze which the court reimposed in December 18, 1992, in response to the Hopi Tribe's appeal. My amendment will not contravene the court's order in any way whatsoever.

My amendment will only allow funds to be used to provide emergency relief for that portion of the former Bennett Freeze area for which the freeze was completely lifted by the U.S. District Court of Arizona on September 25, 1992.

This court decision represents the conclusion of the trial on the merits of the Hopi tribal claims to the 1934 Navajo Reservation as authorized by Congress under Public Law 93-531. In this decision, the court partitioned 60,000 acres of the 1934 reservation to the Hopi Tribe and the balance remained a part of the 1934 Navajo Reservation.

My amendment gives the OMB director the authority, after consultation with the two tribal governments, to work with the Secretary of the Interior and other heads of appropriate Federal agencies to determine how the $118 million for Bennett Freeze relief assistance will be allocated among the various accounts for which this bill appropriates emergency funding.

The two tribes have assessed the relief assistance required to construct homes, roads, water and sewer lines, electric power systems, and community facilities. They will have to justify the relief assistance needed to the OMB Director and the appropriate Federal agencies.

Bennett Freeze citizens have been denied the basic human needs for far too long. They have been unable to pursue the American dream like other American citizens. They have been forced to live as second class citizens for the past 27 years by the U.S. Government. It is time for us to end this travesty and tragedy.

I want to quote an Arizona paper, the Mesa Tribune, which published an editorial titled "Righting a Wrong," on July 21, 1993. I agree with the editorial which stated that "Families, some of whom are living in tiny one-room log and mud hovels, must be brought into the 20th Century." If Congress can find a way to help foreign countries like Russia, surely we can assist our own citizens to rebuild their lives and communities.

They are not asking for the impossible and we must respond after 26 years of neglect and deprivation.

Mr. President, I ask unanimous consent that copies of newspaper articles and an editorial which appeared in the Mesa Tribune and Washington Post describing the conditions in the former Bennett Freeze area be printed in the RECORD in their entirety.

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

[From the Mesa Tribune, July 21, 1993]

RIGHTING A WRONG

In the long and tortured history of misguided government policies dealing with American Indians, few have been as ill-conceived as a directive issued in 1966 that came to be know as the Bennett Freeze. It's a little-known story of government-imposed deprivation that has locked an estimated 2,500 families in grinding poverty on a 1.5-million-acre expanse of the western Navajo Reservation in Arizona and has driven many young Navajos from their ancestral homeland.

Congress has an opportunity now to right some of the wrong, if it can muster the courage to admit failure and provide the funds to being making amends.

The problem is rooted in a series of egregious errors by the federal government, dating back more than a century, in its clumsy efforts to set up reservations for the Southwest's Indian tribes. Various sets of seemingly arbitrary boundaries were drawn, sowing the seeds of a bitter dispute between neighboring Navajos and Hopis.

One of those boundaries, drawn by Congress in 1934, put the Hopi village of Moenkopi on the new Navajo Reservation. Rather than fixing the problem after the Hopis protested, Congress let it fester. The Hopi protest grew to include a historical and spiritual claim to much of what had been designated as the western Navajo Reservation, land long occupied almost exclusively by Navajos.

Still, Congress did nothing.

Finally, in 1966, then-U.S. Indian Commissioner Robert Bennett imposed a freeze over any new construction on 1.5 million acres of the western Navajo Reservation in dispute, including Moenkopi and Tuba City. Bennett's intention ostensibly was to force the two sides together to settle the land dispute. Instead, it heightened tensions.

And the freeze, originally intended as a temporary measure, dragged on year after year. For 27 years.

Growing families were not allowed to build new homes. Older homes could not be upgraded with plumbing and electricity. Schools and medical clinics could not be built. Economic development was nonexistent.

Enforced squalor has meant unsanitary living conditions and rising disease rate. Children, as they grew up and had families of their own, were forced to move off the reservation or to Tuba City, where the freeze was lifted. The results have been increased unemployment, alcoholism and other social problems as traditionally close extended families were forced to split up.

Finally, last fall a federal judge said enough is enough. He did what common sense dictated and what Congress should have done long ago: He designated the area around Moenkopi as Hopi territory and the rest of the disputed area occupied by Navajos as Navajo territory.

While the political problem hopefully has been resolved, decades of deprivation must be undone. Families, some of whom are living in tiny one-room log-and-mud hovels, must be brought into the 20th century.

Economic development must be sparked and public facilities brought up to date.

Navajo tribal officials estimate it would take $300 million to bring the former Bennett Freeze area up to the standards of the rest of the reservation. In tight budget times, it's unrealistic to expect that kind of money. So this spring they requested $21.5 million, mainly for housing, utilities, roads, schools and clinics.

It's a modest request, one that defines a house as a simple two-room, 1,000-square-foot box.

As Navajo President Peterson Zah told a congressional subcommittee earlier this month, if Congress can help the Russians through economic hard times, surely it can help 2,500 American Indians out of the deplorable conditions that Congress itself has tacitly imposed and tolerated.

U.S. Sen. Dennis DeConcini, D-Ariz., supports the $21.5 million appropriation, but admits it will be tough getting it approved, given tight budget constraints.

Yet it's the very least Congress can do to begin improving conditions that ought not be tolerated anywhere in this country. Failing to act now would be to perpetuate what amounts to nothing less than a national shame.

[From the Mesa Tribune, July 10, 1993]

NAVAJO, HOPI DISPUTE TRAPS FAMILIES IN PAST

(By Bob Schuster)

TONALEA.—At the end of a bumpy 20-mile ride on rutted dirt roads that extend like a spider's web across the red sandy hills and white limestone mesas of the western Navajo reservations, Nellie Benally sits locked in time.

At 89, she is spiritually and physically dependent upon the earth-covered hogan that resembles a tiny mountain, where she lives with her eldest daughter, Fay, and son-in-law Billy Shorty. For more than two decades she has longed for a small house and a few modern conveniences like running water and electric lights to make life a little easier in her old age.

But as with most of the estimated 2,500 families living in this 1.5 million-acre section of the western reservation, the housing improvements never came. The area, until last fall, was under a government-imposed construction freeze for nearly 27 years.

To the Navajo, everything in nature has gender, including the traditional one-room dwellings built of cedar logs and dirt. Nellie's is the male-style hogan, with the rough-hewn logs planted firmly in the ground in a 10-foot circle, extending upward and interlocking near the smoke hole at the peak. The doorway greets the rising sun to the east.

Here, near the base of Preston Mesa, she raised her three children. It is the same parched land where her mother and maternal grandmother raised their children, herded sheep and grew summer vegetables. That is the Navajo way, even if she is among a dwindling number of elders still living by it.

"If a house was built for me, I think I would feel better. My spirit would be raised

up a little bit," Nellie says through an interpreter. Sitting on a folding metal chair next to the tiny cast-iron stove in the center of the hogan, Nellie looks down at the earthen floor and explains that her requests to the local chapter for a house have gone unanswered.

A two-room house was allowed for Fay and Billy after their nearby hogan collapsed last year, but it was built a mile away in a low area prone to flooding, Nellie says. So the couple stay with Nellie on the family ancestral land that grudgingly has provided sustenance for generations.

The family has no car or truck, sand water must be hauled on foot or horseback from a windmill a mile or so away, but occasionally one with a truck will offer a ride into Kaibito 10 miles to the north or Tonalea 20 miles to the south. Or they will go on foot.

Neither Nellie nor Fay has heard about the Four Corners illness that has claimed at least 22 lives. By late last week, public health workers had not made it to this remote part of the reservation to warn residents about contact with deer mice, the rodents found to carry the hantavirus disease.

Most of those who have heard of the illness seem to take it in stride, joking that they have lived with rodents for generations with no apparent ill effects.

Log corrals to the east of Nellie's hogan hold the family's two dozen or so sheep and a couple of horses. On a rise a hundred yards behind the hogan is a ragged stack of cinder blocks intended for a house that was never built because of the construction ban known as the Bennett Freeze.

Similar piles of weathered building materials such as lumber, roof trusses, drywall and shingles sit near many of the aging and dilapidated homes here. In most cases, family members explain, they bought the materials years ago in hopes of upgrading, expanding or replacing older dwellings. Or to build a house for a son or daughter's new family.

Some were to be built by family members and others through tribal housing programs. But nearly all were blocked by Hopi tribal officials who, until last September, determined what, if anything, could be built in the freeze area over which the Hopis long have claimed ownership rights.

LEGACY OF BROKEN PROMISES

Alex Goodman was 4 years old when the Bennett Freeze was imposed in 1966 on his parents' land near White Mesa. Today, there is no place for him, his wife and six children to stay when they visit his parents in their ramshackle wood and tar paper hogan.

It is the large female-style octagon hogan, with a rickety shed of scrap boards nearby. Alex's father, Roy, hauls water by truck from a windmill two miles away, or goes into Red Lake about seven miles away when the windmill is broken.

"A lot of people have gotten nice houses (outside the freeze area), but he can't get a simple two-bedroom house," Alex says of his father, a 60-year-old Korean War veteran. "When we come here we sleep in the back of the truck."

Roy, who suffers from heart problems, arthritis and a severe hearing loss, jokes sarcastically about the many broken promises he and his wife, Ester, have heard over the years.

"For 20 years I have asked for housing improvements. I ask if there is any housing assistance for veterans, but I don't get any. First they told me I was on the waiting list. Now they say there is no money."

He shakes his head and laughs softly.

Then he talks about how none of his eight children was allowed to build a home near his. They and his 25 grandchildren had no choice but to move to Tuba City or even farther away.

"I don't have a good home. My kids have to live in town. There's no room when they come to visit so they don't come around much. We all feel bad about it," Roy says.

Of growing concern are his health problems, which he suspects are linked in part to the years back in the 1960s when he worked in a uranium processing mill in Tuba City. The workers were protected only by thin paper masks from the uranium ore dust that hung in the air, he says.

Local medical facilities lack the specialized equipment and doctors needed to treat him, he says, so he must travel to Phoenix when his health problems kick up.

Tribal officials say health has become a major concern in the former Bennett Freeze area because of crowded homes, unsanitary living conditions due to lack of indoor plumbing and refrigeration and lack of modern medical facilities. A recent survey by Navajo/Hopi Legal Services and the Indian Health Service found that only 7 percent of homes in a portion of the Tonalea Chapter within the former freeze area have electricity and none has running water, sewer or septic services, while 52 percent of Tonalea Chapter homes outside the area have running water.

The survey also found residents of the former freeze area are dramatically more likely than other Navajos to seek medical treatment for a variety of ills, including psychiatric problems.

Louise Yellowman, a Coconino County supervisor for 12 years whose district encompasses much of the former Bennett Freeze area including her Tuba City home, says unsanitary conditions here should be considered an emergency priority, especially in light of the deadly hantavirus outbreak on the eastern reservation. The same conditions that led to the increased rodent population there also are present on the western reservation, she says.

"From what we hear, it's a very dangerous situation if those rodents get that disease in this area," Yellowman says. "I don't think it's here yet, but the sanitation is 30 years behind."

Yellowman says it is heartbreakng to see the squalid living conditions of many of the area's elderly residents and to see younger residents forced to leave their parents to get housing and jobs elsewhere. Even if young people come back now that the freeze has been lifted, she says, there are no jobs because the construction ban also applied to business and industry.

She blames rising alcoholism in the area at least in part on the lack of employment.

"A lot of these young people are just wandering around with no jobs. It's really sad . . . We need industrial development of some sort for these young kids so that people can go to work."

GENERATIONAL TIES TO THE LAND

It was in 1925, when Andrew Nez was 6 years old, that he first met a Hopi when he was sent to boarding school in Tuba City. Residents of what later became the northern portion of the Bennett Freeze area say few Hopis had been seen in the area before the 1920s, and when they came it was to trade grain and handcrafts for the Navajos' mutton.

Nez, a former Tonalea Chapter officer and retired worker at the Navajo Generating Station at Page, says everyday relations between Navajos and Hopis have always been cordial.

Nez recalls his grandfather, Keshkali, telling stories about how he and other members of a band of Navajos known as the Manygoats Clan fled to Navajo Canyon in an area now inundated by Lake Powell to escape Army Col. Kit Carson's roundup of the tribe in 1863.

During Carson's campaign of burning hogans, slaughtering sheep and forcing Navajos on what became known as "The Long Walk" to Fort Sumner in what is now New Mexico, clan members hid out in the canyon, farming and herding a few sheep. When the 8,000 Navajos who survived starvation, cold and disease at Fort Sumner were allowed to return to their land four years later, the Manygoats Clan emerged from Navajo Canyon and returned to their ancestral lands, Nez explains.

The generational link to the land was broken again by the Bennett Freeze, he says, which has forced his only child to move away from the family's ancestral home.

HOPIS FEAR NAVAJO EXPANSION

For their part, the Hopis, who live mainly in a cluster of villages on their reservation surrounded by the Navajo reservation, maintain their claim to vast expanses of northern Arizona is spiritual as well as historical and physical.

"The Hopis view themselves as being the original and the indigenous tribe in northeastern Arizona," says David Warren, a Denver attorney whose firm has represented the Hopis in its land disputes since 1986. "And based upon their own traditions, they have a view that, practically speaking or in a religious sense, all of the land we're talking about in this entire area including most of the Navajo reservation was theirs by prior rights."

Warren admits the land dispute "has been one of those molasses lawsuits that has gone on for years and years and years" but adds the Hopis have a legitimate fear of being hemmed in territorially by the Navajos because of the Navajos' historical prosperity to disperse themselves over vast expanses of territory.

The Hopis have appealed last year's lifting of the freeze to a higher federal court and vehemently oppose the Navajos' push for additional construction in the area, says Warren, who acknowledges the Bennett Freeze has caused hardship for Navajos.

But he insists the Hopis have at least partially approved more than half of all requests to replace or upgrade housing in the area.

Edison Dale, program director in Tuba City for the Navajo Nation Housing Service, says that's simply not true. "Of 300 applications for homes in the past 13 years, only about 40 have been approved by the Hopis," Dale says. "Out of those, only one home got electricity and plumbing.

"If the family was living in a 20-by-20 shed that was falling down, that's what we had to build. Almost exactly the same as what was there before. To me, that's building substandard housing. * * * They cannot say they approved homes."

Nez, the former chapter officer, blames political leaders on both sides and in Washington, DC., for starting and perpetuating this and other land disputes. Many other residents of the area voiced similar complaints, often over what they claim to be a slow and indifferent tribal bureaucracy in Window Rock.

Hopis and Navajos continue to live amicably as neighbors in the Tuba City area, Nez points out, accusing politicians of whipping up suspicions for political gain.

"Navajos believe the land was put here for everybody to use," Nez says. "We're not supposed to be fighting over it."

[From the Washington Post, July 11, 1993]

IN ARIZONA, A 26-YEAR 'FREEZE' OF POVERTY

(By Sue Anne Pressley)

TUBA CITY, AZ, July 10.—Every Monday, Etta Begay's husband, Bennie, drives 140 miles to a job where he builds and repairs other people's houses.

This is a fact of great irony because, for 26 years, the federal government did not permit the couple to make a single repair or addition to their family shack in the Arizona mountains. There is no telephone, no running water, no electricity, not for the Begays or for nearly all of their Navajo neighbors.

Each day, buckets of water must be hauled in from Tuba City, five miles away. Ice is bought and stored in an icebox to preserve the family's meat. At night, Nizba Begay, 15, must do her homework by kerosene lamp. For years, Etta Begay hoped to build a pen for her sheep, but that was against the law.

This area, a 1.5 million-acre expanse of sandstone and sagebrush east of the Grand Canyon, is called Bennett Freeze. It takes its name from Robert Bennett, a former U.S. commissioner of Indian Affairs who in 1966 decided to try resolving a bitter dispute about who had rights to the land—the Hopis, who claimed it for cattle grazing, or the Navajos, who lived there in hogans and huts.

Bennett placed a "freeze" on construction and renovations. Intended as a temporary measure, the moratorium instead lasted until last Sept. 25, when a federal judge lifted it. Over the years, angry tribal disputes and federal neglect delayed resolution of the case.

The result is that this region of lonesome beauty, of snow-frosted mountainpeaks and dirt yards cluttered with old tires and snarling dogs, is among the poorest in the nation. Within the Navajo Nation, the federal reservation that covers 17 million acres in three states and is home to the country's largest Native American tribe, there is nothing quite like it.

"It's a national disgrace, this deprivation," said Sen. Dennis DeConcini (D–Ariz.), who held a hearing here Friday on the economic needs of Bennett Freeze for the Appropriations subcommittee on Interior and related agencies. "It's another Somalia, here in our own country."

To right the wrongs in Bennett Freeze, to build new roads and repair houses for its 10,000 residents and construct health centers and other facilities, the Navajo Nation is asking the federal government for $21.5 million for fiscal 1994 and $308 million over the next five to 10 years. "I doubt we'll get anywhere near that amount," DeConcini said, "but maybe we'll get a bite of it."

Witnesses presented considerable evidence of urgent needs within Bennett Freeze:

James Farrell lives in a cardboard box alongside U.S. 160 outside Tuba City;

Haskey Littleman's old hogan on Coalmine Mesa is about to fall down;

Norman Watson keeps tires on the roof of his house at Rare Metals; they anchor the plastic that keeps the rain and wind from coming in; and

Margaret Keebahe has to cook her meals on an outdoor fire on Shadow Mountain.

At the hearing, Navajo President Peterson Zah emphasized that, because of the restrictions in Bennett Freeze, its residents were prevented from participating in the anti-poverty programs of the late 1960s and have never been able to take advantage of other special services.

"I know of no other situation in history in which the U.S. government has imposed a land freeze like this," he said. "Housing conditions in the Bennett Freeze have been described as the worst in America. It is now poorer than the poorest county in the United States—Shannon County, South Dakota."

According to the 1990 census, Zah said, about 25 percent of households in Shannon County, located in the Sioux Nation in the southwest corner of South Dakota, lacked indoor plumbing. In Bennett Freeze, that is true for 90 percent of homes. Virtually every home in Shannon County has electricity; in Bennett Freeze, 90 percent do not.

Health officials testified that there are two and three times as many cases of diabetes, gastro-intestinal ailments and alcoholism at Bennett Freeze than on other parts of the reservation. School officials noted that Bennett Freeze children often must leave their families and attend boarding school in town because the dirt roads to their homes are far-flung and often impassable.

An anthropologist who has studied the Navajos for 20 years said such conditions are destroying the traditional "Navajo way" in that young people had to leave their parents' land because they could not build homes nearby.

The hearing was three hours of stories of desolation and terrible poverty. Etta Begay would have liked to have been there, not to testify because she is shy and more comfortable speaking Navajo, but because she is interested and to show her support. But Begay had another commitment that morning. She had to walk the eight-mile round trip to the store to buy the day's supply of ice.

Navajos have difficulty speaking about Bennett Freeze without revealing their hostility toward the Hopis. During those 26 difficult years, the Hopis used helicopters and field patrols, the Navajos said, to make sure that residents were not violating the freeze.

When Marie Johnson tried to repair a broken window in Kerley Valley, she said in an interview at her home, a Hopi official came by and posted a cease-and-desist order. When Reed Tso quietly tried to build his dream house outside Tuba City, he came home one day to find his carpenters idle. The Hopis had come, the workers said, threatening arrest. No one wanted to be arrested.

At the hearing, Vernon Masayesva, chairman of the Hopi Tribe, stressed that the freeze also has hurt people. He spoke of forgiveness but also he said he is tired of the Hopis being cast as the villains responsible for the freeze. "If you're outnumbered 10 to 1, any legal protection helps," Masayesva said. "When it comes to repairing roads and windmills, our priority was always last."

The Hopi reservation is completely enclosed by Navajo territory, and about 10,000 Hopis live in Arizona, compared with 250,000 Navajos scattered throughout Arizona, Utah and New Mexico. The Hopis have a different lifestyle—they are more communal, preferring to cluster in small, neat villages. The Navajos value privacy and find paradise in an isolated valley in view of the Sacred Mountain.

Because the principal Hopi settlement, Moenkopi, was exempted from the moratorium along with Tuba City, dominated by Navajos, it is true that the Bennett Freeze did not have such a dramatic impact on Hopi lives and housing.

Surprisingly, there was little rejoicing among Navajos in September when the freeze was lifted. Instead, there was great skepticism. The Hopis immediately moved to appeal the ruling. Besides, the Navajos said, construction costs had risen so much in 26 years that no one has enough money to repair their broken-down houses.

Zah said he becomes angry at government officials who try to excuse Bennett Freeze "with racist assertions such as: 'These Navajos want to live like this.'"

"There are, indeed, many Navajos who want to live in what we call the traditional way—living on the land, farming and raising sheep and practicing the Navajo religion," Zah said. "But that does not mean they wanted to live with inadequate sewers, unpaved roads, no running water or electricity and under the watchful eye of the Hopi tribe. They did not wish to live under a law that prevented them from building a new hogan if the old one collapsed or was struck by lightning.

"The Navajo do not want to live like this. Nobody does."

Mr. DECONCINI. Mr. President, I do want to thank the distinguished chairman of the Appropriations Committee, Senator BYRD, for the many, many, courtesies he has given on behalf of the native Americans. He is the chairman of the Interior Committee and he is very receptive to the problems on our reservations and has been extremely helpful.

I understand his opposition to this. It is not supported by the administration. But I cannot vote for an emergency bill without bringing to the floor one of the tragedies of American history right here that has been going on for 26 years. Because the court has lifted it. If we have a tragedy, we have a disaster, we have an emergency in the middle part of this country due to natural disasters, then we have one on the Navajo Reservation due to the action of the Federal Government—a severe, severe tragedy; a severe, severe emergency; a severe disaster. I hope this amendment will be adopted.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I compliment the Senator from Arizona on his dedication to the service of his people. He is a member of the Appropriations Committee, a fine member. It cannot be gainsaid that he is as active as anyone on that committee in being of help to his people, people whom he represents. But he proposes to declare as a natural disaster a situation that has existed on the Navajo Reservation for nearly 30 years—I believe the Senator indicated 26 years, to be exact—and which is a result of longstanding disputes between the Navajo and the Hopi Tribes.

The situation involves a freeze on infrastructure development which has existed in a portion of the Navajo Reservation since 1966. The freeze was imposed administratively by the Commissioner of Indian Affairs and later legislatively imposed by Congress, subject to a ruling by the courts.

Senator DECONCINI's amendment—now, get this—proposes that $118 million of the funds provided in this bill

for relief to the persons affected by the flooding in the Midwest be taken off the top and redirected to the Navajo Indian Reservation—$100 million—and the Hopi Indian Reservation, $18 million. Senator DECONCINI proposes to make funds available for the two tribes as a result of a decision in Federal district court last December.

As part of the decision, the judge allowed for a partial lifting of the construction freeze. The judge's ruling, however, is on appeal in the Ninth Circuit Court of Appeals. The Hopi Tribe, which would be one of the beneficiaries of the proposed amendment, opposes the amendment. The freeze was imposed in order to protect the rights of both tribes in the resolution of the legal claims to the lands in question.

It is premature to appropriate such significant additional funds while the status of the lands remains in dispute. By providing additional funds for infrastructure development on the lands in dispute, this could prejudice the future consideration of the matter by the courts.

Mr. President, we have had a long day. The Senate has heard many good amendments proposed. But, thus far, the Senate has, in its good judgment, rejected all amendments that have not been supported by the administration—and some that were supported by the administration.

I hope we will not add this amendment to the bill. Mr. HATFIELD and I, and all the members of the Appropriations Committee—and Mr. DECONCINI is a good one—we have to go to the House if we run into a stump between now and the final enactment of this legislation. I hope we will not give the House cause to try to offer a good many amendments.

So in the interests of helping the flood victims—that is what this bill is about—the administration has urged that we "keep the bill free of amendments that are not related to providing relief to the victims of the flood."

I am reading from a letter dated August 3 from the administration.

So, Mr. President, I am prepared to make a point of order against the amendment, and I do make a point of order against the amendment on the basis that it is legislation on an appropriations bill and, therefore, violates the provisions of rule XVI of the Standing Rules of the Senate.

Mr. DOMENICI. Mr. President, I wonder if the chairman will permit me to just have a discussion with Senator DECONCINI for 2 minutes before the Senator gets a ruling on the point of order?

Mr. BYRD. Yes.

Mr. President, I ask unanimous consent the distinguished Senator have 3 minutes, and then I would like to press my point of order.

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

Mr. DOMENICI. I appreciate it.

Mr. President, let me say while I agree with the chairman we should not pass this amendment tonight—and I doubt we will—I think we should all recognize this part of the Navajo and Hopi reservation cries out for some kind of legislation that will create a more equitable situation for the people there. This is as much the result of nobody wanting to address an issue, as much the result of lack of attention on the part of Congress and administrations, as anything else, and the easy way was to let stand an order by a man named Mr. Bennett, who was the head of the Bureau of Indian Affairs.

This has caused this to become desolation, and the people who are there are, indeed, desolate. However, I do not believe it belongs on a bill that is talking about flood relief.

I think, I say to my friend from Arizona, we ought to urge the Committee on Indian Affairs to look carefully at this to see what the best judgment is as to the role of the U.S. Government in this desolate area that has been deprived of almost everything except people living in conditions that are unlivable as a result of this order.

I think it should no longer be a matter of blame. We ought to decide constructively what can be done. So in that respect I want to commend him for bringing this issue before the U.S. Senate. It belongs in one of our committees for serious discussion, not continually put over onto some administrator who says, "Let's not do anything until these two Indian groups decide their problems among themselves," which has not occurred in 26 years.

I yield the floor and thank the chairman for yielding time to me.

Mr. BYRD. Mr. President, I withdraw my point of order for the time being.

The PRESIDING OFFICER. The point of order is withdrawn.

Mr. BYRD. I am willing to go to a vote on the amendment. I am not going to ask for the yeas and nays.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 766) was rejected.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I compliment the Senator on his efforts. It was not with great comfort that I opposed his amendment. He certainly has a serious problem, and he has presented it well.

Mr. HATFIELD. Will the Senator yield? I would like to also say to the Senator from Arizona, I admire and respect the Senator from Arizona for trying to make some kind of a resolution, create some kind of resolution on the Hopi-Navajo conflict, but I would like to take a second to say I recall Senator Paul Fannin in this body and as a colleague of his, I recall Senator Goldwater, as well, valiantly tried to resolve the ancient conflict between the Hopi and the Navajo.

I think it is just an example of the tenacity of the Senator from Arizona to continue this effort. I wish him well. As a member of the Indian Affairs Committee, I am most happy to assume a cooperative role and thank him for his manner of raising this amendment and letting it be voice voted.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. DECONCINI. Mr. President, I thank the Senator from Oregon for his, first of all, understanding and his little bit of history regarding this problem. This is really different from the Navajo-Hopi relocation problem, which is another big problem on this large reservation in Arizona that has to be dealt with and is still being dealt with.

I also appreciate the position of the President pro tempore and chairman of the Appropriations Committee. He has a bill to get through here.

The boundary bill of 1934 confirmed ownership to what is now known as the 1934 Navajo reservation lands to the Navajos and other Indians residing on these lands. Starting in the early 1960's, the Hopi Tribe began to assert its claims to the 1934 lands.

In 1966, the BIA Commissioner imposed an administrative freeze on all development and construction in the 1.5 million acres of the 1934 Navajo Reservation.

He took this action in response to the Hopi Tribe's legal counsel assertion that Hopi tribal approval was required on all development involving the 1934 lands.

The Commissioner acknowledged that financial hardships would be imposed on both tribes by not allowing either tribe to take unilateral actions within the area that trespass on the rights of the other.

He stated, "the period of hardship and administrative difficulties would be shortened * * * by a friendly confrontation of the tribes, to the end that in face-to-face talks they might agreeably negotiate * * * their respective interests and thus form the basis for an early and amicable legislative" settlement.

In 1972, the freeze was modified to exempt the Moencopi Village area where the Hopi residents of the 1934 reservation lived. This allowed the Hopi tribal members to be exempted from the devastating impact of the development ban.

In 1980, Congress authorized the District Court of Arizona to settle the tribal claims to 1934 reservations. It

also codified the Bennett Freeze which was to remain in effect until the Court had determined the rights of the litigating parties (Public Law 96–305).

EFFECT OF THE FREEZE

The freeze did not prevent Hopi residents of the 1934 reservation from building homes because their residential area—the Monecopi Village was exempt from the freeze.

By and large the people who were hurt the most are the Navajo people who live in scattered homesites all over the land subjected to the freeze.

Mr. President, I will have to indulge this body again, and maybe again, as well as the committee system. I cannot in good conscience satisfy myself with the defeat of this amendment, nor will I be deterred by the defeat of this amendment. I am intent on being sure that there is ample discussion on this and that some relief be brought to the Native Americans on the Navajo Reservation and the Hopi Reservation.

I thank the Chair, and I thank the distinguished Senator from West Virginia.

Mr. BYRD. Mr. President, I believe there is only one more amendment, if it is called up. Senator HATFIELD and I have four amendments which we wish to present en bloc and they have been agreed upon on both sides.

AMENDMENTS NOS. 767, 768, 769, AND 770, EN BLOC

Mr. President, I send those four amendments to the desk. I ask unanimous consent that they be considered and agreed to en bloc; that the motion to reconsider be laid on the table en bloc; and that appropriate statements be included in the RECORD at the appropriate place in explanation thereof, and that the several measures appear in the RECORD as though acted upon individually.

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

The amendments considered and agreed to, en bloc, are as follows:

AMENDMENT NO. 767

Proposed by Mr. BYRD:

On page 22, at line 8, after 1993 insert: "and other disasters".

DESTRUCTION OF CHUM SALMON RUN IN THE ARCTIC-YUKON-KUSKOKWIM RIVER REGION OF ALASKA

Mr. STEVENS. Mr. President, in the winter of 1988–89 Alaska experienced an extremely severe and unusually cold winter which froze salmon fry overwintering in the river systems of the Yukon-Kuskokwim River Delta. Temperatures dipped below the 80 degrees below zero that National Weather Service thermometers are capable of measuring.

In 1989 then Alaska Governor Cowper declared a disaster in the region which includes 52 Eskimo villages and more than 20,000 people. The region is roughly the size of the States of West Virginia, Connecticut, Delaware, Rhode Island, and New Hampshire. I will ask unanimous consent that Governor Cowper's declaration be printed in the RECORD.

Shortly after Governor Cowper's 1989 designation, a Presidential declaration of disaster was made due to freezing problems associated with water and sewer facilities and because of the inability at the time to obtain goods and services in much of interior Alaska. There are no roads in the area, and planes were grounded due to frozen fuel lines. I will ask unanimous consent that President Bush's disaster declaration be included in the RECORD.

However, it was not known at the time that the salmon fry had been destroyed. As a result of the deep freeze, the salmon killed in 1988–89 did not return to the rivers to sqawn this year as they should have. Instead of 1.8 million chum salmon, the catch in the summer of 88—only 33,00 fish returned this year, a devastating 98-percent reduction. I will ask unanimous consent that the salmon return figures prepared by the Alaska Department of Fish and Game for the past 5 years be included in the RECORD.

With an average unemployment rate in the region of 48.5 percent according to the Department of Labor and a rate in some villages exceeding 80 percent, the Yupik Eskimo people of the region rely on hunting and fishing for their livelihoods. The average income for the region is only $5,059 and 42.6 percent of the people live below the poverty line according to the 1990 census. Roughly 80 percent of people's subsistence food comes from fish—primarily salmon.

There are no other alternatives to hunting and fishing for the Eskimos to support their families. They are forbidden from developing their own Native lands because Congress included them in the Yukon-Kuskokwim National Wildlife Refuge, the country's largest refuge which is larger than the State of West Virginia.

Development of the coal, gold, timber, and oil, and gas on Native-owned lands located within the refuge is forbidden by section 22(g) of the Alaska Native Claims Settlement Act. I will request unanimous consent that a copy of that provision be printed in the RECORD.

Because of the near elimination of the salmon run, the State Department of Fish and Game closed all commercial chum salmon fishing in the region and for the first time ever closed the subsistence fishery as well. The Eskimo people are now forbidden from taking the few chum salmon returning to their rivers.

Deprived of their primary source of food and their only cash income, Alaska Gov. Walter J. Hickel declared a disaster in the Kuskokwim River region of Alaska on July 19, 1993 and has asked for Federal assistance. I will ask unanimous consent that a copy of the Governor's disaster declaration and his subsequent letter to President Clinton requesting disaster assistant be included in the RECORD.

In order to meet short-term needs of the people of the people and to restore the fishery, funds are needed to address the region's economic losses estimated at between $8 and $15 million by the State of Alaska and the Association of Village Council Presidents.

An additional $25 million is needed to construct fisheries enhancement projects, expand sonar coverage, conduct aerial escapement surveys, develop a fishery recovery plan, and provide for other needs.

It was my intention to offer an amendment to provide the funds necessary to address these needs to the emergency supplemental appropriations bill currently pending before us. However, I am informed that the Office of Management and Budget objects to the amendment, and believes that the urgent needs of the region can be addressed within previously appropriated funds. I will ask unanimous consent that the copy of Director Panetta's letter which OMB provided my office be included in the RECORD.

While it would be my preference to address this problem in the context of the pending legislation, that is not possible without the administration's support. However, I am told that OMB will form a task force to address these urgent needs, and I am grateful to Director Panetta for his willingness to consider the plight of the Eskimo people. I look forward to working with Director Panetta in the days ahead to identify specific programs that can help restore the chum fishing runs and to ensure the Eskimo people have the needed resources to make it through the winter.

I ask unanimous consent that the documents to which I referred be printed in the RECORD.

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

STATE OF ALASKA, DECLARATION OF EMERGENCY

Whereas, the State of Alaska has experienced extreme cold weather conditions and unusually harsh winter conditions; and

Whereas, current weather forecasts indicate that extreme weather conditions will continue and could likely deteriorate further; and

Whereas, as a result of these conditions, scheduled delivery systems have been disrupted to rural villages statewide, causing shortages of essential commodities; and

Whereas, other villages are experiencing cold weather related problems in the operation of water, sewer, electrical power generation and heating systems, the failure of which will require emergency response action in order to prevent loss of life and property;

Now, therefore, on this 28th day of January, 1989, under the authority granted by the Alaska Statutes, Section 26.23.20, I, hereby declare that a condition of emergency exists to mitigate the effects in areas of the extreme conditions throughout Alaska;

Further, the Director, Alaska Division of Emergency Services, is hereby authorized to

utilize funds from the Disaster Relief Fund for response to conditions induced by extreme weather that pose an immediate threat to the lives and property of residents and local governing bodies of the affected areas. The Director, Alaska Division of Emergency Services, is further authorized to task, as necessary, the state departments and agencies to provide appropriate assistance in accordance with the State Emergency Plan.

Further, any significant incident requiring extensive recovery assistance or anticipated extensive use of funds will be handled as a separate independent declaration to authorize the commitment of additional funds to the specific event/jurisdiction.

This declaration is applicable to incidents occurring within thirty days of today's date.

STEVE COWPER,
Governor.

THE WHITE HOUSE,
Washington, DC, May 10, 1989.

Hon. JULIUS W. BECTON, Jr.,
Director, Federal Emergency Management Agency, Washington, DC.

DEAR MR. BECTON: I have determined that the damage in certain areas of the State of Alaska, resulting from severe freezing conditions during the period January 15—February 15, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288, as amended by Public Law 100-707. I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate fro funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93-288, as amended by PL 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

Sincerely,

GEORGE BUSH.

FACTS CONCERNING THE KUSKOKWIM RIVER CHUM SALMON RUN

1. The peak of the run into the Kuskokwim River historically occurs during the first week in July.

2. In 1987 the Alaska Department of Fish and Game tagging studies indicated a travel time from the False Pass Fishery to the Kuskokwim River of between 21 and 25 days.

3. Based on those tagging studies, by July 1, Kuskokwim chum salmon are no longer found in the False Pass area.

4. Historical commercial ohum salmon catches have been:

	Kuskokwim River	June False Pass	North Peninsula	Post June South Peninsula
Year:				
1987	574,336	443,000	368,700	933,300
1988	1,381,674	527,000	393,500	1,378,200
1989	749,182	456,000	157,200	538,200
1990	461,624	519,000	125,800	713,800
1991	431,802	772,000	191,300	815,400
1992	345,862	426,000	332,000	927,000
1993	35,000	529,307	10,000	693,000

Note.—Peninsula 1993 totals thru July 3.

5. Presently, under the Post June salmon Management Plan for the Southern Alaska Peninsula, most of the South Peninsula area is closed until July 20. This is the first year this regulation will be fully utilized, as in 1992 the area was reopened prior to July 20 by court order.

6. Most North Peninsula chum salmon catches occur after July 15.

7. The Alaska Department of Fish and Game estimated that in 1987 approximately 19-32% of the June False Pass fishery catch originated in the Kuskokwim River.

8. Permit information:

Alaska Peninsula seine = 119 total permits, 92 held by Alaska residents.

Alaska Peninsula drift gillnet = 159 total permits, 90 held by Alaska residents.

Alaska Peninsula set gillnet = 113 total permits, 91 held by Alaska residents.

Kuskokwim gillnet = 830 total permits, 829 held by Alaska residents.

ALASKA NATIVE CLAIMS SETTLEMENT ACT DEC. 18, 1971 AND AMENDMENTS 1973-1979, PL 92-203 (85 STAT. 688)

SEC. 22.

(g) If a patent is issued to any Village Corporation for land in the National Wildlife Refuge System, the patent shall reserve to the United States the right of first refusal if the land is ever sold by the Village Corporation. Notwithstanding any other provision of this Act, every patent issued by the Secretary pursuant to this Act—which covers lands lying within the boundaries of a National Wildlife Refuge on the date of enactment of this Act shall contain a provision that such lands remain subject to the laws and regulations governing use and development of such Refuge.

DECLARATION OF A DISASTER EMERGENCY

Whereas, the return failure of chum salmon in the Kuskokwim fishery resulting from the adverse affects on this species' fecundity due to the extreme cold weather during the winter of 1988-89; and

Whereas, as a result of this return failure, local residents are subjected to severe economic injury and subsistence losses; and

Whereas, the Kuskokwim Region, mostly Yupik Eskimos, has endured severe economic depravation over an extended period; and

Whereas, the residents of this region rely heavily on chum salmon for subsistence.

Now, therefore, on this 19 day of July 1993, under the authority granted by the Alaska Statutes, Section 26.23.020, I hereby declare that a condition of disaster exists in the Kuskokwim River Region, and is of sufficient severity and magnitude to warrant a disaster declaration in order to provide assistance and to seek additional federal assistance.

Further, the Governor's Cabinet level task force is hereby authorized to utilize funds made available for these purposes in such amounts as considered necessary.

WALTER J. HICKEL,
Governor.

STATE OF ALASKA,
July 27, 1993.

THE PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: On January 28, 1989, Governor Steve Cowper of Alaska declared an emergency due to widespread record cold temperatures that persisted throughout the Interior of Alaska. In some areas temperatures were below the −80 degrees that official National Weather Service thermometers can measure. Winds pushed chill factors in excess of −115 degrees. Shortly thereafter, President Bush issued a disaster declaration recognizing that these extreme conditions crippled rural water and sewage service and prevented the delivery of vital goods and services in much of Interior Alaska. Copies of the declaration issued at that time by the Governor and the President are attached.

The water, sewage, and transportation problems were immediately obvious and were addressed by emergency services provided as a result of the state and federal declarations during January and February of 1989. However, the long-term effects of these adverse environmental conditions on the fishery resources and dependent Eskimo fishermen in this area were unforeseen and have only recently come to light.

A widespread failure of western Alaska chum salmon runs is occurring in 1993, and this failure is particularly acute in the Kuskokwim River. Returns in many areas are less than 10 percent of normal levels.

According to scientific analysis prepared by the Alaska Department of Fish and Game, the leading cause of chum salmon run failures occurring in much of western Alaska, including the Kuskokwim, is the extreme environmental conditions that occurred while these juvenile fish were rearing in interior river systems.

One-third of the Eskimo people live below the poverty line and 48.5 percent are unemployed. As a result, the effects of this shortfall have now created an emergency situation for thousands of Native Alaskans who rely almost exclusively on fish for their livelihood as well as their traditional food supply. It is estimated it will take in excess of $40 million to recover from the drastically diminished run of salmon and the subsequent shortfalls.

As a consequence of these unforeseen damages, I have recently extended Governor Cowper's proclamation and have declared a disaster in this region. A copy of my declaration is attached for your review. I request that the provisions of the regional Presidential Declaration of 1989 (FEMA-826-DR-AK) be similarly extended and that emergency funding, as may be determined by the Federal Emergency Management Agency (FEMA) in coordination with the State of Alaska, be provided to address the additional damages which have just become known from the 1989 disaster. The additional resources are needed to restore the region's fisheries and to address the Eskimo people's nutritional and other immediate needs. I further request that you declare the amount an emergency requirement pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

With best regards.

Sincerely,

WALTER J. HICKEL,
Governor.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, August 3, 1993.

Hon. WILLIAM H. NATCHER,
Chairman, Committee on Appropriations, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Administration commends the Senate Appropriations Committee for acting expeditiously to approve requested legislation that will provide urgently needed assistance to the flood-stricken areas of the Midwest. The Administration is committed to working with the Congress to ensure mutual agreement on funding needs.

The Administration supports passage of H.R. 2667 as reported by the Senate Appropriations Committee. In order to expedite action on the bill, the Administration urges the Senate to keep the bill free of amendments that are not related to providing relief to victims of the flood.

The Administration continues to review the cost estimates for disaster assistance programs. Based on this review, we urge the Senate to approve funding beyond the levels requested and approved by the Committee for the following accounts:

$11.1 million in contingent appropriations for title III of the Job Training Partnership Act, which authorizes assistance to dislocated workers. This additional funding would be available for the Secretary of Labor to finance temporary jobs to repair damage caused by the flooding in the Midwest, clean up affected areas, and provide public safety and health services. This amount is in addition to the $43.5 million already approved by the Committee;

$2 million in contingent appropriations for the Commission on National and Community Service. The Commission helps to finance State-level Youth Corps and Conservation Corps programs to assist in disaster clean-up activities. The $2 million, which is in addition to the $2 million approved by the Committee, would fund the participation of young people in youth corps services over the next year to help with disaster relief services.

$100 million in contingent appropriations for the Department of Commerce, Economic Development Administration. These funds, which are in addition to the $100 million approved by the Committee, would be used to promote the long term recovery efforts in the region affected by the floods.

$10 million in contingent appropriations for the Small Business Administration Disaster Loan program account. These resources, which are in addition to funds approved by the Committee, would provide additional loan authority of $49 million. Language is requested that would increase from $500,000 to $750,000 the current law limitation on business disaster loans. This increase in the limitation would be available to victims of the flood;

Each of these requests would be available only to the extent that the President subsequently submits an official budget request to the Congress that designates the entire amount of the request as an emergency requirement, pursuant to the Balanced Budget and Emergency Deficit Control Act, as amended.

I understand that an amendment may be offered by Senator Stevens to provide economic assistance related to the destruction of chum salmon in the Arctic-Yukon-Kuskokwin River region. While we are sympathetic to the hardships endured by the residents of this region, we believe their needs can be met with existing resources. We will work with the Bureau of Indian Affairs, the Economic Development Administration, the Department of Housing and Urban Development and USDA to identify steps that can be taken administratively to respond to this problem.

We look forward to working with the House and Senate Appropriations Committees as the bill moves through the Congress.

Sincerely,

LEON E. PANETTA,
Director.

AMENDMENT NO. 768

(Purpose: To prohibit the Secretary of Agriculture from requiring the repayment of advance deficiency payments prior to January 1, 1994, in the case of producers on a farm that is located in a disaster area)

Proposed by Mr. BYRD for Mr. PRESSLER:

After section 701, insert the following new section:

SEC. 702. In any case in which the Secretary of Agriculture finds that the farming, ranching, or aquaculture operations of producers on a farm have been substantially affected by a natural disaster in the United States or by a major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) during the 1993 crop year, the Secretary of Agriculture shall not require any repayment under subparagraph (G) or (H) of section 114(a)(2) of the Agricultural Act of 1949 (7 U.S.C. 1445j(a)(2)) for the 1993 crop of a commodity prior to January 1, 1994.

Mr. PRESSLER. Mr. President, this amendment is quite simple and straightforward. It would prohibit the Department of Agriculture from forcing farmers to repay advance deficiency payments until next year. It would provide much needed relief to producers in the Midwest who were prevented from planting a program crop this year due to this year's unprecedented flooding in South Dakota and the Midwest. It could provide breathing room for farmers who are suffering.

The full extent of this year's flood damage will not be fully assessed until this year's harvest is complete. The production of wheat and small grains looks promising, but those crops could be lost if farmers are unable to harvest due to wet fields. Unfortunately, this is becoming a reality in South Dakota.

Producers who were unable to plant this year's crops soon will be forced to repay advance deficiency payments. Many of these producers simply do not have the cash on hand to make repayments. Waiting until next year to require repayment would, at least, provide a little extra time for financially strapped producers to accumulate the resources to repay the Government. The administration has taken steps to make this reality less of a burden. My amendment will assist this effort.

By the first of the year, disaster assistance should be in the hands of producers needing relief. My amendment also could help other producers. Depending on the outcome of this year's harvest, it is possible there will be no deficiency payments on certain crops. Should this happen my amendment will provide breathing room for those producers as well.

Mr. President, the Congressional Budget Office has stated there is no cost to this amendment. I am joined in this effort by Senators GRASSLEY and DASCHLE.

I ask unanimous consent that a summary of the amendment be printed in the RECORD.

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

PRESSLER AMENDMENT 768, REPAYMENT OF ADVANCE DEFICIENCY PAYMENTS

SUMMARY OF THE PRESSLER AMENDMENT

The Pressler Amendment would prohibit the Secretary of Agriculture from requiring the repayment of advance deficiency payments prior to January 1, 1994. Would only apply to producers in designated disaster areas.

EXPLANATION OF THE PRESSLER AMENDMENT

When producers enter into farm programs, advance deficiency payments have been made to help offset the costs of planting crops. These payments are based on expected market price for the commodity and what government payment would be made dependent on the crop's target price.

Should a producer receive an advance deficiency and fail to plant his intended crop, any advance deficiency payment made to that producer must be repaid immediately to the Department of Agriculture. This seldom happens since most producers follow through with their planting intentions.

However, this year's excessive rains and flooding conditions prevented many farmers from planting their crops. Due to no fault of their own, farmers could not follow through with their planting intentions. Producers in this situation are required to repay advance deficiency payments they received. Yet most of the producers have already spent their advance payments and are in no situation to repay. The Administration understands this situation and has stated the Department would not aggressively pursue repayments.

The Pressler Amendment would delay any repayment of advance deficiency payments until next year. This would provide producers time to plan their repayment. Disaster payments will have been made by that time, and financially strapped producers will be able to use that assistance to repay the government.

It is also possible that there may be no deficiency payments on crops this year. This will depend on final production and market price. Should this occur, all producers will have to repay advance deficiency received. The Pressler Amendment would assist those producers as well.

The Congressional Budget Office has stated there is no cost to the Pressler Amendment.

AMENDMENT NO. 769

Proposed by Mr. BYRD for Mr. KERREY:

On page 20, line 17, following "flood", insert the following: ", high winds, hail and other related weather damages";

On page 22, line 8, following "floods", insert the following: ", high winds, hail and other related weather damages".

AMENDMENT NO. 770

Proposed by Mr. BYRD:

Under the heading "National Park Service, Historic Preservation Fund" strike the following: beginning with the word "to" after "1993," and continuing through "(16 U.S.C. 470)."

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DOLE. Mr. President, I was going to offer two amendments. I thought I would make a statement on one in particular, to make a point. It probably would not have any impact, but it was a sense-of-the-Senate that flood victims would not be subject to any retroactive taxes in the reconciliation package proposed by the President.

Retroactively it has been discussed today rather extensively. As I have said before, the draft Russian Constitution in article 57 provides that there will be no retroactive taxes. I wish we could take a look at that draft constitution. I understand there may be a

constitutional amendment offered by Members maybe on both sides which would prohibit retroactive taxes.

We have had some retroactive surtaxes or surcharges during wartime. The Treasury was sort of panic struck today and dug back to 1917 and found retroactive taxes during World War I, they found some in World War II, they found some in the Korean war, and they found some in the Vietnam war.

I think that is a little bit different when it's wartime creating an economic crisis as well as an international crisis. I recall the one with reference to Vietnam. I was in the House at that time and supported President Johnson. It was a temporary 2-year surtax. It was not a retroactive tax rate increase. There is a rather vast difference. And that expired after a couple of years. It was very necessary at that time, according to President Johnson, and most of us, I think, supported it on both sides of the aisle.

I think it is well to make the point. I do not know whether the report has been filed yet on the reconciliation bill. It had not earlier this afternoon, but I do believe—and I say it not critically—but I think this is going to cause a lot of trouble. I know they tried to doctor it up this morning, saying they are still going to have retroactive taxes but you will have 3 years to pay it and there will not be any penalty. That is not going to satisfy a lot of people, because they are going to be reminded every year that the tax is retroactive.

It seems to me, politically, it makes it a bit worse because every year that you have to dig up another third, you are going to be reminded about a retroactive tax rate increase. It is a tax rate increase. And the same is true on the State taxes. Many State tax laws piggy back on Federal taxes.

The flood of 1993 will be a disaster that will remain in the minds of Americans for many, many years. In my home State of Kansas, one-fourth of the State's crops have been destroyed by rain, hail, high wind, and tornadoes. Almost a quarter of the State's 19.5 million acres under cultivation has been adversely affected by the weather. This is over 434 million dollars' worth of agricultural damage in Kansas. That's just agricultural damage—not damage to businesses, not damage to individuals. And that's in the State of Kansas, alone.

The people in these areas have shown courage and resilience as they return to their towns and try to rebuild their homes, their businesses, their livelihood. They have looked toward the Federal Government for assistance. The Federal Government cannot fix every problem, nor is the Federal Government the answer to the disaster, but the Federal Government does have a role and a responsibility. And that role is to help these victims back on their feet, not to drown them.

We continue to believe that the proposed tax legislation, as currently drafted, is wrong for America. If the Clinton plan is enacted, small businesses will soon be sending more hard-earned dollars to Washington. The retroactive tax increases that the President envisions will penalize these hard-working Americans all the way back to January 1, 1993. All the way back before the floods even began. By doing so, we are telling small business men and women who have been paying their income taxes at the current rate that, "what you've sent in the past 7 months isn't enough. Not only do you have to figure out how you're going to mend your lives and repair your businesses due to the flood disaster, not only are you going to be burdened with this tragic and unforeseeable cost, you're going to pay more—a lot, lot more."

And it's not just income tax rates that are retroactive in the Clinton plan. People who died since January, I guess you are not going to bother them, but they have heirs, they have families. They are going to be subjected to higher estate taxes, and they are going to be retroactive. I think that is stretching the point. It seems to me the best way to deal with that is not have it retroactive but have it date of enactment, whatever. But it's probably too late to do that.

I do not think this amendment would do much good except to call attention to the fact that maybe at least flood victims should not be subject to retroactive tax rate increases. And certainly, if someone died between January and the date of enactment, there would not be retroactive estate tax rate increases.

So, Mr. President, I am not going to offer the amendment.

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

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

At the appropriate place, add the following:

It is the sense of the Senate that all those who are affected by the Emergency Supplemental Appropriations Act of 1993 should not have to bear the additional cost of retroactive tax rate increases as proposed in the President's tax reconciliation bill.

Mr. MCCONNELL. As the chairman of both the Committee and Subcommittee for Labor, Health and Human Services and Education knows, communities emerging from disasters pass through three phases, immediate relief, recovery and long-term rebuilding. While FEMA works closely with Red Cross to provide urgent relief in the early stages, a number of private nonprofit organizations are actively involved in the long-term efforts to help rebuild communities. To that end, they provide crucial assistance in the health and human services area, including counseling for depression, prevention of domestic violence, and identification of affordable housing and child care. This assistance is essential to rebuilding the social health and well-being of these communities.

As a part of this supplemental bill, we have increased the amount of funding available to the Secretary of Health and Human Services public health and social emergency fund. This is one of a number of accounts which will address these vital long-term community needs.

Mr. HARKIN. The Senator from Kentucky is correct. The Secretary's fund has been increased by $71 million. Under existing law, the Secretary has broad discretionary authority to use the money to respond to emergency community needs.

Mr. MCCONNELL. Could I clarify one point with the chairman? Are private nonprofit groups which are engaged in the kinds of social services I mentioned eligible to receive grants from the Secretary's funds?

Mr. HARKIN. I see no reason why not. Although the Secretary has traditionally worked through community-based health and human service organizations, if a nonprofit is able to fill a void and provide needed services, they would be eligible for grants. Given the vast and damaging nature of this disaster, it would seem to me that these groups could provide crucial help.

Mr. MCCONNELL. I thank the chairman. There is no doubt in my mind that the damage done by the flooding will stretch State and localities resources. I am confident that the services available through our Nation's nonprofits will ease the suffering of these devastated communities and speed their recovery.

Mr. GRASSLEY. Mr. President, the devastation of the flood is difficult to imagine unless you have seen it personally. I have been in Iowa 15 out of the last 30 days and it is very critical. The effects of this disaster will be felt for years to come in every area of the life of my State.

While I appreciate what is included in this supplemental, I am certain that there are issues that are not addressed in this bill that will have to be addressed at a later time. I would like to take this opportunity to raise some of these extra issues that have been brought to my attention in recent days.

Obviously, in times of natural disaster, some individuals and families who would never dream of needing public assistance are suddenly placed in circumstances of overwhelming need. These families, which normally are self-sustaining, will place an unexpected draw on resources that have been allocated for public assistance.

With this in mind, for a period of 24 months, the State is requesting that the Federal medical assistance participation rate in disaster areas be established at the ceiling allowable under

law and regulation, notwithstanding the application of the appropriate formula.

The State is also requesting a 24-month waiver of the State match requirements for AFDC, food stamps, child support, title 19, 4-E foster care, and 4-F jobs and supportive services, to the extent the number of eligibles increases. Iowa expects that there will be an increase of up to 7.5 percent in the number of individuals and families who become eligible for public assistance.

This increase, at a time when State and county revenue is down, raises a concern of how to serve a greater need at a time when the ability to generate the State match is in question.

Other requirements that Iowa requests be waived include AFDC transitional housing, emergency assistance, medicaid optional State programs, individual and family grant, and food stamp, employment, and training program match requirements.

Citizens who have lost their housing, personal property, or employment as a result of the flooding may be offered immediate assistance in the form of donated clothing, food, or even cash assistance. This kind of charitable assistance is proper and should be encouraged.

The problem is that current law requires that these items be considered gifts, often making the family ineligible for AFDC, food stamps, or medical assistance or at least reducing their potential benefits. It is therefore important that these donated items or temporary assistance not be considered in determination of eligibility for these programs.

With the overwhelming devastation in the State, the Department of Human Services has been swamped—literally—with new responsibilities related to flood relief. Because these new duties have been the necessary priority, other issues of an administrative nature have been temporarily laid aside to address more immediate concerns.

Practically speaking, this means several things. First, the Department has not stayed on its regular schedule concerning Federal reporting requirements for food stamps, AFDC, and the jobs program. Each of these Federal reports is due in the next 6 weeks and the State has requested an extension of 90 days in order to meet these deadlines, while still addressing the immediate needs.

Another issue of administrative concern is the need for an extension of time to address the corrections identified in the conditional certification in the current child support software system. Without this extension, the State may lose Federal financial participation in the effort, making the effort impossible to fulfill.

The State has also requested that quality control functions be suspended between September 1, 1993, and February 28, 1994, for AFDC, food stamps, and medical assistance, and that a zero error rate be assigned.

While I am usually very supportive of tight quality control restrictions on Federal programs, at times of great crisis, it is necessary to set aside the redtape and deal with the immediate crisis at hand. This waiver is not intended to encourage sloppiness on the part of State administrators. It is simply a short-term grant of flexibility in addressing the immediate crisis at hand.

Finally, I believe there is a need for any State with more than one-third of its counties declared as disaster areas in 2 of the past 5 months to receive 100 percent Federal funding to the single State agency administering the 4-A Program.

While I am certain there are other issues of concern to the people of Iowa and other flood devastated areas, these social services needs are at the heart of disaster assistance and should receive prompt attention in later legislation in the immediate future.

DISASTER ASSISTANCE GREATLY NEEDED

Mr. PRESSLER. Mr. President, today the Senate will decide how much assistance can be made available to thousands of Americans suffering from the worst floods ever to hit America's heartland. The dramatic sights and reports on the flooding over the past months have spellbound this country.

The situation we are witnessing in the Midwest is unprecedented. The devastation is mind boggling. Lives have been lost. Homes have been torn apart. Thousands of acres of farmland lie under water. Spires, rooftops, and signposts are the remaining landmarks of submerged towns. Islands and new lakes have been created. Torrents of water have carved new natural boundaries.

Nature's devastation has left an enduring mark on the geography and character of the Midwest. The effects of this flood will be observable for a long time. Every person living in the Midwest will feel the effects of this disaster for years to come.

Farmers and ranchers have lost their source of income for this year, and perhaps beyond. Thousands of people are without homes or shelter. Many businesses could close their doors permanently. Roads, bridges, and rural infrastructure have been destroyed or damaged indefinitely.

Federal assistance clearly is needed. Current damage estimates far exceed the damage done by Hurricane Andrew. We must act now to help people recover.

South Dakota has been a barometer of how bad the flooding would be. Excessive rainfall has been evident in South Dakota since the first of May. Thousands of acres of farmland were never planted or were flooded out. Crops in the eastern half of South Dakota are gone. South Dakota agriculture will suffer proportionately more than other affected States. The president of the American Farm Bureau Federation, who happens to be from Iowa, recently reported that the rain and flooding will inflict the most damage on South Dakota agriculture. The full extent of the damage to South Dakota will not be known until well after harvest, but we do know that the damage to South Dakota is unprecedented. An economist for the Federal Reserve Bank in Minneapolis recently reported that the farm-driven economy of South Dakota likely will suffer the most from flooding in the upper Midwest. It probably will take more than a year for farm income and spending to recover. The bank estimates that in southeastern South Dakota southwestern Minnesota, and northwestern Iowa, farmers stand to lose $1 billion in crops they could not plant due to wet conditions, and another $1 billion in damage to crops that were planted.

Clearly, the news from South Dakota is not good. Hundreds of South Dakotans are applying for temporary unemployment insurance. Many of these individuals simply won't make it in farming. South Dakota was expected to lose 500 farmers already this year. The floods will increase that number.

Mr. President, this year's disastrous planting season follows last year's extremely wet harvest, when farmers experienced lower yields and poor quality crops. Tremendous amounts of income were lost last year. In fact, many farmers were unable to harvest and much of last year's crops still sit in flooded fields.

Most South Dakota farmers today have never experienced a planting season this disastrous. Time is running out for many of these farmers. Action is urgently needed to permit farmers in the devastated counties to earn some income this year. These farmers are suffering. We must act now to help ease their suffering.

Mr. MOYNIHAN. Mr. President, I would like to address a subject that is very much involved with the topic at hand not often spoken of. I refer to the Army Corps of Engineers' flood control efforts in the Mississippi and Missouri River basins. By this I do not mean the corps' current emergency work of repairs to levees and flood walls. In these matters their expertise in unmatched and we are all thankful for their dedicated efforts. Rather, I wish to look into how we got to where we are. We have spent a great deal of money on levees and other flood control structures and have very little understanding what we have got for our money.

The corps has done a great deal to control these rivers and, to be sure, has met with substantial success in most regards. Water borne commerce, once a

dubious prospect at best, is now routine and profitable. Flooding is less frequent, but, it turns out, more severe when it does occur.

The corps has built 10,500 miles of levees and flood walls in the United States, and yet flood damage per capita was two and one-half times higher in the 35-year period that began in 1950 than it was over the 35-year period previous to 1950. These numbers are, of course, adjusted for inflation.

What happened? Something, clearly. First off, our system of public works construction developed with little or no attention to the concept of productivity. During the debate in 1991 on the Intermodal Surface Transportation Efficiency Act—or ISTEA as we call it—I called this lack of attention to productivity a case of public sector disease. This condition has been rampant in the area of surface transportation, and the result is a transportation system where money is spent with little or no regard whether it will generate a return. Assets are managed with scant attention to maximizing their yield for society. In this legislation we made important steps toward changing this pattern, although I must say I do not know if we will succeed.

In the area of water resource infrastructure—that is, flood control, dams, reservoirs, and the like—we have also made some progress. The Water Resources Development Act of 1986 instituted cost sharing for all corps projects, an attempt to keep money spent on water projects from being wasted quite so willfully. The aphorism we adopted during consideration of ISTEA—that free goods are inevitably wasted—was never more true. It took us 16 years to get this bill passed but finally we did.

Of course this was possible in part because there were no more large water projects to be built. And so the issue on the Mississippi and Missouri systems has until now been one largely of sunk costs. Assets in place could be managed a little better here and there, but no great changes have seemed possible.

It could be now that this has changed. The total cost of damage to flood control structures will not be known for some time, but we may be granted a second chance on the Mississippi. Our dominant flood control philosophy for 150 years has been the hard option—dams and levees made of concrete, stone and dirt. More recently a new philosophy has emerged, best summed up by Mr. Larry Larson, director of the Association of State Floodplain Managers in a story from the July 20 New York Times:

For too long we have been trying to adjust rivers to human needs, and then we wonder why our rivers to human needs, and then we wonder why our rivers are messed up and why we continue to get flooded; it's not a mystery.

More and more people in the flood control profession are starting to think this way. Nonconstruction alternatives—soft solutions, as they are called—are being considered in some instances now and more than a few have been built. Or should I say "chosen."

As I said so often during consideration of ISTEA in relation to our transportation policy, "We have poured enough concrete." The Corps of Engineers would do well to learn this lesson.

Mr. President, I ask unanimous consent that the aforementioned article be included in the RECORD at this point.

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

[From the New York Times, July 20, 1993]

THE HIGH RISKS OF DENYING RIVERS THEIR FLOOD PLAINS

(By William K. Stevens)

For decades Americans have insisted on settling next to rivers and streams, like moths drawn to a flame, just as people have throughout history. And to protect their cities and farms, engineers have tried to ward off the inevitable flood waters with levees, flood walls, dams, dikes and diversion channels. To some extent this ambitious attempt to bend nature to human desires has worked.

But nature still wins often enough, as this month's destructive floods in the upper Mississippi valley vividly testify. Even the gains have come at enormous cost to the ecology of flood plains, some experts say, and in some cases control measures have perversely resulted in worse flooding.

By cutting off the flood plain's waters, levees and diversion channels have destroyed and degraded stream-side habitats that contain some of the country's richest biological resources. They have also prevented the flood plain from performing one of its most important natural functions: flood control. By storing and slowing flood waters, the plain reduces their force and height. Containing this water in a narrowly corseted channel, as is commonly done to protect farms and urban settlements, has the opposite effect. It raises both the velocity and the height of the flood and makes it all the more frightening and destructive when it breaks through defenses, as it has repeatedly done in the Midwest.

These realizations are leading flood-plain managers at all levels of government toward a different approach: cooperating with nature rather than trying to subdue it. The emphasis increasingly is on keeping new development away from the flood plain, preserving or restoring its ecosystems and letting water flow as freely as possible so that natural flood-control mechanisms can work.

Across the country, states and communities are exploring alternatives to dikes, levees and flood walls. They are acquiring wetlands to serve as natural flood basins. They are sculpturing the plain to create detention areas for flood waters. They are preserving stretches of flood plain in urban areas which, in between periods of high water, serve as parks, ball fields and greenways. Some communities are discouraging new development on flood plains by requiring expensive flood-proofing measures, such as putting buildings on piers and constructing private detention ponds. One town, Soldiers Grove, Wis., has taken the radical step of moving its entire business district to higher ground.

"For too long we've been trying to adjust rivers to human needs, and then we wonder why our rivers are messed up and why we continue to get flooded; it's not a mystery," said Larry Larson, director of the Association of State Floodplain Managers, an organization of professionals engaged in floodplain management and flood control. "We need to adjust human behavior to river systems."

Sometimes, he said this means that developed areas "need to be cleared out so the river can flood, as we know it will, without damaging property." In other instances less drastic measures can suffice.

One obvious limitation to the new strategy is that many communities have long since committed themselves to living on the flood plain, and with traditional structural methods of flood control. "We can't pick Des Moines up and put it on a hill," said Harry Kitch, an Army Corps of Engineers official in Washington who handles flood-control planning in the central United States. The more natural approach to flood control might seek its greatest success where new development is poised to move onto the flood plain. But particularly for areas already developed, Mr. Kitch said, "you're going to end up with a balance" of structural and natural methods.

Flood-control disputes of the future are likely to involve the tricky and contentious issue of just what balance should be struck. A classic example is the long-running controversy about floods along the Passaic River watershed in northern New Jersey. Towns have existed in the watershed's lower reaches for years, while other parts of the basin are only now becoming ripe for development.

The basin is one of the most floodprone in the country. Over the past decades, various portions of it have been declared Federal disaster areas seven times. Some flooding occurs almost every year, and the Corps of Engineers estimates that a record flood, like that of 1903, would cause $2 billion in damages.

Under a joint Federal-state project authorized by Congress but not yet finally approved by the state, the Corps of Engineers has proposed a hybrid solution. The Passaic's flood waters would be shunted underneath developed areas through a $2 billion, 20-mile-long tunnel terminating in Newark Bay. The idea of the tunnel, Corps officials say, is to avoid disturbing the land. The plan also calls for the state to buy up more than 5,000 acres of wetlands on the flood plain to serve as a catchment to reduce flood volume and speed. As a result, the plan might also prevent some development.

Critics say the plan comes down too little on the side of nature. They favor sharply restricting development in the entire central and upper basin, buying out flood plain residents and acquiring far more natural flood storage acreage than the plan now calls for. Critics also raise fears about the ecological impact of a rush of fresh flood waters into the marine environment of Newark Bay. Some oppose the construction of the tunnel under any conditions. The issue has divided politicians and citizens and has become an issue in the New Jersey Governor's race. Gov. Jim Florio, a Democrat, has refrained from taking a position for or against the tunnel pending an environmental impact study to be completed by the Corps of Engineers in 1995; his Republican opponent, Christine Todd Whitman, is against the tunnel, arguing that buying out flood plain residents would be less expensive. The corps argues the opposite.

Flood plains, the subject of this and many other disputes across the country, are among the most productive ecosystems in the world. When flooded in spring, they become breeding grounds for fish. Most flood plain acreage is wetlands, and about half the country's endangered species require wetland habitat. The riparian zone along rivers is home to distinct assemblages of soils, microbes, plants and animals that depend on high water tables and occasional flooding.

People originally settled along rivers because they provided water, transport and power. That is no longer true, "but now the city is there," said Mr. Larson. Later, people were drawn to flood plains because land there was cheaper. By 1991, according to an interagency Federal task force on flood plains that issued a report last year, floodplain land in 17,000 communities occupied more than 145,000 acres and included nearly 10 million households and $390 billion in property.

This large-scale development, according to the task force, has come at "a high price extracted annually in deaths, personal injury and suffering, economic loss and damage to or destruction of natural and cultural resources." Despite extensive and expensive efforts over the years to control floods through public works (the Corps of Engineers has built 10,500 miles of levees and flood walls alone), inflation-adjusted flood damages per capita were almost 2.5 times as great in the period from 1951 to 1985 as from 1916 through 1950.

Part of this may be attributed to a growing ratio of construction to population, but levees themselves evidently contribute to the escalation. They are the most common type of flood-control measure, and when they fail, as they have many times in the Mississippi basin in recent weeks, they make the damage worse. The Federal task force noted that a breached levee, like a breaking dam, can release a large wave at high velocity on communities that believe they are protected. Images from the Mississippi basin this past week have grimly borne this out. The remaining levee system may subsequently prevent water from draining back into the river, prolonging the flood. The task force reported that levee or flood-wall failure is involved in one-third of all flood disasters.

When a river's flow is constricted, its sediments are no longer deposited to fertilize the flood plain but instead may be dropped within the narrow river channel just outside the levee. This in time raises the height of the river, and the levee must be heightened in turn. "In general, a river wants to recreate itself as a river with a flood plain; it's rising in response to these rising levees," said James T. B. Tripp, an expert on floods with the Environmental Defense Fund, "River systems have a way of adjusting themselves in response to human manipulation of the flood plain in ways that can never be entirely foreseen."

A better approach, according to the emerging new wisdom, is to get the river to work for you rather than against you. The new approaches may be best suited to smaller rivers, but these spawn most of the flash floods, and flash floods are responsible for three-fourths of all Presidentially declared disasters.

After a 1984 flash flood killed 13 people and caused $180 million in property damage in Tulsa, Okla., for instance, the city and the Corps of Engineers collaborated to create a more natural flood-control system. They scooped out a series of permanent lakes in a greenway corridor set aside in Tulsa's Mingo Creek flood plain. Most of the lakes are dry, and when there is no flood the lake bottoms are occupied by soccer and baseball fields and tennis courts. When there is a flood, the lakes store and slow down the water. They are connected by a network of "trickle trails" that serve as jogging paths in dry times and low-flow flood channels in wet ones.

At the same time, development in the flood plain is strictly regulated. Developers must build their own detention ponds to make up for the increased flow that paving causes. Buildings in harm's way must be floodproofed, usually with raised piers. One result is that developers have been discouraged from building in the flood plain—a counterforce, possibly, to whatever incentive to development may be provided by Federal disaster relief and flood insurance.

Only 15 to 30 percent of the nation's flood-prone structures are actually insured by the supposedly self-financing National Flood Insurance program, according to the flood plain task force. Disaster relief is available to an uninsured property only once: If the property is flooded a second time and is still uninsured, owners are on their own.

NATURAL FLOOD CONTROL A SUCCESS

The Tulsa system has been tested by storms that would have been expected to cause serious flooding in earlier years and has passed with flying colors, said Jack Page, who oversees development for the city. He sees "more acceptance of 'soft' engineering; we're getting away from the concrete and the pipes and are leaving the channel in a natural state." The Corps of Engineers says it considers the Tulsa project a model.

Other localities have moved in this direction as well, often with corps involvement. As a pioneering alternative to dams and levees in the Charles River basin of metropolitan Boston, for example, the corps purchased or secured easements on 8,500 acres of wetlands to contain floods while also providing wildlife habitat and promoting recreation. The system was tested by major floods in 1979 and 1982 and each time performed effectively.

The city of Littleton, Colo., established a 625-acre park in its flood plain to attenuate floods rather than allow the South Platte River to be channeled. And in the San Francisco Bay area community of North Richmond, citizens successfully brought about the creation of a naturally meandering flood channel and restored the stream-side ecosystem in a way that would maintain ecological health while accommodating once-in-a-century floods.

In the end, if Mr. Larson and Mr. Tripp are right, there simply may be no way to protect against the very worst floods, no matter what strategy is employed. "We've got to figure out some way to help people understand that Mother Nature will reclaim what's hers from time to time," said Mr. Larson. "We must keep that in mind when we go to build our communities and cities and try to find a way to live in harmony with nature."

To which Mr. Tripp adds: "We can try and manage these river systems to some degree, but we've got to be prepared to accommodate ourselves to the river. If we think we can do things to rivers so they will never flood, we're naive."

Mr. DOLE. Mr. President, I understand on this side of the aisle that there is no request for a rollcall vote, but I understand there may be one request on that side. It was my suggestion that if there was not any request, that it will be a unanimous vote, but if there is a vote, it might be less than unanimous.

Mr. BYRD. Mr. President, I know of no Senator on this side who is going to request the yeas and nays on this bill. It would be a unanimous vote in all likelihood, it being an emergency bill, to provide assistance to the flood victims, somewhat different from the ordinary appropriations bill in that respect.

The PRESIDING OFFICER. If there are no further amendments, the question is on agreeing to the two committee amendments on page 2, lines 6 through 13, and page 2, line 22.

The committee amendments were agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read the 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. 2667), as amended, was passed.

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

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

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I thank all Senators.

I thank the leaders on both sides for their very helpful efforts in expediting action on the bill. I especially thank my colleague, Mr. HATFIELD, for his very good work on this bill, in helping to persuade various Senators to refrain from calling up their amendments, and for his support in arguing against some of the amendments that were called up.

I think the Senate has done a good day's work. The bill has withstood the attacks of several Senators who in good faith attempted to get their amendments up and agreed to. There were other Senators who had amendments but they agreed not to call them up, and some who called up and then withdrew the amendments.

So, all in all, it is a day of which we can be proud. I thank the Appropriations Committee staff and the floor staffs on both sides.

Mr. President, Jim English, the Director of Appropriations staff has been recuperating from a very serious heart operation for several weeks. Tim Leeth, Jack Conway, Mary Dewald, Barbara Videnieks and Marsha Berry have been pillars of strength to me in this period of Mr. English's recovery.

I want to give them their just dues. They have been absolutely invaluable to the Committee over these several months. They stepped right into the

breach and demonstrated that they are the kind of professionals who make us proud to have an Appropriations Committee that is second to none. I extend to them my profound thanks.

Mr. HATFIELD. Mr. President, I would like to express my appreciation as well to the chairman of the committee. It is always not only a pleasure to work with the Senator from West Virginia but a learning process as well. I never fail to learn something about parliamentary procedure, something about Roman history, something about wisdom, such as tonight I felt that one of the brilliant utterances that will be historic for me—I cranked it into my computer hoping that I can pull it out at some future time—is the difference between a lynching and a trial of due process. It is procedure.

I think it was one of those, again, wonderful learning experiences being associated with the Senator from West Virginia.

I also want to express deep appreciation for the two key people not only in this Chamber, Tim Leeth on the majority side and Keith Kennedy on our side, but around the back of the room we have on both sides staff people of 13 subcommittees ready to move at any moment an issue confronts them in their area of expertise. So we have had a real army of staff people here assisting us in this whole effort.

Mr. BYRD. Mr. President, I am glad that the distinguished Senator has mentioned these fine subcommittee staff people who are here early and here late, ready to be helpful, and they have been helpful and without their dedication, high purpose, and high sense of duty, we, indeed, would be unable to carry on our work.

I hope that the House will not ask for a conference in view of the fact that the Senate has not added many amendments—only those that the administration is supporting, and I hope the administration will be able to get the support of the House in accepting this bill so that it will be sent to the President forthwith.

The PRESIDING OFFICER (Mr. SIMON). The majority leader is recognized.

Mr. MITCHELL. Mr. President, I join in thanking my colleagues, the distinguished chairman and ranking member, former chairman of the committee, for their usual outstanding job in managing important legislation.

This is a very important bill, as I noted in moving to it last evening. Considering the scope of the tragedy in the Midwest, it is imperative Congress act this week. And that would not have been possible but for the steady hand of the two managers of the bill and the cooperation of our colleagues, both Democrat and Republican, in getting this bill done. So I thank them. I thank the Republican leader.

Mr. DOLE. If the majority leader will yield, I think the only appropriations bill we have not done that is available is Interior, and there is still some hope, I think on both sides, we may get some agreement that we might be able to do that if there is any downtime here between now and the time of the vote on reconciliation.

Mr. HATFIELD. If the leader will yield, I would only like to raise a possible signal that the administration's forestry program, which has been identified as Option 9, is in the process of being viewed and reviewed, and I get some indications the administration may ask us to help implement that on the Interior Appropriations subcommittee bill. Therefore, I would only like to check with the administration, or have that check made in case that is being considered as a possible vehicle.

EXECUTIVE SESSION

Mr. MITCHELL. Mr. President, I now ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar No. 309, the nomination of M. Joycelyn Elders to be Medical Director of the Regular Corps of the Public Health Service and to be Surgeon General of the Public Health Service.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The legislative clerk read the nomination of M. Joycelyn Elders, of Arkansas, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service, for a term of 4 years.

The Senate proceeded to consider the nomination.

Mr. MITCHELL. Mr. President, as we all know, this nomination, which we will now begin to consider, has been the subject of considerable controversy. Numerous statements have been made which I have seen reported—I am not certain whether they were made on the Senate floor or in press conference, perhaps in both—to the effect that no vote would be permitted on this nomination prior to the Labor Day recess.

I have discussed this matter with the distinguished Republican leader privately prior to now, and we have agreed to have a discussion on the floor, and I have indicated my intention and desire to proceed to a final vote on this nomination this week. I inquire of the Republican leader as to whether he is now in a position to indicate whether or not that will be possible.

Mr. DOLE. If the majority leader will yield, Mr. President, I am not in a position at this time to say it will be possible. But as just demonstrated we did not object to going to the nomination. We did not see any purpose in having a vote on going to the nomination; it probably would have been unanimous. I am not in a position at this time. We did have a meeting late this afternoon on this nomination, and I think some of the principals involved on our side are probably on the way to the floor. I may not be able to tell the majority leader this evening but perhaps sometime midmorning tomorrow.

Mr. MITCHELL. Mr. President, I thank the Republican leader for that information and for his courtesy. I now believe that it would be best under the circumstances simply to permit the principals to debate the matter here this evening, and then I will pursue the matter further sometime during the morning tomorrow.

Mr. President, in light of the fact that we are now going to be on this nomination and that we do not anticipate a response tonight on the question of whether our Republican colleagues will permit a vote to occur on this nomination this week, I think it is appropriate for me to announce that there will be no further rollcall votes this evening.

There will be debate on this matter for some period this evening. That will continue tomorrow morning, at which time we will have a further discussion in accordance with our discussion here this evening, if that is agreeable to my colleagues.

Mr. President, I believe the managers on the matter are now on their way to the Senate floor.

Mr. President, awaiting the arrival of the managers—I understand they will be here shortly—I now suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

THE OMNIBUS RECONCILIATION ACT

Mr. DOMENICI. Mr. President, on a couple of occasions in the last few days a number of my colleagues on this side of the aisle have asked me where is the so-called "reconciliation bill" that we are supposed to vote on Friday. Is that right? I ask the Republican leader. I, in turn, have been asking where it is.

About an hour ago what is currently said to be the reconciliation bill and the report were delivered to the Budget Committee's office. I just wanted to pick it up here and show it to you. My guess is it is—I could not hold it too long because it is probably 23 or 30 pounds. It is 1,800 pages. We surely are

going to do our best to look this over so we can see what is in it. I just want to repeat, the Senator from New Mexico was not invited to attend any of the meetings. Not that I would have helped, because I am not for this, but at least I might know what is in it. At this point I do not. There have been literally hundreds of changes made in both the House and the Senate bill in order to avoid the Byrd rule on matters that should not be in the reconciliation bill.

It is going to be interesting to see how they were fixed because essentially the Byrd rule was supposed to be airtight in terms of measures that are not part of real deficit reduction. I understand most of those are in—but changes to make them either real cuts or real spending instead of authorization, and that that might even be worse. But we will find that out as we try our best to go through this.

I might say to Senator DOLE that if he had been invited to these meetings and participated—two-thirds of this bill comes from the Finance Committee, so it is taxes and all kinds of changes in the code as it pertains to special interests. We do not know what they are yet. But there are a couple that are rather intriguing.

You know, one Senator that seemed to be against this on the Democratic side comes from a State with a lot of restaurant activity. So there is an interesting provision in this, I say to the Republican leader. You see what has happened is the original proposal by the President was that you were not going to permit corporations and business people to deduct meals. You could only deduct part of them. And now that was 50 percent.

It turns out that that really offended some. So to see if they could change some of the restaurant-loaded States in America in their vote, the tax was changed to 60 percent. Sixty percent is deductible.

There was a very interesting thing. The restaurant owners no longer have to pay Social Security on the tips. They were paying that in. It is about $1 billion. The restaurant owners are now going to be permitted to take a $1 billion tax credit, which means that the general taxpayer is going to pay that bill.

But, frankly, we are going to do our best as instructed by our leadership and we are going to circulate it in parts to our various ranking members and their committees, and hopefully in the next few days we will be able to tell the Senate and the people of the country what is in it.

Mr. DOLE. Mr. President, I think this demonstrates—I say it has happened before. I am not being particularly critical. It has happened, I guess, over the years. Here it is 9:20 on a Wednesday night. This is the 400—supposed to be $500 billion, about $420 billion package—billion. It is all right in those papers.

Nobody knows precisely what. You look page by page, $260 billion in taxes in that package, $260 billion—$242 billion in new taxes and $18 billion in fees. So it is a total of $260 billion.

There is a provision in it that makes it retroactive to January 1 this year whether you are alive or dead. It is retroactive. If you died, you cannot escape this package. Whether you are dead or alive, you are going to get taxed. That is all in that package.

We are supposed to read all of this and be able to discuss it thoroughly, in the House tomorrow and in the Senate on Friday. It is 2 to 1—$2 I think, if I am correct, $2.13 in taxes for every $1 in spending cuts.

Again, we have to go back and verify all of that. I am not certain how much spending cuts are there in the first year. Are there any spending cuts in the first year?

Mr. DOMENICI. We have our calculations, and in the first year there are no net spending cuts. And there is almost $31 billion in new taxes.

Mr. DOLE. What about the second year?

Mr. DOMENICI. In the second year there is a very large cut in spending, $4.3 billion, in a $1.5 trillion budget.

Mr. DOLE. How much taxes?

Mr. DOMENICI. Big. It looks like in that year, it is $44 to $48 billion. So that is a well over 10 to 1 in the second year, and then we are getting close to the election year of 1996. There, again, I might say the cuts that are contemplated are beginning to look like this: In the last 2 years of this 5, after the next Presidential election, 80 percent of the cuts allegedly in this package, mandatory and discretionary, will occur, if they do. So it is not only a tax first, but it is tax first and cuts later, and maybe. I am sure we will show this in more graphic manner in the next 48 hours. That is what is supposed to be in here.

Mr. DOLE. I think it is important. And I know it is 9:20 at night, and I am not certain how many people may be viewing what is happening in the Senate. But as I add that up, I guess in the first 2 years there are about $4 billion in cuts and $78 billion in taxes.

Mr. DOMENICI. That is correct.

Mr. DOLE. We are so anxious to tax, we are going to back it up until January, and if the spending cuts come, they will come after 1996. That is why today in the Republican offices, there are thousands of people calling in, and 80 percent are against this package. Nobody knows what is in it, but they are against it because they know it is a lot of taxes. I think we ought to see how much it weighs tomorrow, and maybe bring it back to the floor again, if they can carry it back tomorrow.

Mr. DOMENICI. We need to get a scale.

Mr. DOLE. I think it is a serious matter that ought to be discussed. We are about to try to pass this in 4 or 5 hours on the floor. Keep in mind, it is over $400 billion, $260 billion in taxes, and I think the American people will find it hard to believe how we can deal with something this fast between now and Friday evening.

Mr. DOMENICI. I yield the floor.

NOMINATION OF M. JOYCELYN ELDERS, OF ARKANSAS, TO BE SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE

The Senate continued with the consideration of the nomination.

Mr. KENNEDY. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. The nomination of Dr. Elders as Surgeon General of the United States.

Mr. KENNEDY. Mr. President, I urge the Senate to act promptly to confirm Dr. Joycelyn Elders as Surgeon General.

Dr. Elders is eminently qualified for this position, and it is time to end the delay, distortion, and misrepresentation that have surrounded her nomination.

Few positions in American Government are more important to the health of the Nation than the Surgeon General of the United States. The nominee we are considering this evening has the potential to become one of the best Surgeon Generals in history.

The Surgeon General has many responsibilities; all are important. All must be fulfilled with the highest level of competence. As the Chief of the Commission Corps of the Public Health Service, the Surgeon General must lead a body of dedicated health professionals serving the country wherever their skills are needed.

The Surgeon General is the chief public health adviser to the Assistant Secretary of Health, to the Secretary of Health and Human Services, and to the President.

Whether the issue is controlling the AIDS epidemic, meeting the challenges of infant mortality, dealing with the new plague of drug-resistant tuberculosis, or addressing a variety of serious public health challenges we face, the Surgeon General is a principal resource for analyzing the problem and providing guidance to the administration, Congress, and the Nation.

But most of all, the Surgeon General must mobilize public opinion and public commitment to the cause of good health. In the 1960's, Surgeon General Luther Terry aroused the Nation to the dangers of smoking. In the 1980's, Surgeon General C. Everett Coop educated the Nation about the danger of AIDS. And in the 1990's, Dr. Joycelyn Elders will be a forceful and eloquent voice for the cause of better health for all Americans, but most especially for children and the poor.

By training, by experience, and by temperament, Dr. Elders is superbly qualified for all of the varied responsibilities of a Surgeon General. Her career itself is an inspiring story that demonstrates her outstanding qualifications to be Surgeon General, and it also demonstrates one other thing—that the American dream is alive and well in 1993. When people use the phrase "we shall overcome," they are talking about people like Dr. Joycelyn Elders. She has truly overcome in her own life, and she will do the same as Surgeon General.

No amount of scientific knowledge or intellectual ability can substitute for a commitment to helping those in need the most. Dr. Elders cares deeply about her mission, because in her own life she has surmounted incredible obstacles and experienced great hardship in building her remarkable career of service.

She was born to a teenage mother and a sharecropper father in the tiny town of Schaal, AR, 40 miles from Texarkana. She grew up on the family farm in a three-room cabin, with her seven brothers and sisters. The cabin had no electricity and no indoor plumbing. As a child, Dr. Elders worked in the fields to help support her family from June through Thanksgiving. School had to give way to work on the farm. Still, she was able to skip two grades, and she graduated as valedictorian of her segregated high school when she was only 15.

Dr. Elder's mother never had the benefit of prenatal care. In fact, her children were delivered in her home without medical assistance. One of Dr. Elder's earliest memories is of her young brother crying with the pain of a ruptured appendix, being taken 10 miles on the back of a mule to the nearest doctor. Until she went to college, Dr. Elders herself never saw a doctor, not for a physical exam, not for childhood vaccinations, not for treatment of any illness. She understands the pain of those who have no access to health care, because she has been there herself.

Dr. Elders won a full tuition scholarship to Philander Smith College in Little Rock. Money was so scarce that her brothers and sisters worked in the fields to help pay her bus fare and buy her clothing. She graduated from college magna cum laude in 3 years. She joined the army in 1953 so she could earn the right to GI bill assistance to finance her medical education.

She and her fellow African American students at Arkansas Medical School were forced to eat in a segregated section of the student cafeteria. Dr. Elders went on to an internship in pediatrics at the University of Minnesota. Because of her ability, she was invited back to the University of Arkansas Medical School to the prestigious position of chief resident in pediatrics. After her internship, she was invited to stay on at the university as a professor in pediatrics. In 1987, Governor Clinton named her to lead the Arkansas Department of Public Health.

To be effective, a Surgeon General must have the ability and perseverance to fight for what is right. Dr. Elders has clearly demonstrated the strength of character needed to take on any job no matter how difficult.

To be effective, a Surgeon General must have a strong scientific background and a fine intellect. She must understand the basic issues underlying the difficult questions of health policy.

Dr. Elders is a distinguished pediatric endocrinologist with 150 scientific papers to her credit, who has spent most of her professional life in academic medicine. I would like to read just a few of the titles of those papers now so Senators and the country will have a better idea of the extraordinary background and extraordinary ability of this nominee.

Elders, M. Joycelyn and Knicker, W.T.: Biological role of fetal thymic hormone. J. Pediatric 69:955, 1966.

Chaney, C., and M.J. Elders: Management of juvenile diabetes mellitus. J. Ark. Med. Soc. 72:239–248, 1975.

Elders, M. Joycelyn, Herzberg, Victoria L., Hill, Donald E., Boughter, J. Mark, Harris, Linda, and Heinrich K. Schedewie: Growth hormone effects on erythrocyte insulin binding. Pediatr. Res. 15(4): 507, #402, 1981.

Elders, M. Joycelyn: Keynote Address to the Academy for Educational Development Conference—Urban Middle Schools Adolescent Pregnancy Prevention Program. May 1990 AED.

Elders, M. Joycelyn and Hui, Jennifer: Article, "School-Based Clinics: Meeting Health Needs of Adolescents". California Pediatrician—Spring 1990, Vol. 6.

And the list goes on and on.

Finally, to be effective, a Surgeon General must bring to the job a strong record of commitment and accomplishment in the field of public health. By that standard Dr. Elders is one of the best qualified Surgeon Generals in the Nation's history.

As director of the Arkansas Health Department, she guided one of the most effective and innovative programs in the Nation. Her peers, the chief health officers of the 50 States and territories selected her as the president of their organization, the Association of State and Territorial Health officers. Of all the States and territories, she was selected by the health officers in this country and territories to be the head of that organization, which deals with public health.

Under Dr. Elders' leadership, the Arkansas Department of Public Health doubled the proportion of children receiving timely immunizations. In this country today half the children that are 2 years old do not have immunizations. In this reconciliation bill there is $500 million to help provide those immunizations for children all across this country. We have someone nominated that has the sound record of dramatically increasing immunizations in the State of Arkansas, doubling the proportion of children receiving timely immunizations. We know that we need her leadership in that area.

She established a program that has become a model for the Nation. She launched an assault on infant mortality that significantly increased the number of women receiving adequate prenatal care. She increased by tenfold the number of poor children receiving comprehensive health screenings. She expanded home care opportunities for senior citizens. She led a crusade against teenage pregnancy. She dramatically expanded early screening and detection services for cancer in women. She fought for school-based clinics because she understood that the only realistic way to reach children in need and give them access to at least minimal health services, was to reach them in their schools.

Let me say to all those who reject the idea of school-based clinics for fear that in some schools some children may hear the dreaded words "condom" or "abortion," I say to you, Dr. Joycelyn Elders is living proof that you are wrong. School-based clinics can be a lifeline to a vast number of children who otherwise never see a doctor.

Local officials can decide about controversial issues of health policy like condoms and abortion. But how can anyone deny that basic noncontroversial health care is needed by these children? And they can get it in their own schools.

The fact of the matter is, the decisions about the school-based clinics were made by the local school committee. The decisions about health education for the appropriate age, was made at the local school level. In many of the school-based clinics in Arkansas they do not have that kind of education program. In some they do. If in a local community they make a decision that they want that kind of education, and parents do not want their children to have that education, they can so indicate and the child will not be included in the program, or have available the kind of services of that particular clinic.

The local school district and local parents make the judgment and determination regarding health education programs. The Arkansas Legislature, not considered to be some flaming liberal organization, decided and accepted that the people of Arkansas should make that judgment and decision.

So, Mr. President, it is important to know that in terms of bringing clinics to schools, Dr. Elders puts the value on local interests, local support, and the parents that will be affected by the program.

It is an interesting fact that in Arkansas there are scores of schools that

want to take advantage of these programs, but it has been such a success that they lack adequate resources.

Mr. President, I must say that that kind of attention to the needs of young people, with the decisions being made at the local level, is an important need in schools across this country.

For all of these reasons, Dr. Elders is the right person at the right place at the right time to be Surgeon General. And in the years to come, millions of children are likely to see Dr. Elders as their doctor, too. Yet she has been subjected to unremitting, unfounded, unfair attacks on her character, her views, and her record.

This confirmation proceeding has been plagued with delays from the outset. Her opponents have raised round after round of questions about her positions and her activities. Dr. Elders has patiently answered all of them, answered them effectively, and after considering all of these issues, the Labor Committee recommended her confirmation by a vote of 13 to 4.

Her confirmation has also been marked by unfair distortions, misrepresentations, and unnecessary procedural delays. President Clinton announced her nomination as Surgeon General on December 24, 7 months ago. The issue have been exhaustively debated ever since, and the Senate should take final action before we adjourn for the August recess.

Last month, Senator KASSEBAUM and I postponed Dr. Elders' confirmation hearing for a week to allow the committee additional time to review the specific allegations concerning Dr. Elders' service on a board of a bank in Arkansas. The FBI conducted an intensive investigation of this issue and has made a summary of the investigation available to all Senators.

The suggestion was made that the committee should hold a closed session on the nomination. But Dr. Elders insisted that her hearing be open and to the public. She has nothing to hide. And after the public hearing, it was clear to everyone that she had nothing to hide. During her hearing Dr. Elders eloquently answered every question fully, honestly, effectively, and repeatedly.

When the hearing concluded, none of the Senators present had any further questions. But on the following Tuesday, 198 additional questions were submitted. Never before have so many questions been submitted to a nominee in our committee. Even though many of the questions had already been raised and addressed during the hearing, Dr. Elders answered them fully again. She stayed up to 5 o'clock in the morning one night to do so. These questions were received by Dr. Elders on Tuesday, July 27 at noon, and Dr. Elders had completed all 198 answers by Thursday, July 29, a full 24 hours before the committee met to vote on her nomination.

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Yet, just yesterday Dr. Elders received 36 new questions on issues that were exhaustively discussed in the hearing and also addressed in the early questions. Once again, she worked long into the night to accommodate the concerns of my colleagues, to thoroughly address all the issues, and her answers were available this morning.

Any lawyer worth his salt can think of dozens of more questions, but there comes a time when the process becomes harassment. We have passed that point on this nomination.

Dr. Elders has proven that she can answer the questions as fast as her opponents can think them up and ask them.

Mr. President, I see a number of our colleagues here. The Senator from Maryland wishes to address the Senate and also is supposed to preside, so I would be glad to yield.

I see my colleague from Kansas here.

Mrs. KASSEBAUM. Mr. President, I wonder if the Senator will just yield for 2 minutes, if that much?

Mr. KENNEDY. I am glad to yield to the Senator.

Mrs. KASSEBAUM. Mr. President, I support the nomination of Dr. Elders, and I will be speaking later. But I would just like to correct a statement made by the Senator from Massachusetts, the chairman of our Labor and Human Resources Committee, in speaking about delays.

They were not unnecessary delays. The papers on Dr. Elders did not come from the administration to our committee until July 1. We then were on a July 4 recess and did not come back, I believe, until July 11.

So we moved in an expeditious manner after once the papers were here.

There were some additional concerns which Senator KENNEDY and myself both joined together in questioning the FBI to take a look at some concerns that had been raised with the office of the Comptroller of the currency.

So, I would just like to point out, and I appreciate the Senator from Maryland yielding, that I believe the committee has moved in an expeditious manner once we received the papers and once we were able to answer some of the questions that had been raised that we felt were important to answer before the committee hearings started.

I yield the floor.

Mr. KENNEDY. Mr. President, the Senator from Kansas is quite correct in her reciting the facts. But she did not mention the fact that there was objection by the chairman of the Republican Policy Committee to allowing our committee to have an opportunity to meet on Friday. We went ahead after the Senate completed its business in the late afternoon. Quite frankly, I think the nominee was entitled to be able to address the membership in attendance that morning, rather than having an objection to the committee meeting, using an arcane parliamentary process and procedure. The hearing was going to be available via C-SPAN to millions of interested Americans.

I think that kind of parliamentary maneuver and procedure is available to the Members, and we are very understanding of that. Also, I want to express, certainly, the position that the Senator from Kansas was not involved in this in any way whatsoever, nor do I believe any of the Republican members of our committee were involved.

But, nonetheless, those individuals who have expressed vocally in the press, and to the membership here the strongest opposition to this nomination, exercised that parliamentary device. I think it was unwarranted and an unjustified delay. I think Members can make a judgment whether it was or was not.

Finally, I would just say that we had a number of other nominations earlier this week. We approved Dr. Payzant; we approved Ellie D. Acheson to the Justice Department; we approved Sheldon Hackney to head the NEH, all of which I think were enormously important. I am very hopeful we would permit Mr. Dellinger to move ahead and be approved, as well. I believe we will be accommodated.

But at some point, somewhere, when we have an individual who has been subjected to the kind of, I believe, harassment, certainly in terms of the questions, repeated questions, that have been filed with the committee, and I think that that individual is entitled to some form of judgment.

I would be glad to yield to the Senator from Maryland.

I see the Senator from Indiana wants to speak.

What I would like to do, if we can let the Senator from Maryland speak, and then I would summarize very briefly my final remarks.

I see a number of our colleagues would like to speak, as well.

I yield the floor.

Ms. MIKULSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Thank you, Mr. President,

I rise in enthusiastic endorsement of the nomination of Dr. Joycelyn Elders to be Surgeon General of the United States.

I want to acknowledge that the tradition of the Senate is that usually we alternate between Republican and Democrat. I thank our two Republican colleagues on the floor for allowing me to speak. I will be relieving the Chair at the designated time of 10 o'clock and, therefore, thank everyone for allowing me to complete my remarks now.

Mr. President, I am very pleased to express my full support for the nomination of Dr. Joycelyn Elders to be Surgeon General of the United States. I

cannot think of a more qualified choice to protect the health of the American public.

Mr. President, Dr. Elders has a long and distinguished record of achievement that makes her very qualified to become the top health official in the United States.

I am not sure how many people are aware that Dr. Elders career in public health began as a commissioned officer in the U.S. Army.

She served her country for 4 years—staying 1 year beyond her original obligation.

During those 4 years, she worked as a physical therapist at Brooke Army Medical Center to try to make up for a shortage of physical therapists at that time.

Dr. Elders' military service not only gave her the opportunity to serve her country—it gave her an opportunity she otherwise would not have had—to go to medical school. Like so many Americans at that time, she earned a GI bill. And that GI bill paid her way through medical school.

Now that is what this country is all about. You help America and America helps you. Dr. Elders helped veterans to get well and on with their lives. And as a veteran—I would say our Veteran of the Year—she went on to fight new wars against disease and poverty.

Dr. Elders had a vision of a future few women of her generation could imagine: To be a doctor.

She told me when we spoke last week that it was during her time in service to this country that going to medical school really became a dream for her. And how lucky we are. Because it was in medical school where she began to focus on what has become her great compassion and life's work—to improve the health of this Nation's children.

That is why she became a pediatrician.

Dr. Elders is a special kind of pediatrician. She is a pediatrician with perspective. While she treated one child at a time in her doctor's office, she was developing a plan to help all children, especially poor and minority children be healthy.

She has shown that in her 20-year clinical practice career during which she became one of the foremost experts on juvenile diabetes and growth problems.

Dr. Elders has demonstrated over and over again a unique capacity to combine new ideas for public health with an exceptional understanding of medicine.

But she does not stop with words and rhetoric. She turns these ideas into action. She reaches out to children and families and provides them medical and preventive services where they are—and where they are most likely to get them. And it is this that has caused the most controversy.

Dr. Elders has won the strong backing of the community for her efforts. She has built public health services from the ground up in Arkansas—through the state and county departments of health, the churches, the schools, organizations like the YMCA's, and even with business—Arkansas will be a model for our Nation. She is trusted because she knows what she is talking about.

Mr. President, many of my colleagues are not aware that Dr. Elders is also an exceptional scholar. As a full professor of medicine during 11 years at the University of Arkansas Medical School she taught courses—practiced medicine—and published over 150 articles on important developments in pediatrics.

Her programs to end teen pregnancy; reduce infant mortality; improve the well-being of children and families are all based in science.

Her victories fighting disease are too plentiful to recount.

But it is no wonder that President Clinton chose Dr. Elders when he was Governor to head the Arkansas Department of Health. And it is no wonder that President Clinton has asked Dr. Elders to move to Washington to become this Nation's chief medical officer as the Surgeon General of the United States. Dr. Elder's experience as a scholar, innovator, and veteran will serve well in her new role. Because Dr. Elders is veteran of many wars.

She started her career in health in the U.S. Armed Forces. She spent countless years in the trenches fighting to improve the public health of Arkansas. And now she will be bringing with her all that experience and wisdom to serve our country once again.

Mr. President, I believe Dr. Elders has the proven ability to get people to pull together to improve public health. I can think of no more qualified candidate.

I urge my colleagues to give their support to this remarkable nominee for Surgeon General.

Mr. President, I ask unanimous consent that the statement that Dr. Elders gave before the Committee on Labor and Human Resources on which you and I serve and at which she testified about herself, her background, and her navigational chart she would like to pursue as Surgeon General be printed in the RECORD.

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

STATEMENT OF M. JOYCELYN ELDERS, M.D., BEFORE THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE, JULY 23, 1993

Good morning!

Mr. Chairman, Senator Kassebaum and members of the Senate Labor and Human Resources Committee, it is a great honor to appear before you today as President Clinton's nominee for the position of Surgeon General. I want to thank you for taking time from your busy schedules to meet with me during the past few weeks. I appreciate that opportunity and look forward to talking with those of you I have not yet met.

Before proceeding further, I would like to take this opportunity to thank my dear husband, Oliver Elders, and all of my family and friends, many of whom are here today, who have supported me throughout my career, and particularly, for their support during the past six months. Many say I am a lightning rod. Please know that they have been my thunder.

I appear before you today at a time when our entire Nation is facing great challenges in public health. AIDS, violence, teenage pregnancy, a new strain of tuberculosis, low immunization rates all indicate we have not done a very good job at selling healthy lifestyles in this country. I believe the only way to heal our Nation is through prevention. Prevention requires education. If confirmed, I would make my utmost goal the education of our people, all our people, on how to stay healthy.

I have some personal and professional understanding of these challenges that I would like to share with you.

First, I am the oldest of eight children. I had never seen a physician prior to my first year at college. One of my earliest memories concerning the lack of health care was my four year old brother, who had a ruptured appendix and was taken to the doctor more than ten miles away on the back of a mule. His abdomen was lanced, a drain placed, and he was sent home. I have heard my mother scream during difficult child deliveries, without any medical help. I have seen bright young people all over this country surrounded by social problems impacting health such as drugs, alcohol, violence, homicide, suicide, AIDS and teenage pregnancy. My experience has led me to know first hand many of the programs administered by the Public Health Service and other Federal agencies.

Second, I know about taking advantage of opportunities. The United Methodist Church helped me reach the first rung of the ladder that enabled me to be here today by providing a scholarship to Philander Smith College at age fifteen. After college, I enlisted in the Army and became a physical therapist. Following my service years, I attended medical school on the G.I. Bill and after completing my medical training became a board certified pediatric endocrinologist. I know the importance of providing opportunities for our children today.

Third, as a physician in public health clinics and at the University of Arkansas School of Medicine, I have been the provider of many of the services supported by public health programs.

Fourth, I am a teacher. For over twenty years, I have been on the faculty in the Department of Pediatrics at the University of Arkansas School of Medicine.

During my medical career, I was a National Institutes of Health career development awardee. I served on NIH study sections, advisory committees for both the NIH and the FDA, and, as a consultant to or as a member of advisory committees for many of the programs sponsored by the Public Health Service. I am an experienced researcher having authored many articles on hormonal growth disorders in children. I appreciate the need to have good scientific facts to back up conclusions.

For the past five and a half years, I have been an administrator at the State level as Director of the Arkansas Department of Health. Last year, I was honored by my fellow health directors when they elected me President of the Association of State and Territorial Health Officers (ASTHO).

Finally, I am a coalition builder. Since becoming the Director of the Arkansas Department of Health, I have spent a great deal of

my time, recruiting the help of churches, schools, civic organizations, judges, businesses and local communities. I realized that I could not do the job alone. I needed to mobilize all of the resources available in our communities to help save the most valuable resource we will ever have, our human capital. I do not believe that we can dictate from above what local communities need to do to solve the public health problems we are encountering today. We must empower each community to design their own solutions.

As a result of my background, education, training, and experience, I have become a strong advocate for programs that will strengthen families, reduce risky behaviors, improve health and enable children to become healthy, educated, motivated and to have hope for the future. Far too many of our children have become members of what I call the 5-H Club—hungry, healthless, homeless, hugless, and hopeless.

I would like to explain what I am about. But before I do that, I would like to address some issues about me that have been raised.

I am about early childhood education to help children get a good start in life. Only 18% of Medicaid children in Arkansas, the poorest of the poor, have the opportunity to attend Headstart. We know that early childhood education is cost effective and a preventive measure that reduces the likelihood that such children will end up as drop-outs, in prison, or as teen parents.

I am about—and always have been about—comprehensive health education from kindergarten through the twelfth grade. Comprehensive health education means age-appropriate health education programs which include information on: self esteem, alcohol and substance abuse including tobacco, nutrition, exercise, violence prevention, AIDS and human sexuality. It means being healthy and feeling good about yourself. Comprehensive health education teaches children to take care of themselves. Our children deserve that chance.

I advocate educating our parents so that all will know how to instill in their children the courage, strength and perseverance to meet the challenges of growing up. We do not teach parents how to be good parents. Because they do not want to do anything wrong, too often some parents simply do nothing when it comes to providing sound, solid direction and guidance for their children.

I believe we must teach our young men to be responsible. Children being born today need all the help they can get to succeed in this world—including two nurturing parents when possible. They deserve to know and receive support from both parents.

I am about comprehensive school-based or school-linked health services which provide primary preventive care for children at or near where they spend most of their day, in school. In Arkansas, it was my policy (which was later codified) that the local community and the local elected school board would decide if they wanted a clinic in their school and what services to be provided in the clinic. Only four out of twenty-four clinics in Arkansas offer contraceptives on site. Even in those clinics, the parents must sign a release statement before their child can receive family planning counseling and contraceptives from the clinic.

I believe we must offer our bright, young people hope for the future by providing scholarships to those who stay out of trouble and do well in school so they can attend college. It is far cheaper to send them to college than to send them to prison.

Finally, I am about improving the quality of life of all Americans by:

preventing chronic and infectious diseases, including cancer, heart disease, hypertension, tuberculosis, and AIDS;

reducing infant morbidity and mortality;

eliminating the serious disparities in health problems that minority groups experience;

preventing and reducing the toll of injuries and disabilities in our society;

improving womens' health; and

providing care and services for our elderly so they can live in dignity and comfort during their final years.

As Surgeon General, I will be a true advocate for the improvement of health in America, a strong dedicated leader for the U.S. Public Health Service Commissioned Corps and an effective representative for the Public Health Service.

If confirmed, I am excited about commanding the PHS Commissioned Corps. What doctor wouldn't be excited about working with over 6,500 highly-trained and experienced health professionals? The Commissioned Corps has played such a key role in addressing the public health threats of the day—whether they be polio, AIDS, floods or hurricanes. I commit to you that, under my leadership, the Corps will continue to be a vital force in protecting the health of America.

Mr. Chairman, and members of this committee, I want to change the way we think about health—by putting prevention first. I want to change the behaviors and attitudes of Americans by promoting programs and policies which will enable us to be responsible for our own health. I want to be the voice and the vision for the poor and the powerless. I want to change concern about social problems that affect health into commitment. And, I would like to make every child born in America a planned, wanted child.

Should I be confirmed, I would like to work with you and all America to develop an action plan to improve the health of our country. To me, it is not enough to just reform the health care system. We will never have a large enough budget to address all the health care needs of our citizens if we do not start thinking prevention and taking personal responsibility for our health.

I am a hard worker. I am willing to give my time and my talent. We have a big task before us, and I hope you will see fit to make me part of your team.

I will be most happy to respond to any questions.

Ms. MIKULSKI. Thank you, Mr. President.

I want to just share with my colleagues two important conversations that I had with Dr. Elders, one in my own office, and the other in the dialog of the committee hearing that we held on the confirmation of our distinguished nominee.

When Dr. Elders came into my office, we greeted each other with enthusiasm and her usual energy and talked immediately about what we had in common—we were both about the same size; we are about the same age.

And as we recalled our youthful educational experiences—she from the South and I from the Northeast—we recalled that, as we grew up, we grew up in an atmosphere of segregation, and that we lived in our young adult lives through the most enormous actions and passions that this century probably presented itself: To see not only the end of the cold war and the Berlin Wall come down, but that to live through other types of civil actions in our own country in which we watched, through Presidential leadership and congressional support, the walls of segregation come down and create an opportunity structure in the United States of America.

Dr. Elders recounted for me the days of her own poverty-stricken youth, in which she herself did not have access to health care until she was a freshman at college; the fact that she never dreamed that she could go to the college but, because of the United Methodist Church that reached out to talented, young leadership in the African-American community, that reached out and gave Joycelyn Elders a scholarship, she was able to leapfrog over so many of the obstacles of a young African-American woman in that time and that place in history.

And, yes, she did leapfrog over in order to be able to take advantage of an educational opportunity. But then she never forgot where she came from. Because when she moved ahead, she remembered those who had been left behind, and then devoted her life to seeking an opportunity where she could be a healer in a world that she felt desperately needed healing.

She talked about why she chose the field of physical therapy and why she went in the Army. She went into physical therapy and joined the Army because it was an opportunity in probably what was a more desegregated environment in our society where you could be recognized for talents and abilities—not because of what you looked like, but because of what you could do.

She distinguished herself as a member of the U.S. military. She was a physical therapist in the U.S. military. And on coming out, she took advantage of the GI bill and went to medical school. She became a board-certified endocrinologist.

Mr. President, talk about denying stereotypes. My, gosh, the field of endocrinology is one of the most sophisticated fields of medicine in which one needs to be not only a clinical practitioner but one needs to be a scholar.

And she took those talented hands that God gave her, that great mind, and that great heart and put them to work. And when one looks at what she has done, she has not only been a physician, but she has been a scholar.

She has received an NIH award. She served on a variety of NIH study sections, advisory committees for both the National Institutes of Health and the FDA. And she has been a consultant to members of advisory committees for many of the programs sponsored by the very Public Health Service which we hope she will lead.

Her experience has been in fields like juvenile diabetes and hormonal growth disorders in children.

I think, Mr. President, when one looks at what has been said about Dr. Elders, one can see what her scholarship and her commitment to service has been.

When I asked Dr. Elders what she thought of this confirmation process, she said:

Senator, it hurts. You think you know who you are, you think you know what you have done, and the President of the United States calls you and you know what you want to do and what more you can do for this country.

But she said:

When you go through this nomination process, something happens. In speeches I have made, one liners are taken out of context; other kinds of aspects of my life. I feel like I have been made a caricature of what I truly am.

So I said:

Well, Dr. Elders, tell me who you are and what are you most proud of.

She said:

Senator, I am most proud of what maybe only shows up as one line on my resume. Yes, I am proud that I am a doctor. Yes, I am proud that I led the Arkansas Health Department. But I am proud that I am married to a fine man, who is a basketball coach in our local community. And between us both, we have raised two swell, smart, community-dedicated, God-fearing young men.

She said:

I know what it is like to be a wife and a mother and to take young African-American men, who are often looked at as having no hope and no future, and in my own family raise those boys up with my husband. But with that, I also want to reach out to others regardless of their ethnicity or the way they pray or what they believe.

We want people to have hope and we want people to have responsibility. We want people to embrace the values in our society. That is what I tried to do in my own family.

She said:

My own family does not recognize what is being said about me, Senator.

I said:

In what way, Dr. Elders?

She said:

We are church-attending, God-fearing, Methodist hymnal-book-singing members of a church. My own brother is a minister. He has chosen the healing of the soul while I have chosen the healing of the body. When they hear about me and what they say I am, my family says, "That is not Momma; that is not my sister." And, certainly, that is not me.

I think that says something. I think that says something.

The other thing she said is:

I am a coalition builder, Senator. They had me up there sounding like I am going to say the most radical things, the most offensive things, the most coarse things. That is not me. Maybe when I am in a classroom, I use a one-liner to get the kids' attention. Maybe sometimes in my enthusiasm, I have been a little flip. If only you could reel that back. But Senator, you know; you have given speeches. How do you feel?

I said:

Believe me, I know there are some words I would like to take back.

But she said:

Do you know what? What is continually being missed is that I am a coalition builder. In my own home State, everywhere I have worked, in everything I have done, I have tried to bring people together out of mutual need. When they came together out of mutual need, they got mutual respect. And then, when they got mutual respect, we went on to not only solve the problem, but to build a sense of community and relationship that endured and was sustained long beyond the problem for which we came together in the first place was solved.

I am a coalition builder. And you know that right now, in the United States of America, we need people who can reach out across those lines that normally divide us to bring us together for coalitions.

I thought that was pretty powerful. And she said:

I am not this caricature they want to make me out to be. I am a serious person, dedicated to the public service. Regardless of what judgment the United States Senate makes about me, I am willing to stand before my own family, feeling I have served them well, and to stand before my own Creator and feel I have served him well, as well.

I will tell you, I like a Surgeon General who talks like that. There is more I could say about Dr. Elders, but I wanted people to get that flavor.

Then later on, when we were at the hearing, in terms of the confirmation hearing, I raised some very specific issues, because we want a Surgeon General who, yes, has identified the fact that she wants to make children her number one issue. But I asked about aging. I chair the subcommittee on aging.

Dr. Elders, without missing a beat, talked about how she wants preventive health services not only for children but for elderly. She believes that health insurance, when we use the term long-term care, it is not a synonym for nursing home reimbursement but should be a synonym for a long-term care strategy, a continuum strategy that keeps people out of nursing homes and enables them to stay in their own community. She has supervised and administered those services in her own community to do exactly that.

At the same time, I asked her about Federal emergency management. I chair the subcommittee that funds FEMA. I said: "The Midwest is being flooded; public health problems are going to be at an enormous level.

She outlined how she worked with the Arkansas Federal Emergency Management System so when Arkansas was hit by floods, they could have a public health strategy: Restoring clean water, safety for the kids, immunization against tetanus, at the same time delivering the mental health services that come when you lose a community and lose your job.

I think that is a pretty versatile Surgeon General to be. And she has shown she can be on the firing line, as well as somebody who I believe can hold her own on Night Line.

So, Mr. President, I have come to the conclusion that I believe Dr. Elders is a seasoned clinician, a distinguished scholar, and she also brings character and she brings commitment. She knows how to deal with adversity without herself becoming a victim.

I think she will be inspirational. I think she will be motivational. I think she is the right Surgeon General at the right time at this point in American history.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, I will be happy to yield to the Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I think the chairman and I, the Senator from Massachusetts, would just like to discuss for a moment that the Senator from Indiana and the Senator from Oklahoma wish to speak briefly, I think tonight, and there are many of us who wish to speak tomorrow, if that is satisfactory with the chairman of the committee. Can we reach an agreement there just be a few comments tonight, and the rest of the time tomorrow will be taken for a number of us who do wish to speak? Many have already gone home this evening.

Mr. KENNEDY. I had further remarks myself. I plan to be here for a period of time. I know my colleague from Pennsylvania, Senator WOFFORD, does as well.

I think all of us understand we are in sort of the final time of the Senate. I think most of us—myself included, up to about 45 minutes ago—thought that on the supplemental there were six more amendments that would take us well into the night. Some of the Members are here, and I will be glad to stay here as long as any of our colleagues, members of the committee or others, are interested in making whatever comments they want to. I will be glad to engage them in any discussion or further examination of the issues.

I know there are Members who wish to speak. I intend to be here. I will be glad to enter the discussion, debate, and do the best we can to respond to some of the questions, and proceed in any way. I have some additional remarks, but I welcome accommodating the other Senators with whatever comments they have.

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator from Indiana.

Mr. COATS. Madam President, I appreciate the remarks of the Senator from Massachusetts. I know there are a number of Members on the Republican side who wish to speak to this nomination, many of whom were somewhat caught by surprise, as we all were, when the emergency flood relief bill moved more quickly than we had anticipated when the remaining amendments were either dropped or accepted.

Therefore, a number of Members have expressed the fact that they were not prepared to come to the floor this evening but wanted to make sure they reserved the right to do that tomorrow. I assume, from the remarks by the Senator from Kansas and the Senator from Massachusetts, we can assure them they will have ample opportunity to speak to the issue tomorrow.

I personally do not intend to take a great deal of time this evening. There are a number of areas I would like to discuss, questions and issues I would like to raise regarding this confirmation. I will reserve most of those until tomorrow.

I do, however, want to address the question relative to the delays of this nomination. The nomination was not sent to the Senate, or sent to the committee, in December. While the President stated his intention to nominate Dr. Elders to the position of Surgeon General in December, he clearly indicated that he would not be sending that nomination to the Senate until late spring or early summer.

In fact, the nomination was sent to the Senate on July 1, just prior to the time of the Senate's Fourth of July recess. So on returning from that recess, well into the second week of July, we have had only 3 weeks of time expire since then.

In that 3-week period of time, the Senate Labor and Human Resources Committee has moved, I think, with more speed than it normally moves on these types of issues. It has been remarkable in terms of how quickly we have moved on a nomination of an individual who has generated as much controversy as has Dr. Elders.

I would simply point out to my colleagues that a former Surgeon General nominee, Dr. Everett Koop, was delayed for 9 months in this Senate before he was confirmed to his position as Surgeon General. So compared to Dr. Koop, the timeframe for Dr. Elders is lightening quick.

Here we now are in the last week of the Senate's session before the August recess on a Wednesday evening at 10 p.m. with the majority leader suddenly moving at 9:20 or 9:25, or so, to this nomination, having debated the important issue of emergency flood relief, which has just passed this body, and in the middle of the biggest issue that this President and that this administration has faced in its 7 months of tenure, and that is the budget reconciliation bill or, as we call it on our side, President Clinton's tax bill. This has captured the attention of the media, of the Nation. All of the focus is on what the Senate and what the House are going to do on this bill.

We have yet to see the bill. We have yet to discuss the details of the bill. The Nation has focused its attention on it this week. The common knowledge here is when that is disposed of, we will break for the August recess. I do not really understand what the necessity is to insert this nomination at 10 p.m. on a Wednesday evening into this process and rush to judgment on this particular nominee.

Some have said that there has been an attempt on the Republican side to use procedural devices, whatever procedural devices are necessary, to block this nomination. I know of no Member on the Republican side or, in fact, in this United States Senate, that is intent on filibustering the nomination of Dr. Elders.

I know of several who feel that given Dr. Elders' experience as public health official for the State of Arkansas, given her statements that have raised considerable questions in a number of people's minds relative to her positions on a number of issues, given questions that have been raised regarding her family's and her own personal financial dealings and her financial dealings as a director of an Arkansas bank, given her performance as Public Health Director of the State of Arkansas, I know a number of Senators who have said there are a number of questions that ought to be raised and a number of questions that ought to be answered and we ought to take a thorough look at this nominee, as we do with every nominee.

I serve on the Armed Services Committee, and we have been attempting to confirm individuals, names submitted by the Department of Defense and by the President for months. While we have been attempting to expedite that, it is not outside the realm of the usual in terms of the way the Senate moves on these nominations.

For some reason, which I cannot fully explain, there is a rush to get Dr. Elders nominated. Some suspect the lapse of time between tonight and when the Senate again resumes its business in the second week of September, will shed light on Dr. Elders' activities that perhaps might jeopardize her nomination. I have no knowledge of that. I have no knowledge of any information out there that would do that. But it is somewhat of a mystery to me, to this Senator, that we have to rush this nomination through. I think it is incumbent on us to raise the issues, address the questions, attempt to seek the answers to many of the very serious concerns that have been raised by this.

This is not a matter of passing interest to my constituents. In my 4½ years in the U.S. Senate, I have never seen the kind of opposition and the ratio of opposition to any issue or to any nomination as to this particular nomination. Our phones are flooded with calls from constituents from Indiana in a ratio of 100 to 1—out of 100 calls, 99 oppose the nomination of Dr. Elders and 1 supports it.

I have never had an issue that has come close to that. We have never had a nomination before us—and we have had some controversial nominations before us in this body since my time in the Senate—that have even come close to this. It is of great interest to the people I represent.

I think it is my duty as their Senator to ask the questions that they are asking and to seek the answers that they are seeking, because we are nominating here an individual who speaks for the Nation on public health concerns; that is, in my opinion, an individual who ought to attempt to form a consensus, a person who ought to attempt to educate, a person who ought to attempt to bring us together as a people in acknowledgment of serious public health concerns and devise a strategy to address those concerns.

To put it mildly, Dr. Elders' tenure as public health officer of the State of Arkansas has been fraught with considerable controversy.

This woman has much to be commended for in terms of her background, in terms of her overcoming difficult obstacles in her life, and I admire her efforts in doing so. But in her tenure as public health officer for the State of Arkansas, she has said and done a number of things that have raised some very serious questions in the minds of my constituents, in this Senator's mind, and I think it is important that we spend a considerable amount of time addressing those. This is an important position. It is one that I think is important to this Nation, and I think we would be shirking our duty if we did not carry that type of importance.

Madam President, I will be addressing a number of those issues as we move forward with this nomination. I look forward to the debate we will engage in and, hopefully, we can get the answers to some of the questions we have. With that, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I will take just a very brief moment to respond, because others want to speak.

As was mentioned in the presentation, and in other earlier comments, Dr. Elders' nomination was effectively announced some 6 months ago. Since that time, as the institution proceeds, individuals have been gathering information about the nominee. So there has been plenty of information or time to develop it.

I just remind my good friend—and he is my good friend—we received the nomination of Judge Ginsburg on June 26, effectively 1 week before we had this nomination. She was reported out of the Judiciary Committee 1 day before we reported out the nomination of Dr. Elders. At that time we announced that we expected to have a final resolution of it, and we approved her yesterday. In that amount of time we had a

Supreme Court nominee, which is probably one of the most important decisions made by any President.

We would welcome the opportunity to agree to the same amount of time that this institution spent in considering an outstanding candidate for the Supreme Court, Judge Ginsburg, to debate the Surgeon General, the President's Surgeon General, who is going to deal with public health issues.

I did not hear any of our colleagues saying we were rushing Judge Ginsburg. With all the importance of her nomination, the Senate was able to consider a wide variety of positions that she had and her views about the Constitution and make a judgment. I certainly do not question that Dr. Elders has made statements and comments that people will agree with, and people will differ with. She has taken public health policy decisions that people will agree with and differ with. But we do feel that there should be time for consideration of her nomination. I know there are differences on that issue.

I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, I rise to make a few comments tonight. One, I was not aware this was going to come up tonight. A lot has been said about delay. I will make a couple of comments because some have stated that I am partially responsible for some of those delays and, indeed, I am and for different reasons.

I will tell my friend and colleague from Massachusetts, if Judge Ginsburg had made some of the same statements that Dr. Elders has made, she would not yet be confirmed for the Supreme Court. If she had taken similar radical positions as Dr. Elders, I can tell the Senator from Massachusetts that Judge Ginsburg would not yet be confirmed. We would be here for a long time. I will also tell my friend from Massachusetts, and I heard part of his opening statement when he recited many of the achievements that Dr. Elders has made and her family background, her rising from poverty, I congratulate her for that rise. I congratulate her for her history. I am proud of what she has been able to accomplish. It is exciting to see that kind of success and to see that mobility. So I compliment her for that.

That is not the reason why I oppose her nomination.

I will go into length tomorrow and probably speak for some time tomorrow about why I oppose her nomination. Have we sought undue delay? I would say no.

As both the Senator from Kansas and the Senator from Indiana have stated, this nomination did not come to the Senate until July 1.

I have heard some people say, well, wait a minute. Someone objected to the committee even having a hearing on her while the Senate was in session.

Let me just talk about that for a second. A week earlier I had requested that the committee postpone the hearing on Dr. Elders, and the committee did postpone the hearing on Dr. Elders because the Senator from Massachusetts and the Senator from Kansas wanted to have additional information. There were allegations raised concerning impropriety dealing with banking laws and so on, and they sought and solicited—and correctly so, in my opinion—additional information. And so they postponed the hearing. I think they were right.

I might also mention that there were serious allegations made, or at least some statements made in the paper concerning distribution of defective condoms just a couple of days before the hearing that was actually held.

We did not have answers. I requested information. I requested information from the FDA. We did not have that. As a matter of fact, I requested that FDA information on July 6, and I still do not have all the information from FDA. We are getting it day by day now. But certainly we did not have it prior to that hearing, and this Senator, for one, thought we should. We also did not have an FBI report. The FBI did conduct intensive investigations but there was not a summary report. It was not available to Senators, and, frankly, it should be prior to congressional hearings so individuals can ask questions if they feel that information is pertinent to the nominee.

I also will tell my colleagues I had stated I had no objection to the committee meeting that day as long as they would agree to come back and meet at a later date if additional issues were raised from some of the investigation. The Senator from Massachusetts certainly had the right not to agree to that second day, but, likewise, I had a right to postpone the hearing.

Madam President, I will just make a couple comments. Some people might say, well, why would you oppose a person who has risen from poverty in a neighboring State of mine.

I will just say it is not a pleasurable thing, and I will certainly tell my colleagues it is not because I am a Republican or because I am chairman of the Policy Committee or any of the above. It happens to be that I happen to be very opposed to some of the statements that she has made, and I think her statements are disqualifying.

Maybe I am wrong. I may be in the minority. But I happen to be a father. I happen to be a parent. I happen to have four kids. And when I read some of the statements that Dr. Elders has made—and some of the statements I will go into at length tomorrow—I find them quite offensive, quite offensive to people who oppose abortion who have been characterized as—this is Dr. Elders' quote, not DON NICKLES' quote—"nonChristians with slave master mentalities."

That is a very offensive statement. We will talk about that tomorrow. I am offended by the fact that when she was talking about prolifers, "Well, they need to get over their love affair with the fetus." Well, we will talk about that tomorrow.

As a parent, I am bothered by the fact that she would make a statement that teenage girls should not go out on a date unless they carry a condom.

I still have two teenagers. I have two kids that are in their twenties. But that is not the kind of advice I want my kids to receive from anyone and certainly not the Surgeon General using the bully pulpit for that type of advice to teenagers.

Or comments such as, "Hey, we teach our kids what to do in the front seat. Now we need to teach them what to do in the back seat."

No, thank you. That is not the kind of advice that I want my teenagers to receive from the Surgeon General.

Or when Dr. Elders, on June 19 made some kind of comments, talking about how do you help crack-addicted prostitutes, she said, "I would hope that we would provide them Norplant so they can still use sex if they must to buy their drugs."

I do not see that as being a responsible statement by a Surgeon General nominee either, and we will discuss that tomorrow. And that does not even go into some of the improprieties that have been alleged, which I have been trying to get some information about—not trying to get information through the press but just trying to get information, about the distribution and lack of public notification of defective condoms. We are still trying to get some information on that.

So when I have told people I do not really see how we can complete this nomination by the end of this week, I am being very sincere. I am not saying I wish to filibuster it. I have no desire to filibuster it. I do have a desire to get the information, to find out the facts, to find out if in some cases were laws broken and if so, were the laws broken with her knowledge.

So I think we need to get some answers, and I do not have all the answers yet. I do not know that we are going to have all the answers by tomorrow. I do know that we have one of the largest tax increases, if not the largest tax increase, in the history of our country before us. I think we need to talk about that. I think we need to talk about what is in that package, how it is comprised. I know that the President of the United States said it had more spending cuts than tax increases.

I do not think that is the case. I do not believe that is the fact. I think we need to get the facts out on that package before we vote on it—probably the

most important vote we will be casting this year, maybe this Congress, maybe for several years.

And so I personally would like to spend more time on the tax bill. I would like for the American people to know what is in the tax bill, and what it is comprised of and what kind of special deals were made and not made and so on. So I would like to spend most of my time on that tomorrow and Friday, frankly.

The majority leader has pulled this nomination up, and I will just tell the majority leader and my friends and colleagues that we have extensive comments and questions that will be raised, that need to be discussed, that the American people need to know about before we vote on this confirmation.

I will also tell my colleagues that there are a lot of Senators who wish to speak on this nomination. It is not just the Senator from Oklahoma, the Senator from Indiana, or the Senator from Kansas. But I think there are significant questions and comments that will be made on this nomination, and I really do not see how it would be possible to complete this nomination by this week's end.

Madam President, I yield the floor.

Mr. KENNEDY. Madam President, I do not intend to speak long.

We went into those matters that were raised by the Senator from Oklahoma in the course of the hearings. Many of those matters were raised both in the course of the hearing and as written questions, and they have been responded to. I think it is important in terms of the full record that any of those comments be put in the context in which they were used and the circumstances in which they were used.

I am informed by staff that the remaining information that has not been completed in response to the Senators requests has been—specific information that has been requested of U.S. attorneys. We are inquiring now whether that is appropriate for release. And in terms of the sales information dealing with one of the condoms, which we understand from the FDA is a trade secret, we are glad to share that with the Members. I am more than glad to stipulate the number of defective condoms and get back to the debate on the issue of the health policies that were involved in that question, if that is of help.

Let me just say finally, one of the frustrating aspects of this business has been the questions that are being asked—and I will just mention some very quickly here.

Here we have Senator COATS on the question of Norplant for prostitutes during a program called "Talk Live."

You were asked what you would do with crack-addicted prostitutes who get pregnant. Your response:

"I would hope that they would provide them Norplant so they could still use sex if they must to buy their drugs and not have unplanned babies."

Would you recommend we use Federal funds for this purpose?

It goes into a long description of exactly what her position is. That is a quote on July 29.

Senator NICKLES on August 3: "Would you recommend use of Federal funds for the purpose of providing Norplant to prostitutes?"

Here is Senator COATS on July 29:

Since you have on occasion stated you oppose restricting a woman's access to abortion for reasons other than "medical necessity" would you support a woman's right to terminate her pregnancy simply because the child was the wrong sex? Do you consider this a legitimate form of family planning?

She responds: "I have never considered abortion as a means of family planning."

Continuing, here is Senator NICKLES on August 3:

Do you believe the principles set forth in Roe v. Wade support a woman's right to terminate a pregnancy simply because the child was the wrong sex?

That is virtually an identical question.

Coats on July 29: "You also testified on Friday that you and other directors had voted yourselves an unsecured $230,000 line of credit."

Senator NICKLES on August 3:

1"Did you have an unsecured $230,000 line of credit"?

She goes into the full explanation. They are identical questions.

I just do not think that the nominee should have to answer the same question over and over—I think we are glad to get into each and every one of those issues. It is important that we do get into every one of those and have the full facts out. Every Member of this body should examine the record and how she responded because, as a result of her response to each and every one of the statements of the Senators from Oklahoma and her response in talking about the context in which they were used, and explaining her public policy positions. She was reported 13 to 4 out of that committee, with Republicans as well Democrats.

So all we would like to be able to do is to bring this before the Senate, so that Members do have an opportunity to review that record, and to review the testimony. We believe, quite frankly, that there will be strong bipartisan support. We are glad to get into it.

We have heard repetition of statements and comments that are, as we know, hot button issues and questions that are used out of context and continually repeated out of context. We welcome a full opportunity to have them put in context, and for the Members to effectively read her statement, and to hear her works. Leaving those out there for a period of 4 to 5 weeks is really a disservice to that individual. But we will look forward to the chance to go into those in some detail.

I see my friend from Pennsylvania is prepared to speak. I yield the floor.

Mr. WOFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. WOFFORD. Madam President, I support the nomination of Dr. Jocelyn Elders to be Surgeon General of the United States.

As the Senator from Massachusetts and the Presiding Officer, the Senator from Maryland, have stated in detail and so vividly, Dr. Elders comes before us well qualified to serve as Surgeon General. She is recognized by her peers as one of our Nation's most effective public health officials.

Dr. Elders' list of supporters for this nomination include medical and public health professionals and associations that include former Surgeon General C. Everett Koop, the American Medical Association, the National Medical Association, the American Nurses Association, the American Academy of Pediatrics, and the Philadelphia-based American College of Physicians. At last count, there were over 340 organizations supporting this nomination.

Some—and we just heard a preview from my friend, the Senator from Oklahoma—we criticized Dr. Elders for statements she has made and positions she has taken as the director of Arkansas Health Department. I do not agree with all of Dr. Elders' positions or statements, but I find this to be the case very often with people who are straight-talking and independent-minded.

Remember Dr. Koop. Dr. Koop was another straight-talking, independent-minded nominee. A lot of controversy swirled around that nomination. I did not agree with everything Dr. Koop said. But I hope we would all agree looking back now that he proved to be an extraordinarily good Surgeon General. I hope also we will agree in due course looking back that Joycelyn Elders had that same potential and became an extraordinarily good Surgeon General. In hope we all agree that the delay of many months in confirming Dr. Koop should not be repeated today.

We have had plenty of criticism, indeed, of important positions in this Government not being filled. Here is one that we can fill now. It should be no surprise that we should move forward to do so after the thorough hearing we held in which we went into, as I heard it, every single one of the items brought up by my friend, the Senator from Oklahoma.

I particularly welcome among the things that I like about Dr. Elders, her commitment, to prevention, and her statements before the Labor and Human Resources Committee that if confirmed she will make her "utmost goal the education of our people, all our people, on how to stay healthy."

She recognized that it is not enough to just reform the health care system. She added "We will never have a large enough budget to address all the health care needs of our citizens if we do not start thinking prevention and taking personal responsibility for our health."

Certainly there have been questions raised about Dr. Elders that have ranged from her financial dealings to decisions she made as the director of the Department of Health in Arkansas. But I believe she has responded with the forthrightness and honesty that are a good measure of her character. I was satisfied with her answers. She put the items we have heard into true context.

She noted when she thought she had made a mistake, and her determination to persuade and to shake people up and to stir them up and wake them up. She may not have had exactly the bedside manner that the Senator from Kansas has recommended she develop further, but she earned our respect. By a vote of 13 to 4, with a number of our Republican colleagues voting for her the Committee sent her name to this body, to this floor for action. I hope that we soon move forward to take that action.

I was satisfied with her answers. And I believe we should now move forward to vote to confirm her and end this 11th hour effort at character assassination and caricature.

As one who is working and fighting for health care reform, I believe we need a Surgeon General who will forcefully and passionately carry the message of good health to this Nation. From what I have seen of Dr. Elders and from what I know of her background and achievement, I believe she will be such a Surgeon General.

Madam President, I would like to read from, and by unanimous consent insert into the RECORD, following my remarks, several letters that I have received that illustrate the support of Pennsylvanians for the confirmation of Dr. Elders.

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

(See exhibit 1.)

Mr. WOFFORD. I might add Pennsylvania has an old tie to a controversial Surgeon General. The first Surgeon General, Ben Waterhouse, was a Pennsylvanian appointed by Thomas Jefferson. Dr. Waterhouse was quite controversial in his day.

First, let me read from a telegram from Dr. Leon Sullivan who writes:

I know her personally and professionally and have always been impressed by her commitment to the highest principles and standards. She would be a tremendous asset to the Nation in that position.

The second letter is from Alan S. Noonan, Governor Casey's Secretary of the Department of Health in Pennsylvania. He writes:

As the State Health Official for Pennsylvania, I strongly support the confirmation of M. Joycelyn Elders, M.D. as U.S. Surgeon General.

Her confirmation will help ensure that improved health status of all Americans becomes a priority of this Nation. I encourage you to support her confirmation strongly.

And from Dr. David V. Evans, a recent graduate of the University of Pittsburgh School of Medicine, these words:

As a young physician, Dr. Elders inspires me. With so many of us being trained in schools that do not teach prevention and primary care, Dr. Elders would be a role model for many students and residents to serve the people as a doctor should. I hope that I can be as strong, courageous, and influential as a public advocate.

Madam President, let us move forward and end this debate so that we can resume the important business of our Nation—passing the President's deficit reduction plan and immediately taking up the issue of health care reform when we return in September.

It is significant to me that it was a bipartisan group of Senators on the Labor Committee who voted in favor of Dr. Elders' confirmation. I again thank my colleagues, Senators KASSEBAUM, DURENBERGER, and JEFFORDS of the Labor Committee who, after listening to tough questions posed to Dr. Elders and her responses, cast their votes in favor of her confirmation. I know that a vote on this floor, on this nomination will continue that bipartisan effort. Let us not delay any longer. Let us vote to confirm the nomination of Dr. Joycelyn Elders to be Surgeon General of the United States.

EXHIBIT 1

[Western Union Telegram, July 28, 1993]

Senator HARRIS WOFFORD,
Senate Committee on Labor and Human Resources, Washington, DC.

DEAR SENATOR WOFFORD: I am writing to offer my unqualified support for Dr. Jocelyn Elders as Surgeon General of the United States. I know her personally and professionally and have always been impressed by her commitment to the highest principles and standards. She would be a tremendous asset to the nation in that position. Her primary interest has always been and continues to be the health and well being of all Americans, particularly, our youth and disadvantaged citizens. If I can offer any additional information or support in this regard, please let me know.

Sincerely,

REV. LEON SULLIVAN.

DEPARTMENT OF HEALTH,
Harrisburg, PA, July 9, 1993.

Hon. HARRIS L. WOFFORD, Jr.,
U.S. Senate, Russell Building, Washington, DC.

DEAR SENATOR WOFFORD: As the State Health Official for Pennsylvania, I strongly support the confirmation of M. Joycelyn Elders, M.D. as U.S. Surgeon General. Dr. Elders is a board-certified pediatric endocrinologist. As a professor at the University of Arkansas Medical School and researcher, she authored more than 150 scholastic articles for medical publications.

Dr. Elders tackles tough issues head on. As Surgeon General, she will refocus debate on the health care system towards prevention, which will simultaneously lower health care costs and improve the health of the nation. One of her major goals will be improving the health and well-being of all Americans, those at highest risk of illness.

As director of the Arkansas State Health Department, she has helped raise the immunization rates of pre-school children in the state and has been instrumental in attracting more health professionals to practice in underserved rural areas.

Among numerous distinctions, she has received the American Medical Association's Award for Outstanding Public Health Professional, the National Governors' Association Distinguished Service Award, and the National Education Association's Award for Creative Leadership in Women's Rights.

She currently serves on the boards of a dozen councils and commissions in the public and private sectors, including the National Institute of Medicine's Health Promotion Disease Prevention Committee and the Council on Government Affairs for the Academy of Pediatrics. As a pediatrician, a public health professional and a superb advocate for children, Dr. Elders has the determination and the ability to persuade Americans to take better care of their health.

Her confirmation will help ensure that improved health status of all Americans becomes a priority of this nation. I encourage you to support her confirmation strongly.

Sincerely,

ALLAN S. NOONAN, M.D., M.P.H.

DAVID V. EVANS,
Pittsburgh, PA, July 12, 1993.

Hon. HARRIS WOFFORD,
U.S. Senate, Washington, DC.

DEAR SENATOR WOFFORD: I am writing to you as a constituent to urge your support of the confirmation of Jocelyn Elders, M.D. for Surgeon General of the United States.

As a recent graduate of the University of Pittsburgh School of Medicine and a future family physician, I have seen, first-hand, the importance that prevention and public health play in our society. In Pittsburgh we have one of the highest infant mortality rates among black babies in the country despite an abundance of hospitals and physicians. The death of these babies is due, in part, to teen pregnancy and poor prenatal care.

Dr. Elders has dedicated her professional life to the public through her practice of medicine. She is a well known pediatrician and public health advocate. She is outspoken and strong in this advocacy. The medical community also supports her prior activities as a practicing physician and as the Director of the Arkansas State Health Department.

As a young physician, Dr. Elders inspires me. With so many of us being trained in schools that do not teach prevention and primary care, Dr. Elders would be a role model for many students and residents to serve the people as a doctor should. I hope that I can be as strong, courageous, and influential as a public health advocate.

I urge you, Senator Wofford, to enthusiastically support Jocelyn Elders as the next Surgeon General of the United States. This country needs her.

Sincerely,

DAVID V. EVANS, M.D.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Madam President, this week the Senate has an ambitious schedule of activities to complete prior to adjourning for August recess.

In addition to considering legislation on supplemental funding for flooded

areas, appropriations for several Cabinet departments, and completing action on national service, we have on our agenda the consideration of several nominees. Many of those nominees have already come before this body.

I am here today to encourage my colleagues to work diligently to ensure that the consideration of another nominee, Dr. Joycelyn Elders, is not left behind in the flurry of activity.

I will not spend my few minutes here this evening discussing in detail Dr. Elders' accomplishments as a physician, administrator, and pioneer in the health field. I did that when I spoke in support of her nomination at this very spot on July 20.

Nor am I here to tell you what her nomination means to me and to this Nation as a candidate whose candor, knowledge, commitment, and compassion will enable her to advance the notion of prevention and healthy living to the citizens of this Nation. I did that when I introduced Dr. Elders to the Labor and Human Resources Committee on July 23.

I am here tonight to bring to the attention of this body and the American people, the tactics some of my colleagues are using to attempt to delay a vote on the nomination of Dr. Joycelyn Elders until September.

I will do my best not to have that occur, particularly when the reasons for delaying her vote are unwarranted.

Some of my colleagues assert that she is too controversial and thus wish to use the recess to generate increased opposition.

In fact, that is the whole purpose of the delay, to delay the nomination beyond this Friday or beyond the beginning of the August recess so as to have time to organize politically an opposition to Dr. Elders' nomination.

I might remind some of my colleagues that Dr. Elders was nominated by the President in December—8 months ago. Eight months is a long time to dig up dirt, if there is any to be found, and to consolidate support.

The fact is that 8 months has not been enough and they want to continue into and beyond the recess in order to consolidate support in behalf of a very narrow and, I daresay, unfair, unwarranted, and unprecedented agenda.

The bottom line is, the hearing is over, the Labor Committee voted 13–4, a large and bipartisan majority, in favor of her nomination. That committee has done its job in advising the full Senate. Issues relevant to Dr. Elders' nomination have been addressed in depth, not only at the committee hearing but also through 200 questions submitted to her on July 20 and another 30 questions submitted this week. And, Madam President, she has answered them all.

Dr. Elders has served a large portion of her life in public service—she is not an unknown. Her views have been widely publicized and she has been very forthcoming in response to all questions.

It is time now, not to begin the review of her record again, but evaluate the record that is before us and vote our conscience.

Unwarranted delays do the Congress—not to mention Dr. Elders, but also do this body—a great disservice. In this case, the relevant and appropriate information concerning Dr. Elders' qualifications have been presented and are available to anyone who would like to take a closer look.

There are some things that Dr. Elders may have said that some of my colleagues do not agree with; that is absolutely fine.

But this vote is not about whether one agrees with every single word that Dr. Elders has uttered in the many years of her career, but whether, on balance, based on her total record, one believes that she will or will not be a good Surgeon General for the citizens of this country. And that is what this vote is about, and that is what the vote ought to be about.

The problem, of course, is getting to a vote. And I believe we have an obligation to vote on Dr. Elders' nomination and to conclude this matter so that our country will have a Surgeon General.

I believe that Dr. Elders has demonstrated, throughout her career, sound judgment, integrity, and a firm dedication to improving the health of the citizens that she served, and particularly in the State of Arkansas.

I also believe that most of my colleagues in this body believe, as I do, that she would make a superb Surgeon General and are ready to cast a vote so that she may begin the important work of that position.

While I am also certain that if we were to wait until September to take a vote, her nomination would prevail, that is not the point. The point is that the Senate should not be deterred from the business at hand because some Members, a few Members, a radical minority, I would add, want to take some additional time to gather information that they hope will help consolidate a political opposition to her nomination. And that is the whole point of this debate today.

We cannot allow this to happen. The scrutiny that nominees to public office presently undergo is already painful and intrusive for the nominee and his or her family. How long should we prolong that process?

We are supposed to, I might add, Madam President, we are supposed to perform the function as the Constitution has given us to advise and consent in nominations, which means we take a proactive as well as a reactive position with regard to looking at the qualifications and evaluating a nominee to see if that person has the credentials, the qualifications, the integrity, and the heart to fulfill the post for which they are nominated.

Advise and consent though, Madam President, does not mean an inquisition. I daresay this process, the way that Dr. Elders is being treated and the way, quite frankly, the advice and consent has been perverted, in my opinion, turns it into an inquisition. And that demeans not only the nominees, but it also demeans this Congress as a body and demeans our Nation.

Dr. Elders has already weathered the examination. Her record has been on display for all to evaluate for some time now. I believe the time has come to consider her nomination and I call upon my colleagues to review Dr. Elders' record and to vote on her nomination this week. We must stand together to reject any delay—any further delay—in the consideration of this nomination.

I am willing to stay here as long as it takes. On that point, I am not alone.

In closing, Madam President, I say about this nomination, we are to go in recess at the end of this week. I believe it is altogether appropriate and we can find the time; we certainly find the time to take up matters that are important to the work of this body, that are important to the work of this country. Dr. Elders' nomination is not less than that.

This country needs a Surgeon General. We need to have the direction from that office that she can provide, and she is anxious to provide.

I join her in support of moving this nomination along, having a vote conclude this week, and having her confirmed to be the next Surgeon General of the United States.

NOMINATION OF DR. JOYCELYN ELDERS FOR SURGEON GENERAL OF THE UNITED STATES

Mr. PACKWOOD. Madam President, I rise today to express my support for the nomination of Dr. Joycelyn Elders to be the next Surgeon General of the United States.

Dr. Elders' professional qualifications are remarkable. Although work on her family's farm kept her from attending school full time, she graduated from high school as valedictorian at the age of 15.

After attending college on a full scholarship, she graduated magna cum laude and then went off to the Army so she could attend medical school on the GI bill.

A pediatric endocrinologist, Dr. Elders has experience in every phase of the medical field: She has been a professor of medicine, a medical researcher, a practicing physician, and the director of the Arkansas Department of Health.

Her additional civic and professional activities are too numerous to mention.

In spite of her remarkable personal story, perhaps an even more important qualifying factor for Dr. Elders' fitness as Surgeon General is her demonstrated willingness to take strong positions in favor of public health policies which she believes to be correct.

Her first priority has always been the practice of preventative medicine.

Her courageous initiative against teen pregnancy in Arkansas includes school-based clinics and a public information compaign.

She is a tireless advocate for availability of family planning and prevention of sexually transmitted diseases.

Her expertise in pediatrics served Arkansas well when she moved aggressively to wage a campaign for healthy babies and availability of preventative health services for young children.

Dr. Elders has exercised courage and vision in tackling tough and controversial health problems.

I am pleased to join the American Medical Association; Dr. Michael Skeels, administrator of the Oregon Health Division; President Peter Kohler of the Oregon Health Sciences University, and the other dozens of medical organizations and experts who support her.

She has the kind of leadership we need in health care at this very critical time, and I strongly urge my colleagues to support the nomination of Dr. Joycelyn Elders as our next Surgeon General.

Madam President, I ask unanimous consent to have printed in the RECORD a letter from Dr. Michael Skeels of the Oregon Health Division, which strongly endorses Dr. Elders.

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

OREGON DEPARTMENT OF HUMAN RESOURCES,
Portland, OR, July 7, 1993.

Hon. BOB PACKWOOD,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: I am writing on behalf of the Department of Human Resources, Oregon Health Division, to express my strong support for Joycelyn Elders, MD, for US Surgeon General. As a pediatrician, a public health professional, and a superb advocate for children, Dr. Elders has the determination and the ability to persuade Americans to take better care of their health.

Dr. Elders tackles tough issues head on. As Surgeon General, she will refocus debate on the health care system towards prevention, which will simultaneously lower health care costs and improve the health of the nation. One of her major goals will be improving the health and well being of all Americans, especially adolescents. She will address infectious diseases such as tuberculosis and measles, as well as nutrition, tobacco and alcohol use, and preventing injury and violence. We urgently need her leadership nationwide.

In the five-and-half years since she became director of Arkansas State Health Department, she has helped raise the immunization rates of pre-school children in the state and has been instrumental in attracting more health professionals to practice in undeserved rural areas.

Dr. Elders is a board-certified pediatric endocrinologist. As a professor at the University of Arkansas Medical School and researcher, she authored more than 150 scholastic articles for medical publications.

Among numerous distinctions, she has received the American Medical Association Awards for Outstanding Efforts on Behalf of American Youth and for Outstanding Public Health Professional, the National Governor's Association Distinguished Service Award, and the National Education Association's Award for Creative Leadership in Women's Rights.

She currently serves on the boards of a dozen councils and commissions in the public and private sectors, including the National Institute of Medicine's Health Promotion Disease Prevention Committee and the Council on Governmental Affairs for the Academy of Pediatrics.

Her confirmation will help ensure that improved health status for all Americans becomes a priority of this nation. I encourage you to strongly support her confirmation.

Sincerely,

MICHAEL R. SKEELS, PhD, MPH,
Administrator, Health Division.

Mr. KENNEDY. Madam President, we will have a better opportunity tomorrow to get into the quality and the breadth of support for Dr. Elders. But I do want to mention at this time the excellent support she has from the American Medical Association, not considered to be a flaming liberal organization; the American Cancer Society, because of the great work that she has done in the area of cancer prevention; the American Hospital Association, another very distinguished group that is generally considered to be a conservative organization; the National PTA, parents and teachers, the organization that reflects the parents. I think, again, having the strong endorsement of parents of the various schools where she has brought her skills, whether it has been in immunization, or childhood health screening, or in the other preventive health care areas, to have the parents involvement and their strong support, is a very clear message about the deep respect she has among those groups.

Madam President, I am notified that one of our colleagues will be here momentarily and desires to speak briefly to the Senate. So at this time, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

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

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

Mr. KENNEDY. Madam President, I will include in the RECORD a really superb record of endorsements from our colleagues from Arkansas [Senator PRYOR and Senator BUMPERS], two highly regarded and respected Members of this body who wrote to our colleagues and gave a very clear indication of their own strong support for the nominee, based on their extensive experience.

I am mindful as well of the excellent statements that were made by our colleague from Oklahoma [Senator BOREN] and Senator HATFIELD's statement introducing her to the committee was enormously important. She has also received strong support from other members of the delegation including Congresswoman LAMBERT, from Arkansas, who made an absolutely superb presentation. Congresspersons come and appear regularly before the committee on endorsements, but her detailed knowledge of Dr. Elder's involvement in various health clinics and her description of the various programs that have been initiated under Dr. Elders' leadership in her district was enormously impressive. I think it was a very clear indication of someone who knows Dr. Elders the best, like many of those who support her. That has been very indicative persuasive and powerful to many of us, that the people who have worked with her, whether in academic medicine, or people out in the community, small villages and towns of Arkansas, parents, school administrators, school teachers, school boards, professional public health personnel; the people that really knew her best have been her strongest allies and finest supporters.

They have reflected a wide and diverse political background and experience, primarily based upon very thorough respect for her detailed professional qualifications and abilities, her powerful integrity, her enormous sense of decency and caring and compassion.

We will take some time during the debate tomorrow to use some real illustration, some anecdotes that I think are enormously powerful and telling in terms of the real quality of this absolutely superb individual.

So, Madam President, we look forward to the debate tomorrow. We are going to be here at the time designated by the majority leader. We hope our colleagues will speak to these issues. We are going to be prepared to respond to any of the questions which are raised. And on those two items I mentioned earlier we will, hopefully, have either additional information or responses to those matters as well. We look forward to the debate and, hopefully, a resolution of this nomination.

I believe when the roll is called, Dr. Elders will be approved overwhelmingly.

APPOINTMENTS BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 93–29, as amended by Public Laws 98–459 and 102–375, appoints the following individuals to the Federal Council on the Aging:

Randolph Cleghorn of Oklahoma, reappointed to a 1-year term;

Stephen M. Farnham of Maine, reappointed to a 1-year term; and

Romaine M. Turyn of Maine, appointed to a 3-year term.

APPOINTMENTS BY THE MAJORITY LEADER

The PRESIDING OFFICER. The Chair announces on behalf of the majority leader the appointment of the Senator from Alabama [Mr. HEFLIN] as chairman of the Senate delegation to the British-American Parliamentary Group meeting during the 1st session of the 103d Congress, to be held in Edinburgh, Scotland, September 1–5, 1993.

The Chair announces on behalf of the Majority leader the appointment of the following Senators as members of the senate delegation to the British-American Parliamentary Group meeting during the 1st session of the 103d Congress, to be held in Edinburgh, Scotland, September 1–5, 1993:

The Senator from South Carolina [Mr. HOLLINGS.]

The Senator from Tennessee [Mr. MATHEWS.]

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

LEGISLATIVE SESSION

Mr. KENNEDY. Madam President, I ask unanimous consent that the Senate return to legislative session.

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

MORNING BUSINESS

Mr. KENNEDY. Madam President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein for up to 5 minutes each.

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

IRRESPONSIBLE CONGRESS—HERE IS TODAY'S BOXSCORE

Mr. HELMS. Madam President, as of the close of business on Monday, August 2, the Federal debt stood at $4,360,010,907,754.76; this means that, on a per capita basis, every man, woman, and child in America owes $16,976.34 as his or her share of the Federal debt. There may be some Americans who will want to check on the big-spending record of their two Senators and their Congressman.

TRIBUTE TO BRIG. GEN. DONALD G. COOK

Mr. SPECTER. Madam President. Today I congratulate Brig. Gen. Donald G. Cook, the Chief of the Air Force Senate Liaison Office, for his recent promotion to the rank of general officer, and to recognize his distinguished service to the Senate, the U.S. Air Force, and to our Nation.

In the past year, I have had the personal experience of working with General Cook and have found him to be highly competent. In his work with the Senate, General Cook demonstrated the highest standards of professionalism and integrity we should expect from our senior military leaders. His entire military career is impressive.

General Cook was born August 13, 1946, at Fort Benning, GA, and graduated from Andover High School in Baltimore, MD, in 1965. He received a bachelor of science degree in business administration from Michigan State University in 1969, and masters of business administration from Southern Illinois University in 1976.

After earning his commission as a second lieutenant through ROTC in 1969, he entered undergraduate pilot training at Williams Air Force Base, AZ. His first assignment took him to Webb Air Force Base, TX in 1971 as an instructor pilot in T–37's. In 1972, he moved to Moody Air Force Base, GA, also as a T–37 instructor pilot. General Cook completed B–52 training at Castle Air Force Base, CA, in 1974. In June 1974 he was assigned to March Air Force Base, CA.

In June 1978, General Cook was assigned to Headquarters, AFMPC, Randolph Air Force Base, TX, where he served as a resources manager in the colonel assignments and as chief of the special actions division. Upon completion of Armed Forces Staff College in 1982, he was assigned to Headquarters, Strategic Air Command, Offutt Air Force Base, NE, until assigned to Fairchild Air Force Base, WA in 1984 as a bomb squadron commander.

In 1986, General Cook attended the Air War College and moved to Headquarters USAF at the Pentagon as chief of the special activities division in programs and resources. He moved to Capitol Hill, Washington, DC, as the Air Force representative to the House Armed Services Committee in 1987. He arrived at Carswell Air Force Base, TX, in November 1988 as the deputy commander for operations and became vice commander for the 7th Bombardment Wing in July 1989. General Cook was assigned as the commander of the 3415th Air Base Group, Lowry Air Force Base, CO, in June 1990. Most recently he commanded the 47th flying training wing, Laughlin Air Force Base, TX from July 1991 to July 1992. The wing conducts undergraduate pilot training for the U.S. Air Force and allied nations. He assumed his position as chief of the Air Force's Senate Liaison Office in August 1992.

General Cook has more than 3,300 flying hours in the B–52's and the T–37B and T–38A aircraft. His military awards and decorations include the Legion of Merit with one oak leaf cluster; Meritorious Service Medal with two oak leaf clusters, the Air Force Commendation Medal with one oak leaf cluster, Air Force Outstanding Unit Award, the Combat Readiness Medal, and the National Defense Service Medal with Bronze Service Star.

I wish Don continued success in his new assignment as commander of the 21st space wing in Colorado Springs and fully expect to see his advancement to more senior positions in Air Force leadership.

STATEMENT ON THE NOMINATION OF ELANOR D. ACHESON

Mr. GRASSLEY. Madam President, earlier this week, the Senate voted to confirm Elanor Dean Acheson for Assistant Attorney General for Policy Development. I wanted to comment upon the issue that has been raised in the context of her nomination—that is the issue of membership in exclusive country clubs.

Ms. Acheson is a distinguished lawyer in Boston and has belonged to several athletic and country clubs in the Boston area. At least one of the clubs, the Country Club of Brookline, has no minority members, although one is currently on the waiting list. Unlike previous Republican nominees, this nominee never faced public questioning, about the policy and practices of her club. At her hearing, none of my Democrat colleagues raised the issue of whether her club engaged in intentional discrimination or whether she made any efforts to make the club accessible to nonwhite individuals.

It took the diligence of a new member to the committee, Senator PRESSLER, to raise the issue before the committee. He was rightfully confused in view of the fact that, in 1990, the Judiciary Committee passed a resolution on this subject. And he properly wondered whether there was a double standard being applied—one for previous Republican nominees who were sharply rebuked for club memberships, and one for current Democrat nominees, whose club membership has been generally overlooked.

I am not of the view that membership in an exclusive club—one with no members from minority groups—should disqualify an individual from public service. As Judge Ginsburg demonstrated from her record—numbers alone don't indicate discrimination. In her 13 years on the bench, she hired 57 law clerks and not a one was African-American. This certainly does not mean Judge Ginsburg discriminated. Nor does membership in a club with no

minority members mean that a particular member of such a club discriminates.

Our committee resolution reflects such a view as well. The resolution does, however, give Senators discretion to consider an individual's membership in a club that has a policy or practice of intentional discrimination. Such membership should be considered by Senators, in conjunction with other factors reflecting on the nominee's fitness and ability. That is what our resolution provides.

The current issue, as I see it, is not whether Ms. Acheson should be blocked because she belonged to an exclusive club until March of this year, when she knew she would be getting a Government position. The issue is the committee's handling of the club matter. Republican nominees have been extensively questioned by the Committee; but for Senator PRESSLER'S diligence, Ms. Acheson would have escaped a single question on her club's policies and practices. The committee must do better. There must be consistency in the way this issue is handled.

Appearances and perceptions are an important part of the work that happens here inside the beltway. All segments of the American public must feel confident that our work is fair and consistent. The Judiciary Committee, which often finds itself in the middle of controversy, must take care to treat nominees of either party the same. I would hope that in the future, especially as we start reviewing candidates for the 129 judicial vacancies, the club matter is examined consistent with our committee resolution. Nominees who belong to clubs with no minority members or policies of a secondary membership category for women must be asked about those clubs. The nominee's record on bringing minorities and women to the club as guests and members should also be examined. After all, the Judiciary Committee can not be seen as treating Republican nominees more rigorously than Democrat nominees. That would be a form of discrimination.

CONTRACTOR LOBBYING ON THE SUPERCONDUCTING SUPER COLLIDER

Mr. PRYOR. Madam President, I rise today to bring an issue to the attention of my colleagues as they prepare to go home for the August recess. As we all know, during visits to our home States we are often lobbied on matters that will come before the Senate. This is usually an appropriate and informative activity.

However, I want to alert my colleagues that they will likely be subject to a coordinated lobbying campaign on the superconducting super collider. Who is paying for this lobbying effort? It appears the taxpayers. Let me repeat that point. This lobbying campaign is apparently being paid for by tax dollars. If true, this is illegal and reprehensible.

This project has been controversial since its inception. However, that does not change the fact that it is illegal to use tax dollars to seek to keep it alive and keep the money flowing to the thousands of contractors involved in the project.

Madam President, I have received copies of memos and computer messages which outline a coordinated campaign to continue funding for the superconducting super collider. One memo states "It is particularly important to reach your U.S. Senators before they return to Washington * * *".

The contractors have also developed a detailed vote tally to predict how the House and Senate will vote on the super collider funding. The document lists each Member's past votes on the issue, their probable 1993 vote and the amount of contract money awarded in each district. The document is so detailed that it can track $30 in one congressional district in Illinois and $38 in a Michigan district.

Let me quote from one of the computer messages originating from the superconducting super collider laboratory:

> Basic Research is in Grave Danger. Your Urgent Help is Needed Immediately * * *It is our duty to educate the public about basic research. We are imploring you to send today telegrams and faxes to all or some of these organizations * * *

I have written to both the Department of Energy inspector general and to the General Accounting Office to request that they investigate this matter. I have provided each of them with documents that clearly indicate that a coordinated lobbying effort is underway. I hope the investigation will focus on these issues: Whether Federal funds are paying for these lobbying activities; that contractors are involved in this effort; whether the Byrd prohibition on using Federal funds to lobby for a grant or contract is being violated; and whether any employees in the Department of Energy are aware of or involved in this lobbying.

Madam President, the stakes involved in this issue are high. The Department of Energy has virtually turned over this entire program to a network of contractors. Estimates of the total cost for this program range from $8 to $13 billion. With this many dollars involved, and with private contractors running the program, I am not surprised that when the program is criticized that a lobbying campaign is launched. It is no wonder they are nervous after one IG audit found that of $508 million spent on contracts from 1989 to 1992, a full 40 percent, $216 million, were unnecessary or excessive costs.

The reason I brought this to the floor, is that I want my colleagues to be aware of the genesis of this lobbying campaign on this issue. The most recent computer message I have received is dated Monday, August 2, 1993, and contains the latest likely count on the Senate vote on super collider funding. This makes it clear to me that this project is not about science but about politics. And, most importantly, the taxpayers may be paying the bill.

Madam President, I ask unanimous consent that my letters to the Department of Energy inspector general and the General Accounting Office and the Universities Research Association, Inc., memo be included in the RECORD after my statement.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, August 3, 1993.

Hon. CHARLES A. BOWSHER,
Comptroller General,
General Accounting Office, Washington, DC.

DEAR MR. BOWSHER: As you know, I have spent years reviewing the use of contractors by the Department of Energy. During this review, I have looked at the Superconducting Super Collider (SSC) and found a largely contractor bureaucracy that has operated with far too little oversight. I am forwarding some materials that I have received that outline the startling practices that some contractors on the Superconducting Super Collider have undertaken to protect their pipeline of federal dollars. Specifically, I request that you investigate lobbying efforts to determine whether any criminal or civil statutes or federal regulations were violated.

While I am also writing to the Department of Energy Inspector General on this matter, I am interested in your particular review of this situation to determine if this is a violation of the Byrd rule that prohibits the use of federal funds to lobby to obtain grants or contracts.

Your office has been an effective watchdog on this project and your efforts have uncovered numerous instances of inappropriate spending. It is my belief that this possibly illegal lobbying campaign is being waged to attempt to save this program that has proven to be so poorly managed. Unfortunately, when the federal government gives such large sums of money to private contractors and does not exercise adequate oversight, these are the very types of problems which can arise.

Thank you for your prompt attention to this request. If you have any questions, please contact my subcommittee staff at 224-2254.

Sincerely,

DAVID PRYOR.

COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, August 3, 1993.

Hon. JOHN LAYTON,
Inspector General, Department of Energy, Washington, DC.

DEAR MR. LAYTON: As you know, I have spent years reviewing the use of contractors by the Department of Energy. During this review, I have looked at the Superconducting Super Collider (SSC) and found a largely contractor bureaucracy that has operated with far too little oversight. I am forwarding for your review some materials that outline the startling practices that some Superconducting Super Collider contractors have

undertaken to protect their access to federal dollars. Specifically, I would like your office to investigate this lobbying effort to determine whether any criminal or civil statutes or federal regulations were violated.

In your investigation of this activity, I request that you determine the following: Have SSC contractors lobbied Congress? What particular activities (i.e. letters, meetings, phone calls) did these individuals engage in to carry out this campaign? Which Department of Energy contractors or federal employees were involved? Were the DOE officials monitoring the SSC aware of this lobbying campaign?

Your office has been an effective watchdog on this project and your efforts have uncovered numerous instances of inappropriate spending. It is my belief that this possibly illegal lobbying campaign is being waged to attempt to save this program that has proven to be poorly managed and perpetuate the same types of wasteful practices you have uncovered. Unfortunately, when the federal government gives such large sums of money to private contractors and does not exercise adequate oversight, these are the very types of problems which can arise.

Thank you for your prompt attention to this request. If you have any questions, please contact my subcommittee staff at 224-2254.

Sincerely,

DAVID PRYOR.

UNIVERSITIES RESEARCH ASSOCIATION, INC.,
Washington, DC, July 1, 1992.

To: Presidents and Chancellors of URA Universities.

From: John Toll.

Subject: Now Is the Time To Speak Out on the SSC.

As I mentioned to you in my memorandum of June 23, it is extremely important that you bring your views concerning the SSC to the attention of Members of Congress with whom you have to contact. It is particularly important to reach your U.S. Senators before they return to Washington about July 20. If you write either letters or summaries of meetings, I hope that you will send copies to the URA office at the address above.

For your information, I include some letters that have recently been written about the SSC. The first is signed by many Nobel Laureates and other scientific leaders, and additional signatures are being added daily. Also included are some letters giving industrial viewpoints. A detailed letter from W.K.H. Panofsky, answering some questions of Senatorial staff, is also included.

On June 30th the largest hearing room of the Senate Office Buildings was filled with a distinguished crowd of scientists, industry representatives, and government officials. The joint hearing of the Senate Committee on Energy and Natural Resources and the Senate Appropriations Subcommittee on Energy and Water Development met to debate and to hear testimony on the SSC by Leon Lederman, George Smoot, Roy Schwitters and Bob Galvin. Some of the scientists at the hearing (e.g., Nobel Laureates Val Fitch, Jerome Friedman, Henry Kendall, Leon Lederman and Steve Weinberg) were invited to meet with President Bush to discuss the SSC. Copies of testimony will be forwarded to you as they become available.

Also enclosed is a copy of a letter published yesterday in The Washington Post. I encourage each of you to publish in local newspapers your own views on the SSC, and to invite your faculty to submit "Op Ed" articles and "Letters to the Editor."

I hope you will share these materials and your point of view on the SSC and its importance to science and to your university with your Federal Relations officials. Please also ask them to work with the URA office in Washington and, in particular, to attend the meeting on the SSC, sponsored by AAU and NASULGC, which will be held on Wednesday, July 8, at 1:00 P.M. in the Kellogg Room at 1 Dupont Circle, N.W., Washington, D.C.

IRISH-AMERICAN HERITAGE MONTH

Mr. KENNEDY. Madam President, yesterday, 25 of my colleagues joined me in introducing Senate Joint Resolution 119, a joint resolution to designate the month of March 1994 as "Irish American Heritage Month." I ask unanimous consent that its text may be printed in the RECORD.

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

S. J. RES. 119

Whereas the first Irish emigrants arrived in America as early as 1621;

Whereas 9 of the generals who served in the Continental Army during the American Revolution were Irish born;

Whereas Commodore John Barry of County Wexford, Ireland, served brilliantly in the Continental Navy and is widely regarded as the father of the American Navy;

Whereas James Smith, George Taylor, Matthew Thornton, and Charles Thomson, 4 of the individuals who signed the Declaration of Independence, were Irish born and 9 other signers were of Irish ancestry;

Whereas the contributions of the Irish to America's victory in the American Revolution led Lord Mountjoy to exclaim in the British Parliament that "America was lost by the Irish emigrants";

Whereas beginning at the time of the potato blight and famine in Ireland in 1845, over 700,000 Irish immigrants came to the United States during the 1840's, 900,000 during the 1850's, and over 300,000 in each decade through 1910;

Whereas Irish Americans participated heavily in the industrial and economic development of America during the nineteenth century, building our cities and canals and the railroads that expanded the Nation to the West;

Whereas even today, it is said that under every railroad tie an Irishman is buried;

Whereas the Irish contributed greatly to the development of the labor movement in the United States, including the establishment of the American Miners Association in 1861;

Whereas nearly 150,000 natives of Ireland served in the Union forces during the Civil War;

Whereas more than 500 members of the Irish Brigade were killed while fighting for the Union in the Battle of Antietam on September 17, 1862, a date that has been called the bloodiest day in American history;

Whereas the Irish Brigade fought courageously in several other Civil War battles including Fredericksburg, Chancellorsville, Yorktown, Fair Oaks, Gaines Mill, Allen's Farm, Savage Station, White Oak Bridge, Glendale, Malvern Hill, Gettysburg, and Bristow Station;

Whereas in 1892, Annie Moore from County Cork, Ireland, at age 15 became the first immigrant to pass through Ellis Island;

Whereas Irish Americans have made numerous contributions to the arts and to sports, as exemplified by the achievements of F. Scott Fitzgerald, Eugene O'Neill, Helen Hayes, Georgia O'Keefe, John L. Sullivan, and Connie Mack;

Whereas the first woman to serve as the organizer of the American Federation of Labor was Mary Kennedy O'Sullivan;

Whereas at the beginning of the twentieth century, many of the school teachers in America's largest cities were Irish American women;

Whereas President John F. Kennedy was the first American President to visit Ireland during his term in office;

Whereas Irish Americans, including Kathryn Sullivan, the first American woman to walk in space, and Christa Corrigan McAuliffe, America's first school teacher in space, who perished on the Challenger mission, have bravely served as America's pioneers in space;

Whereas more than 200 Irish Americans have been awarded the Congressional Medal of Honor;

Whereas President William Jefferson Clinton is the nineteenth American President of Irish ancestry;

Whereas 37 United States governors and mayors designated March 1993 as "Irish-American Heritage Month"; and

Whereas 44 million Americans are of Irish ancestry: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of March 1994 is designated as "Irish-American Heritage Month". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe this month with appropriate ceremonies and activities.

IN MEMORY OF RUSSEL G. SCHWANDT

Mr. DURENBERGER. Madam President, I rise today to honor the memory of Russel G. Schwandt, a former Minnesota Commissioner of Agriculture, who passed from this life last week.

Russ Schwandt embodied the principle that is the underlying philosophy of public involvement in my State: He said so frequently, "Our politics are not Republican or Democrat or any other party. Our politics are agriculture." To some in Minnesota, politics are education; to some, politics are health, and to others politics are natural resources or trade or environment. But Russ's politics were agriculture and he served agriculture well.

He began his career with the Minnesota Farmers Union, then with the Grain Terminal Association where he managed elevators in Minnesota, North Dakota, and Montana. In 1963 he was appointed by Democratic Governor Karl Rolvaag to be his Commissioner of Agriculture. And from 1967 he served in the same position under Governor Harold LeVander, a Republican. It is there that I came to know, admire, and love Russ Schwandt as I do to this day.

Russ later founded the Minnesota Agri-Growth Council, and chaired the Seaway Port Authority of Duluth.

It was Russ Schwandt who taught us that agriculture is not only a farmer

and his or her land. He keenly made Minnesotans aware that agriculture is in everyone's very best interest because one of every three people in Minnesota works in an agricultural-related job: restaurants, farm implement dealers, grocers, bankers, elevator managers, the great Port of Duluth, the chemical and fertilizer industry, the rail and barge system are all part of agriculture and we are part of it. This lesson becomes more and more important during this year of rain-related crop disasters in 35 Minnesota's finest agricultural counties.

Russ Schwandt died in the same farmhouse in Red County where he was born 73 years ago. He is survived by his wife Lotus, his son Jim and daughter-in-law Kathy, and grandchildren Kirsten, Piper and Dallas.

Minnesota agriculture—all of us involved in that circle—will miss him dearly.

STATEMENT ON THE NOMINATION OF JIM BLANCHARD

Mr. GORTON. Madam President, last week the nomination of Jim Blanchard to be United States Ambassador to Canada came before the Senate for consideration. Jim Blanchard is a former Governor and Member of Congress from the State of Michigan. And because of Michigan's proximity to Canada, Governor Blanchard is familiar with the Canadian form of government and has the benefit of previously working with Canada on issues of importance during his tenure as Governor and Member of Congress.

I had the opportunity to meet with Governor Blanchard to discuss an issue of environmental significance to Washington State, the Canadian Province of British Columbia, and the United States. The issue is this: each day the city of Victoria, British Columbia dumps millions of gallons of raw, untreated sewage into the Strait of Juan de Fuca. A scant 17 miles across the Strait sits the city of Port Angeles, WA. Needless to say the citizens of Washington State, in cities and towns throughout the Puget Sound region, are furious with their Canadian neighbors for polluting the marine environment we are working so hard to protect.

To add insult to injury, Canadian provincial and regional governments continue to insist that dumping raw sewage into the Strait does not harm the marine environment. Mr. President, Washington State residents are crying foul. Each day the city of Victoria continues to dump raw sewage into the Strait all but nullifies the efforts of Washington State citizens to preserve and protect the Puget Sound and surrounding areas with the construction of costly—but necessary—sewage treatment facilities.

As a former border State Governor, Blanchard is practiced at dealing with Canada over many environmental issues. The Governor impressed me with his knowledge of the sewage dumping issue, and his willingness to put this issue on the top of his environmental agenda to discuss with his Canadian counterparts is precisely what Washingtonians have long been waiting to hear.

I continue to be impressed with the willingness of the State Department, staff and officers, to assist this Senator and his constituents in their efforts to convince Victoria decision makers to discontinue the practice of sewage dumping. The commitment of Governor Blanchard to make this one of his top environmental priorities is a step in the right direction. As a consequence, for the first time, in a little less than a year in which I have been working to convince B.C. regional decision makers to put an end to this terrible practice, I think this issue has a chance of being resolved.

Madam President, after meeting with Governor Blanchard it is clear to this Senator that, because of his background and willingness to tackle difficult issues, he will do a fine job as United States Ambassador to Canada. For these reasons I am delighted that the Senate voted to confirm Jim Blanchard to be the next United States Ambassador to Canada.

TRIBUTE TO A LEADER: IN REMEMBRANCE OF DANIEL X. FREEDMAN, M.D.

Mr. DOMENICI. Madam President, earlier this summer, individuals and families whose lives have been affected by severe mental illnesses lost a very gifted and caring friend in the passing of Dr. Daniel Freedman, the Judson Braun Professor of Psychiatry and Pharmacology at the University of California at Los Angeles [UCLA]. In the many capacities that Dr. Freedman served throughout his distinguished career, he is recognized as one of the most important psychiatrists in our Nation through this half century. The treatment of mental illnesses has undergone radical transformation in the past 25 years and Dr. Freedman had the courage and foresight to help lead the way.

Born in 1921, Dr. Freedman was raised in Crawfordsville, IN. He spent 3 years at Harvard before joining the Army, serving first in the infantry and then as a clinical psychologist. In 1945, Dr. Freedman and Mary Neidigh, an artist, were married. He returned to Harvard to complete his degree in Social Relations, obtained his medical degree and completed an internship in pediatrics and a residency in psychiatry at Yale.

Dr. Freedman continued on at Yale where, in 1955, he began his career in academia as an instructor, followed by his quick ascension to the position of chief of the biological sciences section of the department of psychiatry. His excellent work at Yale led to his obtaining one of the first Career Investigator Awards granted by the National Institute of Mental Health [NIMH].

While at Yale, Dr. Freedman developed an extraordinary collaboration with the late Prof. Nicholas J. Giarman, of the department of pharmacology, which resulted in an interdepartmental effort that continues to this day. The uniqueness of this program came from the way it combined the biological sciences and psychiatry. In fact, there may be no program that has influenced more future scholars in these areas.

Dr. Freedman became the chair of the department of psychiatry at the University of Chicago in 1966. In this capacity, he coordinated an outstanding group of scholars and developed leaders in fields ranging from community psychiatry to the biology of severe mental illnesses and substance abuse. In 1983, the west coast beckoned and Dr. Freedman moved to UCLA where he became executive vice chair of the department of psychiatry and biobehavioral sciences.

The aspect of his career in which he may have touched the most lives, however, was through his position as chief editor of the Archives of General Psychiatry. Dr. Freedman influenced and helped raise the standards of psychiatric research from this position for 23 years. He took his role of nurturing and molding scientists and researchers seriously and was always willing to speak on behalf of psychiatric research and the care of patients.

Under Dr. Freedman's leadership, the Archives of General Psychiatry became the standard by which all psychiatric journals and psychiatric information are measured. If it is an article suitable for Archives, then it must have provided sufficient, substantial and novel research data.

Throughout his career, Dr. Freedman was always a leader with tremendous foresight. For this reason, when President Carter formed his Commission on Mental Health to examine the inadequacies of our Nation's delivery of mental health services with the hopes of providing a new direction he called upon Dr. Freedman. Dr. Freedman provided the necessary insight to reflect upon advances in the delivery of care and then focus attention upon our underserved populations in an effort to incorporate previous advances into a flexible system of care. His ability to understand the implications and consequences of executive and legislative activities and help provide policy addressing the needs of those with mental disorders is legendary.

More importantly, Dr. Freedman recognized the need for people not involved with the field of psychiatry to

understand and appreciate the impact of mental illness in our nation. He understood the lack of knowledge among the populous regarding these dreaded diseases and he utilized Archives to fill this void. Upon the completion of the NIMH Epidemiologic Catchment Area Study [ECA], one of the largest mental health surveys in history, Dr. Freedman began to publish this landmark information.

From my standpoint, Dr. Freedman made his most significant contribution in his combining the biological sciences with psychiatry. For too many years severe mental illnesses were viewed as something other than physical diseases. Through Dr. Freedman's focus and direction it became more widely accepted that severe mental illnesses were biological in origin and should be treated in a fashion similar to any other physical illness.

Because of Dr. Freedman's groundbreaking efforts it is now much easier for Congress and the President to consider providing health care benefits for persons with severe mental illnesses that is commensurate to that received by persons with other physical illnesses. This will ultimately make a direct positive impact on the lives of the more than 5 million Americans who suffer from the likes of schizophrenia, bipolar disorder, and major depression.

Fortunately, Dr. Freedman did not limit his leadership to solely professional endeavors. Over the years, Dr. Freedman was the president of the American Psychiatric Association, the American College of Neuropsychopharmacology, Society of Biological Psychiatry, American Association of Chairmen of Departments of Psychiatry, and the Association for Research in Nervous and Mental Disorders. He was Founding Chair of the Academic Psychiatry Consortium of the Center for Advancement of the Behavioral Sciences. Finally, he was elected to membership in the Institute of Medicine of the National Academy of Sciences.

My wife, Nancy, and I had the great fortune to know Dr. Freedman on both a personal and professional level. He provided us critical information and insight into the impact of mental illnesses on the individual and nation. His knowledge and understanding of how federal policy influenced the delivery services for persons with mental illnesses provided me with the tools to begin to address some of the unmet needs for this neglected population—for this I am deeply grateful.

Persons suffering from severe mental illnesses have been neglected, ignored, and discriminated against for centuries. Through the efforts of Dr. Freedman we have begun to eliminate some of the stigma and discrimination and provide hope for the millions of Americans whose lives are impacted by these diseases. The world is truly a better place for his having lived and we will all miss him.

FEDERAL STUDENT FINANCIAL ASSISTANCE PROGRAMS

Mr. NUNN. Madam President, Senate and House conferees recently agreed to a major reform of Federal student financial assistance programs. Known as direct lending, the program requires the Federal Government to loan funds directly to students through their schools. This type of reform will vastly expand the current role of the Department of Education in the lending process, while eventually eliminating the need for certin private financial entities, including banks, secondary markets, and guaranty agencies.

Proponents of direct lending have argued that it will save the Federal Government—and the taxpayers—anywhere from $3.2 to $6.7 billion over a 5-year period. Like those who proposed direct lending, I, too, am skeptical of the large profits now being made by some private players in the current system. Like those who proposed direct lending I, too, doubt whether some of those players—guaranty agencies for example—are really essential and cost effective in the system. And finally, like those who proposed direct lending, I, too, am all for saving the Federal Government billions of dollars, though I doubt some of the more optimistic projections.

I do, however, have some very serious concerns about the current student assistant programs that I believe need to be taken into account by the Congress and the administration as direct lending is implemented. In my mind, the single most critical issue in the debate on direct lending is the ability of the Department of Education to competently and effectively carry out a vastly expanded role in these programs. Can the Department, given its track record as well as budget and resource limitations, produce the kind of hand-on management and intense oversight that direct lending will no doubt require? If not, can we afford to open the door further to the type of fraud and abuse that has so plagued Federal student assistance programs for far too many years?

I raise those questions as the result of the very detailed examination of the Federal student financial assistance programs that has been conducted by the Senate's Permanent Subcommittee on Investigations over the years. As a member and now chairman of that subcommittee, I have had the opportunity to oversee, in 1975 and in 1990, two investigations of the student loan program and, currently, an ongoing investigation of the Federal Pell Grant Program.

These investigations raise serious warning flags about the ability of the Department of Education to effectively oversee current assistance programs, as well as added questions about the direct loan program which will necessitate greater and more intense scrutiny by the Department.

In 1975, our subcommittee examined what was then the Office of Education's management of the Student Loan Program, the loan default issue, and the unscrupulous practices of some trade schools. The testimony revealed a program which, in the absence of adequate oversight, had been repeatedly victimized by fraud and abuse.

Fifteen years later, in 1990, I directed a subsequent investigation by our subcommittee which found that, unfortunately, little had changed in the program's vulnerability to fraud and abuse. If anything, as loan and dollar amounts skyrocketed, abuse became more widespread and far more profitable for con artists and the like.

In the 19 years that I have served on the subcommittee, I have conducted numerous oversight reviews of Government Programs. Frankly, the findings of our 1990 review of the Student Loan Programs were perhaps the most discouraging of any of our investigations on the issue of Government performance. The staff report left little, if any, room for optimism:

> * * * to date we have not found one area that we have examined in federal student aid programs that is operating efficiently or effectively. We were told, time and again, that the result of this inefficiency and ineffectiveness is a tremendous waste of taxpayers' money. During our investigation, we have engaged in what can only be termed frank and honest discussions with the people involved in the oversight of these programs. Every individual we have spoken to, without exception, has told us that despite recent changes in program administration, the system is severely broken and that major changes must be made immediately to save the taxpayer's money.

In its final report, issued in May 1991, the subcommittee found that "plagued by fraud and abuse at every level and lacking meaningful oversight and management controls, the [student loan] program has become inefficient, ineffective and far too costly." As to the Department, the subcommittee found "through gross mismanagement, ineptitude, and neglect in carrying out its regulatory and oversight functions, the Department of Education had all but abdicated its responsibility to the student it is supposed to service and the taxpayers whose interests it is charged with protecting."

Madam President, as Congress and the Clinton administration add to the Department's current administrative burdens, we had better make sure that the Department has the competency and the resources necessary to tackle the job. It is incumbent on all of us to make sure we give the Department the resources to accomplish the task and to make sure the Department not only has a commitment to improve, but can

demonstrate the results of their efforts.

I want to make clear that I am not condemning with a broad brush the efforts of all of those who today staff the Department of Education. I understand that these problems are not solely the fault of the Department. Some of them, but clearly not all, can be attributed to the complexity of the Higher Education Act, a lack of funds and resources to adequately do the job, as well as the tendency of Congress to add more education programs to be administered while reducing the Department's staff. Moreover, I recognize the fact that the problems we have identified go back many, many years and that those who are leading the Department on behalf of this administration have clearly inherited, by all accounts, a bureaucratic disaster.

I have great confidence in Secretary Dick Riley, Deputy Secretary Madeleine Kunin, and Assistant Secretary David Longanecker, and I believe that they will give this area high priority and provide the Department of Education with the strong management and leadership so clearly required. They have made the commitment to vastly improve the Department and these programs. The question is how rapidly they can do this job and how quickly the Department's role can be increased, as they, at the same time, straighten out long existing problems.

I recognize and appreciate the fact that our new leaders in the Department of Education candidly acknowledge the problems they face. To their credit, they are taking some steps to put the Department back on the right track. Those positive steps include:

Realignment of the office of Student Financial Assistance to better coordinate efforts on certification and eligibility, program review, and audit resolution;

Efforts to move more rapidly on implementing regulations for the 1992 Amendments to the Higher Education Act, in contrast to the Department's history of chronic delays in this area; and

Negotiations with many States to contract with State governments for school monitoring, as authorized by the 1992 Amendments.

Many of the recommendations contained in our subcommittee's 1991 report were incorporated by Congress in the 1992 amendments to the Higher Education Act. For example, the new legislation strengthens the Department's ability to handle program compliance and eligibility issues at the lender, loan servicer, guarantor agency, accrediting, correspondence school, and institutional levels.

The Higher Education Act is very complex, and has been amended several times. The resulting regulatory changes have often led to confusion in all sectors involved. I expect Secretary Riley to identify the legislative problems he faces, so that they may be addressed in the Congress.

All of these steps are, in my view, progress in the right direction. But, given the magnitude of the program's problems, the Department still has a long way to go to gain the kind of capabilities that will be essential to properly manage existing programs and the direct lending program.

My view in that regard has been reinforced by the subcommittee's ongoing review, assisted by the Office of Special Investigations of the General Accounting Office, of the Department's handling of the Pell Grant Program. In the 1991–92 academic year the Pell Grant Program awarded over $6.7 billion to approximately 3.8 million students. While our investigation is not yet complete, our review thus far strongly suggests that many of the same problems which the Department has had in the Student Loan Program are today hampering its ability to effectively administer the Pell Grant Program. And, as with the Student Loan Program, the Department's administrative and oversight failures have apparently left the door open for fraud and abuse within the Pell Grant Program.

I want to stress that I appreciate the noble purpose of the Pell Grant Program. I applaud the original intentions of Senator PELL and others in starting this program as a way to help low income young people develop their talents and abilities to the fullest. In carrying out this purpose we have to recognize that every dollar of Pell grant funds that is spent on bogus, fraudulent, wasteful, or otherwise unworthy applicants further cuts the amount that can be offered to truly deserving students.

Our preliminary investigation indicates that the checks and balances which were designed in theory to protect the Pell Grant Program, the student, and ultimately the taxpayer, too often appear in practice to be ineffective, or in some cases nonexistent. In particular, the subcommittee staff has identified serious weaknesses in the following areas:

The program's gate-keeping functions, designed to prevent ineligible institutions from gaining access to the program are not working. In some instances schools have been allowed to participate in the program despite the fact that they are not licensed in the State in which they operate. Moreover, experience shows that licensing, accreditation, and certification have not been effective in identifying and prohibiting problem schools from participating in the program;

The Department of Education's program review process, designed to ensure statutory and regulatory compliance by institutions once they have gained access to the program, is ineffective at detecting abuse because of inadequate manpower, resources, and training. Despite the strong recommendation of our subcommittee in 1991, program review personnel in the Department of Education still receive no formal training, either in their areas of substantive responsibility or in fraud detection. It is ironic that the Department entrusted with the task of ensuring quality education and training for America's youth has been historically incapable of adequately training its own personnel; and

Procedures to audit the financial aid records of institutions which have left the program, designed to identify possible abuse or fraud and lay the foundation for actions to recoup money owed to the Government, are largely ineffective.

These weaknesses apparently encourage unscrupulous individuals and institutions to exploit the Pell Grant Program, thereby creating a situation where the Federal Government may be spending tens of millions of dollars in unwarranted or improper payments. In fact, our preliminary investigation so far has found indications that such exploitation is not only taking place, but may be longstanding. Surely most of the 6,300 schools participating in the Pell Grant Program are doing so honestly and with integrity, but our review has uncovered evidence of what may be widespread abuse.

For example, the examination by the subcommittee and GAO has to date uncovered, among other things, evidence suggesting:

The use of false documentation, including false high school diplomas, false statements of employment, false W-2 forms, false academic records, and false school admission applications to satisfy the eligibility requirements for Pell grants;

The award of Pell grant money to high school students;

Apparent kickbacks of Pell grant money by schools to students to encourage the students' cooperation in applying for Pell grants;

The selling of student biographical information by brokers to schools for use in submitting false Pell grant applications; and

Individuals who have received numerous Pell grants over a number of years with apparently no intention to eventually attain a degree or other educational certificate.

In addition to fraud and abuse, our investigation has also highlighted certain policy decisions affecting the Pell Grant Program that Congress may want to review, given our current deficit and budget problems. I have requested the Department to provide the subcommittee with the following information:

The number of students who have received Pell grants for more than 5 years in a row and the amount of their awards;

The number of students who have received Pell grants for more than 10 years in a row and the amount of their awards;

The numbers and dollar amount of Pell grants awarded for study abroad in the last 5 years; and

The number of schools which have been declared exempt from the State licensing requirement for the Pell Grant Program in the last 5 years.

As I understand it, current law and/or policy allows participation in the Pell Grant Program for students and/or schools covered by the above categories. Those policy choices may have been valid and supportable at the time they were made. They may still be valid, but given our current budget environment, I believe that we need to review these and other policy choices after getting the financial information from the Department of Education.

All of this is relevant, in my mind, to the question of how the Government, and more specifically, the Department of Education, has managed the student financial assistance programs over the years—ranging from the task of enforcing compliance and preventing fraud and abuse to the responsibility for statutory interpretation and policymaking. Success in the direct lending program will require exceptional competence and diligence by the Department of Education.

I urge my colleagues, as we call upon the Department to undertake the burden of direct lending, to also recognize the systemic problems I have tried to point out this morning. The Department plans to phase out the existing program as it phases in the new system, and we must support the Secretary and his staff as they do so.

To have any reasonable chance of working, the Department must be provided adequate resources to do the job. The worst possible outcome would be to shift the direct loan program to the Department and the schools without giving them the resources necessary to assure success. Leadership, commitment, resources, skill, and personnel are essential to protect the taxpayer and to give students the access to education they need. The Department must also exercise vigorous leadership in addressing the longstanding problems identified by our subcommittee and by other consistent reports. These are, in my mind, critical weaknesses that have to be addressed and corrected by both the administration and the Congress if we are ever to have a truly effective student financial aid program in the future.

TRIBUTE TO EWING M. KAUFFMAN

Mrs. KASSEBAUM. Madam, President, I rise today to pay tribute to Ewing M. Kauffman, the chairman emeritus of Marion Merrell Dow Inc. and the owner of the Kansas City Royals who died over the weekend at his home in Mission Hills, KS.

When Ewing Kauffman founded Marion Laboratories in his home in 1950, it was a one-man firm, By 1989, when Marion combined with Merrell Dow Pharmaceuticals to form Marion Merrell Dow Inc., it was a publicly traded company with sales approaching $1 billion. Throughout this period of phenomenal growth, Marion Laboratories benefited from Ewing Kauffman's vision, values, and character.

In 1969, in order to bring major league baseball back to Kansas City, Ewing Kauffman purchased an American League expansion franchise that was to become the Kansas City Royals Baseball Club. In the club's relatively short history, it has won six American League Western Division titles, two American League pennants, and a World Series championship. The Royals have also served as a model organization for other major league teams and provided millions of people throughout the midwest entertainment, pleasure, and a common bond.

Given Ewing Kauffman's commitment to people, perhaps his most fitting legacy is the Kauffman Foundation which creates and operates programs designed to meet human development needs. Since its inception in 1986, the Foundation has sought to demonstrate breakthrough solutions that will have a lasting impact, particularly in helping at-risk young people and stimulating the growth of entrepreneurship.

Madam President, Ewing Kauffman was indeed a special person, who along with his wife Muriel, touched the lives of many. The State of Kansas and the entire Nation will miss him.

TRIBUTE TO WYLAND

Mr. INOUYE. Madam President, media reports indicate that much attention is being paid again to the plight of the largest animal ever to roam the earth, the whale. In the August 2 issue of Time magazine, an article entitled "The Hunt, The Furor" tells us that the cry of "Save The Whales" is being heard again around the world. There is the furor stemming from Norway's insistence to continue whaling. The Norwegians press on, despite threats of sanctions and boycotts against their products and next year's winter Olympics in Lillehammer. There is also the furor springing from the media itself: The movie "Free Willie" has raised questions about the captivity of these creatures and has generated thousands of inquiries on how to join in the effort to save the whales.

Against this backdrop of controversy is the quiet effort of one man whose mission has been to raise the public's consciousness about the need to acquaint ourselves with, and respect, whales and other marine life. Wyland is a young man who calls Hawaii his home. He is considered by many to be the finest environmental artist in the world. Wyland is best known for his gigantic "Whaling Walls," one of which stands in Honolulu. For the past several weeks, he has worked to paint a "Whaling Wall" in each State along the Eastern Seaboard of our country, on what is being billed as the biggest art tour in history.

Wyland began this series of murals on June 1st in Portland, ME. He is expected to take his tour, and his technique of combining public art with an education on the environment, to New Hampshire. Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, North Carolina, South Carolina, Georgia, and Florida. He is now in Washington, DC, the 11th stop in his tour. For the next few days, he will be seen near the entrance to the National Zoo, where he will paint yet another mural depicting lifesize of whales and other marine life in their natural habitat.

I hope my colleagues will join me in welcoming Wyland to our Nation's Capital and to take to heart his message. He has made a commitment to join with others to preserve and protect a species that many hold in awe and in wonder. His works have helped to draw international attention to the plight of the whales.

Last year, in an attempt to preserve our natural legacy in Hawaii, the President signed into law my measure to develop a humpback whale sanctuary in waters adjacent to the Hawaiian Islands. This measure, together with Wyland's unique "17 Cities in 17 weeks" tour of the Eastern Seaboard, proves that in the struggle to preserve this endangered species, people working together can make a difference. Wyland is an inspiration to us all.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Zaroff, 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 1:58 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 bills:

H.R. 572. An act for the relief of Melissa Johnson.

H.R. 856. An act to improve education in the United States by promoting excellence in research, development, and the dissemination of information.

H.R. 2339. An act to revise and extend the programs of the Technology-Related Assistance for Individuals With Disabilities Act of 1988, and for other purposes.

H.R. 2766. An act to amend the 7(a) Loan Program, and for other purposes.

The message also announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 1273. An act to enhance the availability of credit in disaster areas by reducing the regulatory burden imposed upon insured depository institutions to the extent such action is consistent with the safety and soundness of the institutions.

ENROLLED BILLS SIGNED

At 6:15 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 416. An act to extend the period during which chapter 12 of title II of the United States Code remains in effect, and for other purposes.

H.R. 798. An act to amend title 38, United States Code, to codify the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans as such rates took effect on December 1, 1992.

S. 1295. An act to amend the Rehabilitation Act of 1973 and the Education of the Deaf Act of 1986 to make technical and conforming amendments to the Act, and for other purposes.

At 8:16 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2010) to amend the National and Community Service Act of 1990 to establish a Corporation for National Service, enhance opportunities for national service, and provide national service educational awards to persons participating in such service, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following as the managers of the conference on the part of the House:

From the Committee on Education and Labor: Mr. FORD of Michigan, Mr. MURPHY, Mr. KILDEE, Mr. MARTINEZ, Mr. OWENS, Mr. GOODLING, Mrs. ROUKEMA, and Mr. GUNDERSON.

From the Committee on Government Operations: Mr. CONYERS, Mrs. COLLINS of Illinois, Mr. WAXMAN, Mr. CLINGER, and Mr. MCCANDLESS.

From the Committee on the Judiciary: Mr. BROOKS, Mr. BRYANT, Mr. SCOTT, Mr. FISH, and Mr. MOORHEAD.

From the Committee on Natural Resources: Mr. MILLER of California, Mr. VENTO, and Mr. YOUNG of Alaska.

From the Committee on Post Office and Civil Service: Mr. CLAY, Mrs. SCHROEDER, Mr. MCCLOSKEY, Mr. MYERS of Indiana, and Mrs. MORELLA.

From the Committee on Public Works and Transportation: Mr. MINETA, Mr. RAHALL, Mr. TRAFICANT, Mr. SHUSTER, and Mr. PETRI.

MEASURES REFERRED

The following measures were read the first and second times by unanimous consent, and referred as indicated:

H.R. 572. An act for the relief of Melissa Johnson; to the Committee on the Judiciary.

H.R. 856. An act to improve education in the United States by promoting excellence in research, development, and the dissemination of information; to the Committee on Labor and Human Resources.

H.R. 2766. An act to amend the 7(a) Loan Program, and for other purposes; to the Committee on Small Business.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2339. An act to revise and extend the programs of the Technology-Related Assistance for Individuals With Disabilities Act of 1988, and for other purposes.

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-1343. A communication from the Sacramento Farm Credit Employee's Retirement Plan, transmitting, pursuant to law, the annual pension report for the period January 1, 1992 through December 31, 1992; to the Committee on Governmental Affairs.

EC-1344. A communication from the Assistant Vice President (Human Resources), Western Farm Credit Bank, transmitting, pursuant to law, the annual report and audited financial statement for the eleventh farm credit district employees' retirement plan for calendar years 1991 and 1992; to the Committee on Governmental Affairs.

EC-1345. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1992; to the Committee on the Judiciary.

EC-1346. A communication from the General Counsel of the Federal Mediation and Conciliation Service, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC-1347. A communication from the Chairman of the National Commission on Judicial Discipline and Removal, transmitting, pursuant to law, a final report; to the Committee on the Judiciary.

EC-1348. A communication from the Chairman of the National Transportation Safety Board, transmitting, a draft of proposed legislation entitled "Independent Safety Board Act Amendments of 1993"; to the Committee on Commerce, Science and Transportation.

EC-1349. A communication from the Assistant Secretary (Legislative Affairs), Department of State, transmitting, pursuant to law, a draft of proposed legislation entitled "Iraq Claims Act of 1993"; to the Committee on Foreign Relations.

EC-1350. A communication from the Acting Director of the Peace Corps, transmitting, pursuant to law, a report under the Inspector General Act of 1978 as amended; to the Committee on Governmental Affairs.

EC-1351. A communication from the Chairman of the Advisory Commission on Intergovernmental Relations, transmitting, pursuant to law, the annual report for calendar year 1992; to the Committee on Governmental Affairs.

EC-1352. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-61 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC-1353. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-62 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC-1354. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-63 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC-1355. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-64 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC-1356. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-65 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC-1357. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-66 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC-1358. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-67 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC-1359. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-68 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC-1360. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-69 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC-1361. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10-70 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC-1362. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law,

copies of D.C. Act 10–71 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1363. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–74 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1364. A communication from the Commissioner of the Office of Educational Research and Improvement (National Center For Education Statistics), Department of Education, transmitting, pursuant to law, the annual statistical report for the calendar year 1992; to the Committee on Labor and Human Resources.

EC–1365. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, a report of proposed regulations governing multicandidate political committees; to the Committee on Rules and Administration.

EC–1366. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, a report relative to forms on governing multicandidate committee status; to the Committee on Rules and Administration.

EC–1367. A communication from the Administrator of the Small Business Administration, transmitting, pursuant to law, a report on minority small business and capital ownership development for fiscal year 1992; to the Committee on Small Business.

EC–1368. A communication from the Secretary of Veterans' Affairs, transmitting, a draft of proposed legislation to restore the statutory eligibility for burial in national cemeteries of spouses who predecease individuals eligible for such burial; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON from the Committee on Energy and Natural Resources:

Report to accompany the bill (H.R. 631) to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, and for other purposes (Rpt. 103–123).

EXCUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. RIEGLE, from the Committee on Banking, Housing and Urban Affairs:

Gordon J. Linton, of Pennsylvania, to be Federal transit Administrator.

Nelson A. Diaz, of Pennsylvania, to be General Counsel of the Department of Housing and Urban Development.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. INOUYE (for himself, Mr. DODD, Mr. STEVENS, Mr. AKAKA, Mr. GORTON, Mr. MURKOWSKI, and Mr. SIMON):

S. 1350. A bill to amend the Earthquake Hazards Reduction Act of 1977 to provide for an expanded Federal program of hazard mitigation and insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. REID:

S. 1351. A bill to curb criminal activity by aliens, to defend against acts of international terrorism, to protect American workers from unfair labor competition, and to relieve pressure on public services by strengthening border security and stabilizing immigration into the United States; to the Committee on the Judiciary.

By Mrs. FEINSTEIN:

S. 1352. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) to establish a public-private partnership demonstration project for the cleanup of ground water pollution in the San Gabriel Basin; to the Committee on Environment and Public Works.

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 1353. A bill to amend title 23, United States Code, to permit the use of funds under the highway bridge replacement and rehabilitation program for seismic retrofit of bridges, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. KASSEBAUM (for herself, Mr. JEFFORDS, Mr. COCHRAN, and Mr. PRESSLER):

S. 1354. A bill to amend the Fair Labor Standards Act of 1938 relating to the minimum wage and overtime exemption for employees subject to certain leave policies, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HEFLIN:

S. 1355. A bill to amend chapter 91 of title 28, United States Code, to provide that the United States Court of Federal Claims may have jurisdiction over certain pending claims, and for other purposes; to the Committee on the Judiciary.

By Mr. DOLE (for himself, Mr. HATCH, Mr. THURMOND, Mr. GRAMM, Mr. MACK, Mr. SIMPSON, Mr. COCHRAN, Mrs. KASSEBAUM, Mr. HELMS, Mr. D'AMATO, Mr. STEVENS, Mr. LOTT, Mr. GRASSLEY, Mr. DOMENICI, Mr. BROWN, Mr. NICKLES, and Mr. WALLOP):

S. 1356. A bill to restore order, deter crime, and make our neighborhoods and communities safer and more secure places in which to live and work; to the Committee on the Judiciary.

By Mr. LEVIN (for himself and Mr. RIEGLE):

S. 1357. A bill to reaffirm and clarify the Federal relationships of the Little Traverse Bay Bands of Odawa Indians the Little River Band of Ottawa Indians as distinct federally recognized Indian tribes, and for other purposes; to the Committee on Indian Affairs.

By Mr. JOHNSTON:

S. 1358. A bill to amend the Immigration and Nationality Act to improve immigration enforcement and anti-smuggling activities, to reform the asylum law, and to authorize appropriations for the Immigration and Naturalization Service; to the Committee on the Judiciary.

By Mr. LEAHY (for himself, Mr. HARKIN, Mr. SIMON, Ms. MOSELEY-BRAUN, Mr. WOFFORD, Mr. PRYOR, Mr. KERREY, Mr. BAUCUS, and Mr. JOHNSTON):

S. 1359. A bill to amend the Food Stamp Act of 1977 to require the domestic production of food stamp coupons; to the Committee on Agriculture, Nutrition, and Forestry.

By Mrs. MURRAY:

S. 1360. A bill to amend title I of the Employee Retirement Income Security Act of 1974 to exempt from preemption under such title certain provisions of the law of the State of Washington relating to health plans; to the Committee on Labor and Human Resources.

By Mr. COVERDELL (for himself, Mrs. HUTCHISON, Mr. BENNETT, Mr. FAIRCLOTH, Mr. GREGG, Mr. KEMPTHORNE, Mr. CRAIG, Mr. WALLOP, Mr. THURMOND, Mr. HELMS, Mr. LOTT, Mr. MCCAIN, and Mr. SMITH):

S.J. Res. 120. A joint resolution proposing an amendment to the Constitution prohibiting the imposition of retroactive taxes on the American people; to the Committee on the Judiciary.

By Mr. RIEGLE (for himself, Mr. D'AMATO, Ms. MIKULSKI, Mr. DURENBERGER, Mr. LUGAR, Mr. INOUYE, Mr. MOYNIHAN, Mr. GLENN, Mr. COATS, Mr. SPECTER, Mr. LAUTENBERG, Mr. LEVIN, Mr. COCHRAN, Mr. DECONCINI, Mr. SARBANES, Mr. SIMON, Mr. THURMOND, Mr. DOLE, Mr. JEFFORDS, Mr. DODD, Mr. HELMS, Mr. WARNER, Mr. CONRAD, Mr. DASCHLE, Mr. HOLLINGS, Mr. BROWN, Mr. ROTH, Mr. WOFFORD, Mr. PRESSLER, Mr. GRAHAM, Mr. BRADLEY, Mr. FEINGOLD, Mr. HEFLIN, Mr. BRYAN, Mr. WALLOP, Mr. JOHNSTON, Mr. METZENBAUM, Mr. GRASSLEY, Mr. BURNS, Mr. DORGAN, Mr. SASSER, Mr. DANFORTH, Mrs. KASSEBAUM, Mr. EXON, Mr. MURKOWSKI, Mr. SHELBY, Mr. MACK, Mr. CHAFEE, Mr. ROBB, Mr. KOHL, Mr. BREAUX, Ms. MOSELEY-BRAUN, Mr. AKAKA, Mr. KERRY, and Mr. PELL):

S.J. Res. 121. A bill to designate October 6, 1993 and 1994, as "German-American Day"; 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. PELL (for himself and Mr. BIDEN):

S. Res. 138. A resolution authorizing the printing of the publication "To Stand Agression: Milosevic, the Bosnian Republic, and the Conscience of the West"; considered and agreed to.

By Mr. MITCHELL (for himself and Mr. DOLE):

S. Res. 139. A resolution to establish procedures relating to the settlement of complaints filed with the Office of Senate Fair Employment Practices, and for other purposes; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. INOUYE (for himself, Mr. DODD, Mr. STEVENS, Mr. AKAKA, Mr. GORTON, Mr. MURKOWSKI, and Mr. SIMON):

S. 1350. A bill to amend the Earthquake Hazards Reduction Act of 1977 to

provide for an expanded Federal program of hazard mitigation and insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NATURAL DISASTER PROTECTION ACT OF 1993

Mr. INOUYE. Mr. President, today, I rise to introduce the Natural Disaster Protection Act of 1993. I am joined by Senators STEVENS, AKAKA, DODD, GORTON, MURKOWSKI, and SIMON as original cosponsors of my bill.

I wish to commend the National Disaster Coalition for their efforts and assistance in crafting this legislation. This measure is the product of many months of intense dialog, drafting, and hard work. The Coalition is a task force comprised of the insurance industry, realtors, lenders, State emergency managers, firefighters, and homeowners' groups dedicated to reducing property losses and injuries from natural disasters.

This legislation responds to the unprecedented losses caused by recent catastrophic natural disasters. Last year's devastation from Hurricanes Andrew and Iniki, and now the current floods in the Midwest underscores the seriousness and vulnerability of homeowners to natural disasters.

According to experts, natural disasters are becoming more frequent and more costly. New studies project that a class 5 hurricane striking Miami would cost $53 billion, while a catastrophic earthquake striking the New Madrid zone of the Mississippi River Valley could cause insured damage of up to $60 billion. Insured losses could have reached $30 billion had Hurricane Iniki struck the island of Oahu.

The magnitude of such losses far exceed the resources of any insurance company or State and local government. Insured losses alone from Hurricanes Andrew and Iniki exceeded $18.2 billion. Many insurance companies continue to reassess their risks and exposure to loss thus affecting the availability of insurance.

As a result of Hurricane Iniki, approximately 30 percent of Hawaii's homeowners insurance market is impaired. While many Hawaii residents have found alternative sources of insurance, coverage is expensive and limited. There are only two sources of insurance available in Hawaii, and applications are not taken freely. The annual homeowner's insurance premiums collected in the State are simply insufficient to cover losses from future catastrophic disasters. Consequently, the Hawaii State Legislature recently established a hurricane pool sufficient enough to cover losses of up to $1.6 billion. However, this pool is insufficient should losses from a future catastrophic disaster exceed $1.6 billion.

Presently, in the absence of an adequate system for insuring against catastrophic losses disaster victims must rely upon various forms of Federal Government disaster assistance. Unfortunately, there are several widely recognized problems plaguing disaster assistance programs. For example, they are costly to the Federal Government and taxpayers, and they do not provide adequate assistance to all victims.

While future disasters are unavoidable, preventive measures can be taken to reduce the loss of life, property, and the economic consequences of a catastrophic disaster. The Natural Disaster Protection Act of 1993 establishes three interrelated programs that will not require any taxpayer subsidies and will reduce the Nation's reliance on federally funded disaster assistance. First, the act establishes a mitigation program with a strong emphasis on building code enforcement and enhanced emergency planning. Funding for these purposes are provided entirely by private sector revenues. Second, the act establishes a primary insurance program which provides affordable comprehensive disaster protection for homes. Third, the act establishes a national reinsurance program which would provide a source of insurance which insurers could purchase to better manage the risk from highly infrequent, but extremely costly disasters. The reinsurance program would be financed by the insurance industry, and would help to prevent a homeowner's insurance availability crisis currently experienced in Hawaii, Florida, and other coastal States.

The act addresses flood-related disasters in four ways. First, the bill supports the improvement of mitigation and disaster preparedness efforts in disaster prone regions. Second, the legislation provides a new source of funding for these activities. Third, the bill addresses the inadequate participation of those at-risk of flooding in the National Flood Insurance Program by augmenting responsibility for enforcement with greater involvement by the insurance industry. Fourth, the bill directs the Federal Emergency Management Agency [FEMA] to study the possible integration of the Flood Insurance Program into the two new programs established under this legislation and provide its recommendations to Congress within 6 months.

The following summarizes the provisions of the National Disaster Protection Act of 1993.

MITIGATION PROGRAM

The mitigation program provides incentives to State and local governments to enhance their disaster planning and mitigation efforts in coordination with the FEMA. States would be eligible for grants from a Federal Disaster Mitigation Fund, which would be financed by a 5–10 percent set-aside of funds collected under the primary insurance and national reinsurance programs of the bill. To be eligible for such grants, States would be required to adopt stronger building and safety codes designed to make new construction less vulnerable to hurricanes, earthquakes, and other natural perils. In addition, States will be required to submit a comprehensive disaster plan to FEMA that includes detailed steps for identifying at-risk structures and methods to improve building code enforcement, emergency response, and overall disaster preparedness. Further, States must comply with the building codes and implement new mitigation plans within 5 years. States not in compliance would be ineligible for these funds and could be denied access to certain types of Federal disaster relief.

The legislation establishes an advisory committee to assist FEMA in its efforts to encourage improved disaster training, research, technology transfer, and education.

PRIMARY INSURANCE PROGRAM

The Natural Disaster Protection Act provides a more comprehensive homeowners' policy that includes standard coverage for earthquakes, volcanic eruptions, and other perils not currently included in basic coverage. Rates for this coverage would be risked-based so that homeowners in areas prone to such hazards would not be subsidized by residents from low-risk areas. In addition, homeowners would still have a choice of deductibles, type of coverage, and additional endorsements. The premiums and deductibles for these expanded lines of coverage would be set by FEMA. Insurance companies would collect the premiums and remit them to a Federal trust fund which would be used to pay claims.

REINSURANCE PROGRAM

The Natural Disaster Protection Act addresses the homeowners' insurance availability problems which have occurred in the wake of recent disasters and helps to avoid even greater availability problems in the aftermath of a future catastrophe. It also reduces the potential for insurance company insolvencies from exceptionally large disasters.

This would be accomplished through the creation of a new Federal disaster reinsurance fund that would be financed by the insurance industry. The reinsurance fund would provide a source of insurance which insurers could purchase to better manage the risk from highly infrequent, but extremely costly disasters.

Premiums for the reinsurance program would be set by FEMA, with companies making payments into a national reinsurance fund. Over time, the fund will accumulate considerable reserves to be used when a large disaster strikes. If such an event occurs before a sufficient reserve has accumulated, the Treasury would be authorized to borrow additional funds to cover the

shortfall and then charge insurers, with interest, to rebuild the fund.

Participating insurers would only be eligible to make claims against the fund if a natural disaster, or series of disasters occurring in a 12-month period, exceeds 15 percent of the industry's surplus, currently estimated at $24.5 billion. If, for example, a catastrophic earthquake causes $28 billion in insured losses, insurance companies would pay the first $24.5 billion and could only make reinsurance claims for $3.5 billion. Individual companies could also make claims if they experience a 20-percent reduction in their surplus as a result of a single disaster.

States would be eligible to participate in the reinsurance program if they create insurance pools or other State-sponsored programs to provide insurance for homeowners who are unable to secure coverage on their own.

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

There being on objection, the material was ordered to be printed in the RECORD, as follows.

SECTION-BY-SECTION ANALYSIS OF THE NATURAL DISASTER PROTECTION ACT OF 1993—S. 1350

This legislation amends the Earthquake Hazards Reduction Act of 1977 to provide for an expanded federal program of hazard mitigation and insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions.

Section 1. Title. This section entitles the bill the "Natural Disaster Protection Act of 1993".

Section 2. Findings. This section adds 11 new congressional findings to the Earthquake Hazard Reduction Act (EHRA) that outline the policy rationale for this bill. The findings, for instance, state that: the major natural disasters (e.g., hurricanes, earthquakes and volcanic eruptions) will inflict substantial long-term consequences on the country; hazard reduction measures, such as building codes, are not in place and not adequately enforced; improved first responder and emergency management capabilities will lessen the impact of future disasters; and millions of Americans do not have adequate natural disaster insurance coverage.

Section 3. Purpose. This section adds 10 new purposes to the EHRA that explain the objectives of the legislation. The purposes, for instance, include: building safer structures; enhancing emergency management and first response capability; creating a self-sustaining funding mechanism to help states pay for hazard mitigation programs; providing adequate insurance coverage for natural disaster perils; involving the insurance industry to speed recovery following a catastrophic disaster; reducing reliance on government disaster assistance.

Section 4. Definitions. This section adds 29 new definitions to the EHRA that define important terms used in this bill.

Section 5. Conforming Amendments. This section makes several conforming changes to the EHRA, primarily renumbering section numbers.

Section 6. Multihazard Mitigation Program. This section adds a new title II to the EHRA that creates a comprehensive multihazard mitigation program.

Section 201. Identification and Designation of Disaster-Prone States. This new EHRA section requires the FEMA Director within 1 year of enactment to identify states (defined to include territories) that are prone to damages from hurricanes, windstorms (e.g., tornadoes), earthquakes, volcanic eruptions, and flooding. Six months after being notified as a state prone to one or more of these disaster perils, the disaster-prone designations become final. Any state disagreeing with its disaster-prone designation has a right to appeal to a local federal district court.

Section 202. Building and Safety Standards. This section requires each hurricane-prone, windstorm-prone, or earthquake-prone state to either adopt one of the three recognized model building codes (and the national consensus fire safety codes) or certify that the local communities within the state have adopted and are enforcing these codes for all new construction or additions which increase the value of the structure by at least 50 percent. Likewise, each flood-prone state must either adopt the relevant flood minimum performance standards under the National Flood Insurance Act or certify that the flood-prone local communities within the state have adopted and are enforcing these standards for new construction or additions which increase the value of the structure by at least 50 percent.

Section 203. State Mitigation Plans. This section requires each disaster-prone state to develop and submit to FEMA within two years a mitigation plan or designate an existing mitigation plan. The mitigation plan must include processes for: verifying compliance with building and safety codes as well as any federal multihazard mitigation standards; identifying areas within states, types of structures, and hazard mitigation measures that should be prioritized; improving the emergency response to natural disasters, including better training for first responders; and expediting the rebuilding of lifelines and recovery by individuals and businesses.

Section 204. Compliance by States. This section gives disaster-prone states five years following enactment to substantially comply with the building standards and state mitigation plan requirements outlined above. The compliance mechanism would be self-certification subject to review by FEMA which would renew compliance certifications every two years. The following penalties would be imposed on states failing to certify compliance: loss of funds from the self-sustaining mitigation fund (discussed in section 206); higher premiums and deductibles for the federal multihazard insurance coverage (discussed below); and loss of assistance for any new federal building or new federally-leased, assisted, or regulated building. In addition, local communities which fail, within five years of enactment, to comply with the building standards outlined above would also be denied Stafford Act public disaster assistance funds.

Section 205. Federal Hazard Mitigation Authorities. This section requires FEMA to develop programs that carry out multihazard and emergency management initiatives such as: model building code development; training and licensing of code inspectors and other relevant professionals; expanded research of safer building technologies and technology transfer; additional postdisaster aid; and public education. This section also requires all new buildings owned or leased by any federal agency or receiving federal assistance to meet the newest edition of the relevant building code requirements.

Section 206. Self-Sustaining Mitigation Fund. This section requires a percentage of the premiums collected from both the primary and reinsurance programs described below to be deposited into a self-sustaining mitigation fund. The FEMA Director would set the actual percentage which must be between five and ten percent, unless the amounts in the two insurance funds are sufficient to cover losses for any probable maximum natural disaster. The mitigation funds would be allocated to disaster-prone states based on the primary program insurance premiums collected in that state. States could use the funds as they see fit, provided they are used for hazard mitigation activities (subject to FEMA audits) and a portion of the money flows through the affected local communities. Finally, FEMA could allocate a portion of the mitigation fund to support the federal hazard mitigation initiatives described above.

Section 207. Natural Disaster Mitigation and Planning Advisory Committee. This section establishes a 20-member independent advisory committee to advise FEMA on hazard mitigation and disaster planning, particularly the programs authorized by this legislation. The FEMA Director would appoint the members who would represent various interests, including: fire fighters and chiefs; emergency medical, search, rescue, and law enforcement personnel; state and local emergency managers and building code officials; architects, builders, and engineers; members of organized labor; wind and seismic mitigation experts; consumers; and insurers.

Section 7. Federal Insurance Programs. This section adds a new title III to the EHRA that creates two federal insurance programs.

SUBTITLE A CREATES THE PRIMARY INSURANCE PROGRAM

Section 301. Basic Authority and Program Operations. This section directs FEMA to establish a national multihazard insurance program to provide insurance against "shake" losses resulting from earthquakes and related seismic perils. FEMA would also conduct a study to determine whether the existing federal flood insurance program should be integrated into the multihazard insurance program and report any recommendations to Congress within one year. Insurance agents and companies participating in the federal flood insurance program would also be required to notify FEMA of policyholders living in flood plains and required to have flood insurance who refuse to purchase the coverage. FEMA would then have six months to take necessary and appropriate steps to ensure these non-compliant policyholders purchase the coverage. The FEMA Director, moreover, would submit a report to Congress within six months of any additional sanctions needed to improve participation in the federal insurance program.

Section 302. Program Scope. This section makes the multihazard coverage available only for residential properties (defined as one-to-four family structures and personal property of those living in apartments and condominiums). Upon a finding that insurance coverage is unavailable in the private sector, the FEMA Director may recommend to Congress that additional types of properties qualify for the multihazard coverage.

Section 303. Terms and Limitations of Insurance Coverage. This section authorizes FEMA to establish the terms and conditions of insurability, including: the type, location, and specific insurability definitions of residential properties; damages covered by the insurance; and premiums rates, loss-deductible, coverage limits, and minimum coverage amounts. The insurance would cover losses (including debris removal, additional living

expenses, and ordinance and law coverage) proximately caused by: earthquakes, except for fires caused by earthquakes (which are already covered in homeowners' policies); volcanic eruptions, including fires caused by volcanic lava flows; and tsunamis. Any private insurer can participate in this program by providing to all of its homeowner policyholders living in earthquake and volcanic eruption-prone states either the federal coverage or the identical coverage on its own paper at the same rate. Finally, private insurers electing not to participate in this program must notify all of the homeowner policyholders in at-risk states of their nonparticipation and of the absence of insurance protection for earthquakes and related seismic perils.

Section 304. Actuarially Sound Rates. This section requires FEMA to establish risk-based rates for the multihazard coverage by considering the following factors: the severity and frequency of earthquakes, volcanic eruptions, and tsunamis in specified rating zones; the value, age, construction type, and architectural type of the residential structures; and whether hazard mitigation measures have been followed in the constitution or subsequent retrofitting of the residential structures. The rates must be actuarial so that, over an extended period of time, expected losses do not exceed premiums collected. The rates established, moreover, must minimize cross-subsidization by reasonably reflecting the risk of losses for each subclassification of policyholder. The rate classification system developed by FEMA must also be cost-effective, simple, and easy to understand by agents and policyholders. Finally, any premiums collected cannot be used to establish highly specific microzonation maps for the covered seismic perils.

Section 305. Primary Insurance Program Fund. This section creates within the U.S. Treasury the primary insurance program fund which would be exempt from all tax (except for state insurance premium taxes). Participating insurers would remit to this fund on a quarterly basis all the premiums they collect (including any interest earned) from their homeowner policyholders who purchase the multihazard coverage. Following an earthquake, volcanic eruption, or tsunami, insurers would pay the damage claims filed by their homeowners. The insurers would then be reimbursed within 30 days from amounts in the primary insurance program fund for the claims paid plus any loss adjustment expenses. The fund would also pay for the agents' commissions in selling and serving the coverage and for all of the program's administrative and operating expenses. The full faith and credit of the United States would be pledged for full payment of claims.

Section 306. Borrowing from Treasury. This section authorizes FEMA, subject to the availability of congressional appropriations, to borrow from the Treasury to cover any shortfalls that may result in paying the multihazard coverage claims and expenses. Amounts borrowed would be deposited in the primary insurance program fund and must be repaid, with interest, from future premiums collected.

Section 307. Insurance Mitigation Incentives. This section requires FEMA to provide the following insurance mitigation incentives: lower premiums or deductibles for residential structures in earthquake-prone states which meet seismic building standards or pass a seismic safety inspection; and lower premiums or deductibles for new residential structures not constructed in highrisk volcanic zones.

SUBTITLE B CREATES THE REINSURANCE PROGRAM

Section 311. Basic Authority and Program Operation. This section directs FEMA to make excess reinsurance coverage available to the following entities for losses arising from catastrophic hurricanes, earthquakes, volcanic eruptions, and tsunamis: private insurers participating in the primary insurance program described above; private reinsurers that reinsure private insurers participating in the primary program; and state insurance programs such as workers' compensation funds and state residual insurance pooling programs.

Section 312. Levels of Retained Losses. This section establishes the amount of insured losses that must be borne by eligible entities before they can qualify or receive reinsurance claims.

Industry-wide Retained Losses. Reinsurance would be available to companies if the property-casualty industry as a whole is likely to incur gross losses (i.e., losses prior to deducting any anticipated private reinsurance payments) from catastrophic natural disasters occurring during any 12 month period that exceed 15 percent of the industry's consolidated surplus, except that only separate events which cause at least $1.5 billion in losses (adjusted for inflation) would be counted. Once the industry has sustained this magnitude of loss (currently estimated to be about $25 billion), reinsurance would pay 95 percent of a company's losses which exceed 15 percent of that particular company's consolidated surplus.

Individual Company Retained Losses. If the industry-wide retained losses level is not reached, individual companies could receive reinsurance if a single natural disaster resulted in losses that exceed 20 percent of that company's consolidated surplus. At this point, reinsurance would pay 95 percent of the company's losses which exceed 20 per cent of the company's consolidated surplus up to a limit of 200 percent of the company's surplus.

State Insurance Programs. Reinsurance would be available to eligible state insurance programs if the Insurance industry is likely to incur gross losses in that state arising from natural disaster's occurring during any 12 month period that exceed the lesser of 10 times the premiums earned in that state or $10 billion (adjusted for inflation). This lesser amount, however , must equal at least $500 million (adjusted for inflation). Once this level of losses has been reached, reinsurance would pay to state insurance programs 95 percent of the losses which exceed the lesser amount described above.

The federal reinsurance claims paid to these eligible entities would be reduced by any reinsurance recovered from private sources. The full faith and credit of the United States would be pledged for full payment of reinsurance claims.

Section 313. Lines of Insurance. This section directs FEMA to provide excess reinsurance coverage for 16 lines of insurance, including fire, multiple peril, workers' compensation, and general liability. Other lines of coverage could be added by the Director of FEMA in consultation with the insurance advisory committee described in section 322.

Section 314. Actuarially Sound Rates. This section requires FEMA to establish risk-based rates for the excess reinsurance coverage so that, over an extended period of time, expected losses do not exceed premiums collected. The rates must also minimize the degree of cross-subsidization among classes of reinsured and the following rating factors must be considered: the premium rate volume of reinsureds and the total expected reinsurance payments by line of insurance; the adequacy of private reinsurance purchased; the payback of losses sustained by the reinsurance fund; and the reinsured's ratio of premiums written to consolidated surplus. Any rate classification system established by FEMA cannot impose disproportionate administrative costs.

Section 315. Reinsurance Fund. This section creates within the U.S. Treasury the reinsurance fund which would be exempt from all tax. Companies and state insurance programs participating in the reinsurance program would pay to this fund quarterly premiums where they would accumulate and be available to pay reinsurance claims.

Section 316. Borrowing from Treasury. This section authorizes FEMA, subject to the availability of congressional appropriations, to borrow from the Treasury to cover any shortfalls that may result in paying the excess reinsurance claims and expenses. Amounts borrowed would be deposited in the reinsurance fund and must be repaid, with interest, from future premiums collected from companies.

SUBTITLE C DESCRIBES THE ADMINISTRATION FOR THE INSURANCE PROGRAMS

Section 321. Plan of Operation. This section requires the FEMA Director to develop a plan of operation for the administration of the two federal insurance programs. Within one year of enactment, the Director would submit the draft plan of operation to the insurance advisory committee (described in the next section) for review and comment. The Director must consider all recommendations of the advisory committee and must publish in the Federal Register, with an accompanying explanation, any instances in which the Director fails to adopt an advisory committee recommendation. The final plan of operation would be issued as federal regulations within 18 months of enactment. Any lawsuits filed against the Director in connection with the insurance programs must be brought in the relevant federal district court (which would be the D.C. federal district court for actions brought by insurers).

Section 322. Federal Insurance and Reinsurance Advisory Committee. This section establishes a seven-member independent advisory committee to advise FEMA on the operations of the two insurance programs. The members would be appointed by the FEMA Director and must include: a state emergency planner; a state insurance commissioner, a professional actuary; and representatives of consumers, insurers, reinsurers, and insurance agents.

Mr. DODD. Mr. President, I am pleased to cosponsor the Natural Disaster Protection Act of 1993 with my distinguished colleague, Senator INOUYE.

The reactive nature of the current system of disaster relief is a major problem. A hurricane or earthquake strikes, and the Federal Government scrambles to find the money to repair the damage. This usually requires the Federal Government to borrow more money and increase the deficit.

The Natural Disaster Protection Act would change that approach. It would help communities plan for disasters and provide an insurance fund that would cover damages. With this reform in place, the disaster relief costs paid

by taxpayers would decrease. Additionally, the bill would assure the continued availability of homeowner's insurance both before and after a major disaster.

In recent years, the Nation has been hit with a series of devastating and expensive natural disasters. The rampaging waters flooding the Midwest are the most recent tragedy. Dozens of lives have been lost, millions of acres of crops have been destroyed, and countless businesses have been forced to close. The most recent estimates put losses at $10 billion.

Last year, Hurricane Andrew swept through Florida leaving a path of destruction in its wake. The final costs from that storm are still not known, but they may exceed $17 billion. Similarly, Hurricane Iniki left 8,000 people homeless and caused more than $1.5 billion in damages. Although it was not as severe as the tropical storms, my home State of Connecticut also experienced a natural disaster last winter when a northeaster smashed into the coast.

These disasters will cost the American taxpayers an enormous amount of money. This year, President Clinton has requested $4.3 billion to help the victims of the flooding in the Midwest. That is on top of the $156 million paid earlier this year to help victims of flooding in California. In 1992, taxpayers paid $2.1 billion to assist the victims of Hurricane Andrew and $362 million to repair the damage caused by Hurricane Iniki. All told, Federal Government outlays for disaster relief exceeded $75 per taxpayer for the year.

Although the last 2 years have been particularly difficult, we also paid $702 million for costs associated with the Loma Prieta Earthquake in California, and $1.5 billion for Hurricane Hugo in 1989.

Of course, private insurers pay for most of the costs associated with natural disasters. Insured losses from Hurricanes Andrew and Iniki exceeded $18 billion. These enormous losses have hurt the industry and homeowners. Eight insurers, responsible for 15,000 homeowners' policies, failed as a result of Hurricane Andrew. Forty percent of homeowners in Hawaii are either currently without homeowner's insurance, or will not have their policies renewed as a result of insurance company insolvencies. Furthermore, many Americans do not have adequate coverage for natural disasters.

The high cost paid by taxpayers, and the difficulties faced by private insurers, suggests that there should be a better way to deal with disaster relief. The Natural Disaster Protection Act offers a new approach that would reduce the Nation's reliance on federally-funded disaster assistance.

Under this legislation, the Federal Emergency Management [FEMA] would work with State and local governments and private insurers to improve the Federal disaster relief system. The bill has three main components: First, a hazard mitigation program that would require States in disaster-prone areas to develop a plan for dealing with natural disasters and certify that building and safety codes are being complied with; second, a national insurance program that would provide comprehensive disaster protection for homes; and third, a reinsurance program, financed by the insurance industry, to help prevent an insurance availability crisis.

The National Insurance Program is a key part of the bill. FEMA would begin the process by designating disaster-prone States. Working with a committee whose members would represent the interests of consumers, State emergency planners, and insurers; FEMA would also establish the terms and limitations of the insurance coverage. Most important, the premiums would be actuarially based so that the cost reflects the risk faced by individual homeowners. Insurance companies would collect the premiums and foward them to a Federal insurance fund which would be used to pay claims.

With this fund in place, the Nation would have a cushion to soften the costs associated with natural disasters. This should reduce the amount of direct Federal expenditures after a disaster. Additionally, the government could invest part of the fund to help build up the reserve.

Up to 10 percent of the fund would also be used for grants to help State mitigation efforts. To qualify for the grants, States would have to: First, submit a comprehensive disaster plan to FEMA which would identify ways to improve building code enforcement, emergency response, and overall disaster preparedness; and second, certify that local communities are complying with federally approved building codes.

Finally, the bill would establish a Federal reinsurance fund. Premiums would be set by FEMA, and paid by insurance companies. Essentially, the reinsurance fund would provide insurance for insurers, so that they could better manage the risk from extremely costly disasters. This will help reduce the potential for insurance company insolvencies after major disasters.

With the Natural Disaster Protection Act in place, the Nation will be better equipped to deal with natural disasters. As a result of mitigation efforts, and the establishment of Federal insurance funds, the costs paid by taxpayers would be substantially reduced. The development of the reinsurance program would also protect against insurance companies going out of business and leaving homeowners stranded. Not surprisingly, a wide range of organizations have voiced their support for this bill including the National Emergency Management Association, the American Insurance Association, the National Consumers League, the National Association of Realtors, the International Association of Fire Fighters [AFL-CIO], the United Homeowners of America, and the National Council of Senior Citizens.

Of course, some modifications to this bill may be necessary as the legislative process moves forward. One issue that I am concerned about is the way in which the new disaster insurance fund is coordinated with other Federal insurance programs, including the National Flood Insurance Program. But this legislation serves as a starting point, and I look forward to working with my colleagues to reform our system of Federal disaster relief.

Mr. AKAKA. Mr. President, today I join Senators INOUYE, STEVENS, DODD, MURKOWKSI, SIMON, and GORTON in introducing legislation to lessen the economic consequences of a catastrophic disaster. Our bill provides a workable solution to reducing the loss of life and property and lessens the need for massive Federal disaster assistance.

Last September, the garden island of Kauai took a direct hit from Hurricane Iniki, with slamming winds of up to 165 miles per hour. Damage to the island totaled over $1.4 billion. It is important to remember that Hurricane Iniki occurred shortly after the Nation's most costly natural disaster, Hurricane Andrew, and preceded the great flood of 1993 by less than a year.

To those Americans displaced both physically and emotionally from their homes and livelihoods by natural disasters, the Federal Government offers a variety of emergency disaster services. For many disaster victims, the shock of losing one's home or business is compounded by the realization that the Federal Government can only do so much. Moreover, many affected by these disasters find that their insurance policies are often inadequate to cover losses.

The legislation we introduce today offers a multipronged approach to responding to future disasters. Encompassed in the bill are a hazard mitigation program—which will result in the construction of safer buildings and improved State and local emergency management capabilities; a primary insurance program to provide affordable, comprehensive disaster protection for homes; and a national reinsurance program financed by the insurance industry. Only through a comprehensive catastrophic disaster insurance program will be encourage those living in flood-prone, hurricane-prone, and earthquake-prone areas to purchase insurance. The central concept of this legislation is a cooperative effort that lessens the impact of a disaster through shared responsibilities among property owners, insurers, and government at all levels.

The Hazard Mitigation Program provides grants to State and local governments to strengthen their disaster planning and mitigation effort, in coordination with FEMA, through a Federal disaster mitigation fund. States meeting specified criteria would be eligible for these grants, which would be financed through amounts collected from other programs in the act. States not in compliance would be ineligible for these funds and could be denied access to certain types of Federal disaster relief.

This legislation does not intend to micromanage the jurisdictional structure or the actual mitigation steps to be followed, but rather, establish a framework within which the appropriate Federal agencies can deliver assistance effectively. Each State designated to be prone to specified disasters will be required to carry out certain mitigation efforts to address each of these types of disasters.

One of the most important features of this bill is the establishment of a reinsurance program to address the problem of homeowners' insurance availability. It would also reduce the potential for insurance company insolvencies from exceptionally large disasters, like Hurricanes Iniki and Andrew, and now the Midwest flood.

I might add that I sincerely hope that the residents of the Midwest do not meet the same problems encountered by the citizens in Hawaii after Hurricane Iniki, when the State's third largest insurer declared bankruptcy after claims became too great. This prompted most insurance companies doing business in the State to stop writing new policies and refusing to renew existing ones. Because many homeowners, and eventually many businesses, were without property insurance after Iniki, the Hawaii State Legislature adopted a bill to establish a new public corporation to provide hurricane coverage.

Another point in favor of Federal disaster insurance is that even when the Hawaii insurance pool is fully funded, it could never cover losses should a hurricane the force of Iniki hit the State's most populated island of Oahu. It is estimated that such a direct hit would result in estimated losses of $35 billion. Mr. President, this is where a reinsurance program becomes advantageous to everyone.

An important feature of the reinsurance fund is that it would be financed by the insurance industry. The fund would provide a source of insurance which insurersse high could purchase to better manage the risk from highly infrequent, but extremely costly disasters. States would also be eligible to participate in the reinsurance program if they create insurance pools, like Hawaii's hurricane relief fund, or other State-sponsored programs to provide insurance for homeowners who are unable to secure coverage on their own.

This bill is intended to lessen the damage suffered through injuries or loss of life, as well as lessen physical damage to insured structures. By lowering the amount of claims that insurance companies are forced to pay out, we will lessen their risk to a level where they feel that they can participate in high-risk markets.

Mr. President, I wish to reemphasize that our bill is aimed at long range effectiveness. In searching for an equitable and effective means of addressing the financing of disasters, we must be willing to try new approaches. Although we cannot avert most disasters, we can take a proactive stand to lessen the impact of these unpredictable acts of nature.

The Natural Disaster Protection Act of 1993 provides a road map for dealing with the impact of serious, catastrophic disasters which appear to be striking with more frequency and intensity by shifting the emphasis from taxpayer dollars to private dollars as a means of funding disaster recovery.

Mr. MURKOWSKI. Mr. President, I rise today to join with my good friends Senator INOUYE and Senator STEVENS in introducing this important legislation.

As has already been explained, this bill will both strengthen existing building codes to prevent damage from natural disasters and vastly increase the availability of insurance to people in States at risk for such disasters.

I would just like to comment specifically on three items.

First, I would like to thank Senator INOUYE for including at my suggestion, language insuring that potential victims of tsunami damage are also covered by this bill as well as those victims of earthquakes or volcanic eruptions.

In the last great earthquake in my State, the Good Friday earthquake of 1964, a great proportion of the damage was done by tsunami, and this bill will insure that should that happen again that damage would be covered.

Second, this bill anticipates future difficulties. Too often, we here in Congress are accused of waiting until after the horse is gone to shut the gate; of waiting until after the disaster has occurred and then throwing money at the ruins. This bill is different. This bill attacks the risk of catastrophic damage when it should be attacked, before the disaster occurs, before a single life is lost or a single building destroyed. I commend the Senator from Hawaii for this foresight.

Finally, this bill will vastly broaden the availability of disaster insurance for millions of Americans at no cost to the Federal Government. We here in the Congress have to understand that the Federal Government simply does not have the financial resources to address each and every problem in this Nation. This bill recognizes that fact. This bill's innovative self-funding mechanisms are the wave of the future, and I am pleased to be associated with this effort.

I look forward to working with my colleagues to insure passage of this important legislation.

By Mr. REID:

S. 1351. A bill to curb criminal activity by aliens, to defend against acts of international terrorism, to protect American workers from unfair labor competition, and to relieve pressure on public services by strengthening border security and stabilizing immigration into the United States; to the Committee on the Judiciary.

IMMIGRATION STABILIZATION ACT OF 1993

Mr. REID. Mr. President, it is truly dazzling to think about the contributions immigrants have made to this great Nation. Names like Einstein, Baryshnikov, and Greta Garbo spring immediately to mind. One of our recent Poet Laureates of the United States was the Russian immigrant, Joseph Brodsky.

And there have been so many more famous and unknown immigrants that have made America great. In the past, our immigration has been mostly European. But we have a new immigration in America today. People from Latin America and the Far East are now making their own mark on our society.

Students from the Far East are class valedictorians all across the country. Korean and Chinese small businesses proliferate and are successful, reminiscent of An Wang's great success as an inventor and businessman.

Latin Americans have made great contributions to the arts, theatre, politics, and many other areas. The Spanish language has become a part of our everyday experience. I, myself, have three sons fluent in this language.

This is what makes America America. The diversity of our public consciousness and the unity of our purpose has made us strong.

As many of us here, I and my children are from immigrant stock. My grandmother emigrated from England, and my father-in-law was from Russia. Like many of our recent immigrants, they came here, worked hard, and improved their lives.

Mr. President, today I am introducing comprehensive legislation aimed at overhauling our Nation's immigration laws. Immigration is rapidly becoming one of the most critical issues on the national agenda and one which the American people believe requires the urgent attention of Congress. The legislation which I am introducing today is aimed at addressing the growing concern on the part of the American people that our immigration laws lack a purpose and a sense of direction.

In 1958, Senator John F. Kennedy published a pamphlet entitled, "A Nation of Immigrants." Since that time

the description, "a nation of immigrants" has become almost a national badge of honor. Perhaps as no other nation before ours, we have taken people from many different cultures, religions, and races and melded them into a cohesive unit—a nation. Moreover, the United States has succeeded in creating this feat in a remarkably brief period of time.

In effect, we may have become victims of our own success. Like so many things, we have begun to take for granted the ability of the United States to absorb and assimilate large numbers of newcomers into the mainstream of American life. In recent years, we have lost sight of the fact that being a nation of immigrants is an ideal that requires effort and planning. President Kennedy's lofty ideal is in danger of becoming an empty cliché.

Thirty-five years after the publication of "A Nation of Immigrants" it is fair to say that the United States lacks an immigration policy. Webster's defines the term policy as "prudence or wisdom in the management of affairs." Policy also implies an overriding objective and a common understanding of what national good is being served. Yet in 1993, the United States admits a population roughly equivalent to the population of my home State of Nevada every year, and will continue to do so every year for the foreseeable future, without any clear idea of what it is we hope to achieve.

Every public policy generates differences of opinion, but those differences generally center on how best to achieve a given objective. As the Nation wrestles with the difficult issue of health care reform we will witness passionate and protracted debates from all segments of society. But at least we all agree that the objective ought to be to provide the best possible health care for the greatest number of people within the limits of our resources. The same could be said for virtually every other difficult issue that the Nation, and by extension those of us here in Congress, must deal with.

When it comes to immigration we have not even taken the first step of debating and establishing our goals. Immigration to the United States is governed by an inchoate and often incomprehensible hodgepodge of statutes, regulations, and procedures. Cobbled together over the last 100 years in the true spirit of ad hocracy, America's immigration laws utterly lack the support and confidence of the people of the United States. The time has come to move beyond the myths, shibboleths, and clichés and open a national debate on an issue that Attorney General Janet Reno has aptly described as "one of the most critical issues that we face this decade."

There is no better place to begin than by taking a clearheaded look at exactly what America's immigration tradition has been. For years, those who have promoted expanded immigration levels and who have urged us to wink at massive illegal immigration and abuse of our political asylum laws, have argued that we must be true to America's immigration tradition. But what exactly is that tradition? Upon closer scrutiny, immigration to the United States today is anything but traditional.

From 1820 until 1965—a period that encompasses most of our history as a nation—the United States admitted an average of less than 300,000 immigrants a year. During that 145-year period we settled the frontier, fought a civil war, created an industrial revolution, engaged in two world wars, endured a great depression and ultimately emerged as the world's greatest military and economic superpower. There were ebbs and flows in immigration over this period, but taken together 300,000 immigrants a year is our true immigration tradition. And, with the exception of one relatively short period at the beginning of the 20th century, these levels rarely varied.

Contrast those levels of immigration with the numbers we are seeing today. Depending on estimates of illegal immigration, we are now resettling between 1.2 million and 1.5 million newcomers every year. There is nothing traditional, or rational for that matter about attempting to absorb the population of Nevada every year, year in and year out. When history is written, the decade of the 1980's will be remembered as a decade of wretched excess and, true to form, immigration was taken to excess as well. As we focus on reining in many of the other excesses of the preceding decade, we must not overlook immigration.

Unless serious reforms are undertaken, 15 million newcomers will settle in the United States during the 1990's. Yet we continue to act as though immigration exists in a vacuum. Not a whit of thought has been devoted to how we will meet the needs of that population. There has not been a single debate in Congress about how we will provide a first class education to all these new children, provide quality health care to the sick, secure adequate and affordable housing, ensure that there will be sufficient jobs, improve and expand infrastructure, cope with environmental degradation, or ensure domestic tranquility. In short, we are admitting unprecedented numbers of new immigrants without even a modicum of planning. We are taking a leap of faith hoping that somehow everything will work out tomorrow.

Over the past 15 years, Congress and successive administrations have acted on immigration like they have acted on the national debt. As a result, our immigration laws are in the same mess as our financial situation. The American people are angry about both the budget deficit and immigration. Nobody has asked them if they want to foot the bill for what is happening. Nobody has consulted with them about whether they want to see the social and cultural makeup of their nation radically altered. Nobody has ever asked the American people if they want to see the population of the United States grow by more than 50 percent within the lifetimes of their children and grandchildren.

In a democracy, the people have a right to be consulted on issues of vital importance to their future. Every public opinion poll done in the past 15 years indicates that the American people—of very race, religion, ethnic group, and region of the country—want to see legal immigration reduced to more traditional levels and illegal immigration brought under control. Several weeks ago, Jim Hoagland wrote in the Washington Post that immigration would soon become topic A in all the industrialized democracies. It is time, therefore, that Congress began to address this issue and the concerns of the people seriously.

It is for these reasons that I am introducing comprehensive legislation aimed at establishing an immigration policy for the United States. I wish to note that while many piecemeal immigration proposals have been introduced to deal with particular problem areas—such as asylum abuse—no other Senator or Congressman has introduced a comprehensive reform bill.

Comprehensive reform is essential for effectively addressing this critical issue. The problems with our immigration system have grown too large to be dealt with by tinkering with the margins. The troubles with our immigration process cannot be solved with a few more dollars, or a few more border guards, or by tightening up on asylum regulations. The problem is the system itself and that is why I am proposing that it be reformed top to bottom. It is time to reexamine all aspects of the issue: Controlling illegal immigration, ending abuse of our political asylum process and establishing, for a change, some guiding principles by which we can administer a legal immigration policy that is fair, rational, and which serves the interests of the United States.

Under the legislation I am proposing, we would begin to restore immigration to its more traditional and manageable levels of about 300,000 annually.

Annual levels of 300,000 would restore immigration to more traditional levels. To put the excesses of our current immigration numbers in perspective, even if we were to enact this decrease of more than 50 percent, the United States would still have the most open and generous immigration policy in the world.

Paring back immigration to more manageable levels would necessitate

some long overdue changes in the way immigrants are selected. The ever-growing pressure to expand immigration levels is a byproduct of a system that grants immigration preferences to extended family members. Each time we admit a new immigrant, we expand the pool of people eligible to join the queue of those who would like to immigrate in the future. Thus, under the current system, the more immigrants we admit, the greater the pressure becomes to admit relatives who feel they have entitlement to come to America. We now have an astounding backlog of 3.4 million such people—roughly equivalent to the population of the city of Los Angeles.

What is more, people who immigrate under one of the family reunification provisions do not have to meet any objective criteria which measure whether they are likely to become contributing members of our society. Of the more than 1 million people who settle here each year, not more than about 50,000 are selected based on what they can do for the United States. We have lost sight of the fact that immigration is a public policy and like all public policies it is supposed to serve the best interests of the United States.

To both serve the national interest and reduce the pressure for ever-expanding immigration quotas, we must eliminate immigration preferences for extended family members. The nuclear family is the bedrock of our social structure and when an immigrant is selected he or she should be entitled to bring a spouse and unmarried minor children, but the United States must make it clear that there is no implicit or explicit promise that other family members will be permitted to immigrate as a result. Like other immigrant-receiving countries, the United States has a duty to set limits on the number of people who can come and fill those quotas based on an objective assessment of our own national interests.

Events in recent months, such as the hideous bombing in New York, have demonstrated that one of our most important national interests has been grossly neglected, with tragic results. Illegal immigration has become not only one of our most costly problems, but a threat to our national security. For decades, we have pretended not to see the problem of illegal immigration. The time has come to begin treating this matter seriously through a combination of enforcement and deterrence.

Twice in the past 7 years Congress has authorized increases in Border Patrol manpower and, in both instances, failed to appropriate the necessary funds. With an estimated 3 million people illegally crossing our borders every year, Congress must significantly increase the size of the Border Patrol to ensure our borders are secure. This will require roughly twice the number of Border Patrol officers we now have—an increase to 9,900 personnel. Inadequate manpower is penny-wise and pound-foolish. The Constitution requires that we provide for the defense of the Nation. As long as anyone can enter this country, at any time, for any reason, we are failing to meet this most basic of our constitutional obligations—the security of the people.

In addition to adequate manpower, we must also provide those who guard our borders with the necessary equipment to do their jobs. It is a waste of the taxpayers' money to pay Border Patrol agents' wages when their vehicles are often in such a state of disrepair that they are unable to guard our borders. How can we expect aliens to take seriously our commitment to securing our Nation's borders when Border Patrol vehicles often sit idle for lack of gasoline?

Given the other events that are taking place here in Congress this week; namely, producing a budget that makes significant reductions in the Federal deficit, the legislation I am introducing today contains a plan for paying for the increased border security I am proposing. My colleague, Senator DIANNE FEINSTEIN of California has already suggested the institution of a border crossing fee to cover the costs of these needed improvements. Her idea has been incorporated into this bill. A $3 fee would raise approximately $1 billion a year to fund efforts to combat illegal immigration and expedite travel for the hundreds of millions of people who cross our land borders for legitimate reasons.

As important as improving security along the border is, however, the cornerstone of our policy to control illegal immigration must be effective deterrence. We will never be able to stop all the people attempting to enter the United States illegally as long as they believe they will be able to live and work in this country if they can successfully elude the Border Patrol.

In 1986, Congress made a deal with the American people. In exchange for granting amnesty to 3.1 million people who had violated our immigration laws, Congress promised to institute effective deterrents to further illegal immigration in the form of employer sanctions. These sanctions penalize employers who hire illegal aliens instead of citizens and legal residents. Congress also promised to establish an effective and nondiscriminatory way for employers to verify whether each newly hired worker was eligible to work in the United States.

Instead, the Federal Government has sat by idly as the deterrence factor of employer sanctions has been eroded by rampant document fraud. We have allowed ourselves to be paralyzed by specious claims that tamper-resistant, verifiable documents pose a threat to privacy and are likely to be abused. As a result a multimillion-dollar criminal enterprise in forged documents has sprung up and undermined our ability to enforce the laws we have enacted.

I am, therefore, proposing that we adopt the recommendations of the General Accounting Office and begin issuing a fraud-resistant, verifiable Social Security card. Every person legally in the United States over the age of 2 is already required to have a Social Security card. There is no reason why, in 1993, a Social Security card cannot be as easily verified as a credit card or an ATM card. In a society increasingly dependent on technology, it is simply unrealistic not to employ technological means to ensure that only those people who are legally entitled to work and collect benefits in the United States actually do.

The most humane and effective means of controlling large-scale illegal immigration is deterrence. If people around the world become convinced that the United States is serious about enforcing its immigration laws and that stealing into this country will not be rewarded, many potential illegal immigrants will make the very rational decision not to try to come to the United States by illegal means. This will increase the capability of the Border Patrol to apprehend those who attempt to come here illegally anyway. Reducing the ratio of illegal border crossers to Border Patrol agents would enhance the probability of apprehension. That, in itself, would provide one more layer of deterrence.

Finally, the legislation I am introducing would take strong measures to deal with the abuse of this country's humanitarianism. The past several months have presented numerous and vivid illustrations of how our political asylum laws are being blatantly abused by people seeking to evade our immigration laws and even by organized criminals seeking to steal, cheat, and intimidate. Perhaps no other abuse of our immigration policy has raised the hackles of the American public like those blatant abuses of our immigration standards.

The abuse must be ended. At its best, political asylum today has been turned into a means by which a small number of people can jump ahead of 18 million refugees worldwide to enter the United States.

The bill I am introducing would eliminate the incentives to abuse our Nation's political asylum process by ensuring the quick and certain exclusion of those filing patently bogus claims of political asylum. The current system has simply been overwhelmed. Some 275,000 cases are backlogged and the backlog is growing at a rate of 100,000 a year. It has become such an inviting target for abuse that more than half of all applicants never even bother to appear for their scheduled hearings. Even the generous spirit of

the American people can be strained to the breaking point when they realize that they are being played for suckers.

In summation, it is time for the United States to adopt an immigration policy. It is no wonder that from the cover of this week's issue of Newsweek, to the pages of every major newspaper and magazine, to the Nation's airwaves we are hearing reports of growing dissatisfaction with the way immigration is being handled. It's time to listen to what the American people are saying about immigration.

The comprehensive proposal I am submitting calls for an overall set of objectives and a plan for achieving them. It is an opportunity to open a national debate on what is becoming increasingly acknowledged as one of the most critical issues ever to face our country. Patches on the blanket won't do anymore. What we need is a new blanket.

In the coming weeks and months I will be addressing specific aspects of the immigration issues in more detail on the floor of the Senate. It is an issue that will affect virtually every aspect of life in the United States and every aspect of business conducted here in Congress. One thing seems certain: We cannot go on indefinitely adding the equivalent of the population of the State of Nevada every year to our national population base. The time has come for the United States to have an immigration policy.

Mr. President, I ask unanimous consent that a copy of my bill and a section-by-section analysis of its provisions be printed in the RECORD.

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

S. 1351

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 "Immigration Stabilization Act of 1993".

SEC. 2. TABLE OF TITLES.

Title I. Admission of immigrants.
Title II. Admission of refugees.
Title III. Asylum reform.
Title IV. Criminal aliens.
Title V. Financial responsibility.
Title VI. Employer sanctions.
Title VII. Border security.
Title VIII. Alien smuggling.
Title IX. Local cooperation.
Title X. Citizenship.

SEC. 3. EFFECTIVE DATE.

Except where otherwise specifically provided, the provisions of this Act are effective for fiscal years after fiscal year 1993.

TITLE I—ADMISSION OF IMMIGRANTS

SEC. 101. WORLDWIDE LEVELS OF IMMIGRATION.

Section 201 of the immigration and Nationality Act (8 U.S.C. 1151) is amended—

(a) By striking subsection (c) and inserting:

"(c) The worldwide level of family-sponsored immigrants is—

(i) 300,000, minus

(ii) the sum of—

(A) the number of refugees admitted under section 207 in the preceding fiscal year, and

(B) the number of aliens described in sections 201(b)(2) and 203(b) who were issued immigrant visas or who otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year;

(b) By striking subsection (d) and inserting:

"(d) The worldwide level of employment-based immigrants is 40,000"; and

(c) By striking "55,000" from subsection (e) and inserting "zero".

SEC. 102. ALLOTMENT OF VISAS.

Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended by—

(a) Adding the following paragraph to subsection (a):

"(5) If the worldwide level of family-sponsored immigrants for any fiscal year is less than 226,000, then the maximum number of visas that can be allotted to any class of family-sponsored immigrants under this subsection shall be proportionately reduced for that fiscal year;

(b) Striking subsection (b) and inserting:

"(b) ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Visas shall be made available in a number not to exceed the worldwide level of employment-based immigrants to qualified immigrants who are aliens described in any of the following paragraphs (1) through (3):

(1) ALIENS WITH EXTRAORDINARY ABILITY.—An alien is described in this paragraph if—

(A) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(B) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(C) the alien's entry into the United States will substantially benefit prospectively the United States

(2) OUTSTANDING PROFESSORS AND RESEARCHERS.—An alien is described in this paragraph if—

(A) the alien is recognized internationally as outstanding in a specific academic area.

(B) the alien has at least 3 years of experience in teaching or research in the academic area, and

(C) the alien seeks to enter the United States—

(i) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(ii) for a comparable position with a university or institution of higher education to conduct research in the area, or

(iii) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

(3) CERTAIN MULTINATIONAL EXECUTIVES AND MANAGERS.—An alien is described in this paragraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this paragraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive."

(c) Striking subsection (c) and inserting:

"(c) Visas shall be made available to employment-related immigrants in the order in which a petition on behalf of each such immigrant is filed with the Attorney General and waiting lists of applicants for visas shall be maintained in accordance with regulations prescribed by the Secretary of State."

(d) Striking "(a), (b), or (c)" from subsections (d), (f), and (g) and inserting "(a) or (b)".

(e) Striking subsection (e).

(f) Renumbering subsections (f) and (g) as (e) and (f), respectively.

SEC. 103. APPROVAL OF PETITIONS.

Section 204 of the Immigration and Nationality Act (8 U.S.C. §1154) is amended by—

(a) Striking from subsection (a)(1)(A) "the classification by reason of a relationship described in paragraph (1), (3), or (4) of section 203(a) or";

(b) Striking from subsection (a)(1) subparagraphs (B), (C), (D), (E), (F), (G), and inserting:

"(B) Any alien desiring to be classified under section 203(b), or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.";

(c) Striking from subsection (e) "as an immigrant under subsection (a), (b), or (c) of section 203 or";

(d) Striking from subsection (f)(1) ", 203(a)(1), or 203(a)(3), as appropriate"; and

(e) Adding:

"(h) Notwithstanding any other provision of this section, the Attorney General shall not approve after September 30, 1993, any petitions other than for immediate relative status under section 201(b)(2) or classification by reason of a relationship described in section 203(b)."

SEC. 104. CONFORMING AMENDMENTS.

The Immigration and Nationality Act is amended by—

(a) Striking from section 201(b)(2)(A)(i) "the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age" and inserting "children and spouses of a citizen of the United States".

(b) Striking from section 203(a)(1) "UNMARRIED SONS OR DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States" and inserting "PARENTS OF ADULT U.S. CITIZENS.—Qualified immigrants who are the parents of citizens of the United States who are at least 21 years of age".

(c) Striking "MARRIED" and "married" from section 203(a)(3).

TITLE II—ADMISSION OF REFUGEES

SEC. 201. NUMBER OF ADMISSIONS.

Section 207 of the Immigration and Nationality Act, 8 U.S.C. §1157, is amended by striking subsection (a) and inserting:

"(a) Except as provided in subsection (b), the number of refugees who may be admitted under this section in any fiscal year may not exceed 50,000. Admissions under this subsection shall be allocated by the President among refugees of special humanitarian concern to the United States."

SEC. 202. NONDISCRIMINATION IN REFUGEE ADMISSIONS.

(a) Public Law Number 89-732, as amended by Public Law Number 94-571, is repealed.

(b) Section 207 of the Immigration and Nationality Act (8 U.S.C. §1157) is amended by adding after subsection (e) thereof:

"(f) Determinations of the allocation of admissions under subsections (a) and (b), determinations of admissions under subsection

(c), and procedures for the determination of refugee status shall not discriminate in favor of or against any alien on the basis of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

TITLE III—ASYLUM REFORM

SEC. 301. INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.

(a) INSPECTION OF ALIENS.—Section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) is amended to read as follows:

"(b) INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.—

(1) An immigration officer shall inspect each alien who is seeking entry to the United States.

(2)(A) If the examining immigration officer determines that an alien seeking entry—

(i) does not present the documentation required (if any) to obtain legal entry to the United States; and

(ii) does not indicate either an intention to apply for asylum (under section 208) or a fear of persecution, the officer shall order the alien excluded from the United States without further hearing or review.

(B) The examining immigration officer shall refer for immediate inspection at a port of entry by an asylum officer under subparagraph (C) any alien who has indicated an intention to apply for asylum or a fear of persecution.

(C)(i) If an asylum officer determines that an alien has a credible fear of persecution, the alien shall be entitled to apply for asylum under section 208.

(ii) If an asylum officer determines that an alien does not have a credible fear of persecution the officer shall order the alien excluded from the United States without further hearing or review.

(3)(A) Except as provided in subparagraph (B), if the examining immigration officer determines that an alien seeking entry is not clearly and beyond a doubt entitled to enter, the alien shall be detained for a hearing before a special inquiry officer.

(B) The provisions of subparagraph (A) shall not apply—

(i) to an alien crewman,

(ii) to an alien described in paragraph (2)(A) or 2(C)(ii)(I), or

(iii) if the conditions described in section 273(d) exist.

(4) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to enter is so challenged, before a special inquiry officer for a hearing on exclusion of the alien.

(5)(A) Subject to subparagraph (B), an alien has not entered the United States for purposes of this Act unless and until such alien has been inspected and admitted by an immigration officer pursuant to this subsection.

(B) An alien who (i) is physically present in the United States, (ii) has been physically present in the United States for a continuous period of one year, and (iii) has not been inspected and admitted by an immigration officer shall be deemed to have entered the United States without inspection.

(6) INTERIOR REPATRIATION.—The Secretary of State shall undertake to enter into, on behalf of the United States, arrangements with the governments of countries contiguous to the United States that any excludable or deportable alien who is to depart the United States to such country under an order of deportation, under a grant of voluntary departure with safeguards, or at a time when the alien is in federal custody shall be transported to a point in the contiguous country that, to the extent practicable, is not less than 500 kilometers from the border of the United States.

(b) GROUNDS FOR EXCLUSION.—Section 212(a)(6) of the Immigration and Nationality Act is amended by adding the following paragraphs:

"(G)(i) Any alien who, in seeking entry to the United States or boarding a common carrier for the purpose of coming to the United States, presents any document which is forged, counterfeit, altered, falsely made, stolen, or inapplicable to the alien presenting the document, or otherwise contains a misrepresentation of a material fact, shall be excluded.

(ii) Subparagraph (ii) shall not apply to an alien if, in the determination of the asylum officer, the document or documents to which that subparagraph refers were presented by the alien solely to enable the alien to depart directly from—

(A) a country in which the alien had a credible fear of persecution; or

(B) a country in which there was a significant danger that the alien would be returned to a country in which the alien would have a credible fear of persecution.

(iii) For the purposes of this subparagraph, the term 'credible fear of persecution' means (I) that it is more probable than not that the statements made by the alien in support of his or her claim are true, and (II) that there is a significant possibility, in light of such statements and of such other facts as are known to the officer that the alien could establish eligibility for asylum under section 208.

(H) Any alien who, in boarding a common carrier for the purpose of coming to the United States, presents a document that relates or purports to relate to the alien's eligibility to enter the United States, and fails to present such document to an immigration officer upon arrival at a port of entry into the United States, shall be excluded."

(b) CONFORMING AMENDMENTS.—Section 237(a) (8 U.S.C. 1227(a)) is amended—

(1) in the second sentence of paragraph (1) by striking "Deportation" and inserting "Subject to section 235(b)(2), deportation"; and

(2) in the first sentence of paragraph (2) by striking "If" and inserting "Subject to section 235(b)(2), if".

SEC. 302. ASYLUM.

(a) IN GENERAL.—Section 208 (8 U.S.C. 1158) is amended to read as follows:

"SEC. 208 (a) ASYLUM.—

(1) RIGHT TO APPLY.—An alien physically present in the United States or at a land border or port of entry may apply for asylum in accordance with this section.

(2) CONDITIONS FOR GRANTING.—

(A) GRANTS BY ATTORNEY GENERAL.—The Attorney General may grant asylum to an alien if the alien applies for asylum in accordance with the requirements of this section and establishes that it is more probable than not that in the alien's country of nationality (or, in the case of a person having no nationality, the country in which such alien last habitually resided) such alien would be arrested and incarcerated or such alien's life would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.

(B) EXCEPTION.—Subparagraph (A) shall not apply to an alien if the Attorney General determines that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

(v) a country willing to accept the alien has been identified (other than the country described in subparagraph (A)) to which the alien can be deported or returned and the alien does not establish that it is more likely than not that the alien would be incarcerated or the alien's life would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of clause (ii), an alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime. The Attorney General shall promulgate regulations that specify additional crimes that will be considered to be a crime described in clause (ii) or clause (iii).

(3) ASYLUM STATUS.—In the case of any alien granted asylum under paragraph (2), the Attorney General, in accordance with this section—

(A) shall not deport or return the alien to the country described under paragraph (2)(A);

(B) shall authorize the alien to engage in employment in the United States and provide the alien with an 'employment authorized' endorsement or other appropriate work permit; and

(C) may allow the alien to travel abroad with the prior consist of the Attorney General, except that such travel may not be authorized to the country from which the alien claimed to be fleeing persecution.

(4) TERMINATION.—Asylum granted under paragraph (2) shall be terminated if the Attorney General, pursuant to such regulations as the Attorney General may prescribe, determines that—

(A) the alien no longer meets the conditions described in paragraph (2) owing to a change in circumstances in the alien's country of nationality or, in the case of an alien having no nationality, in the country in which the alien last habitually resided;

(B) the alien meets a condition described in paragraph (2); or

(C) a country willing to accept the alien has been identified (other than the country described in paragraph (2)) to which the alien can be deported or returned and the alien cannot establish that it is more likely than not that the alien would be arrested or incarcerated or the alien's life would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion; or

(D) the alien returns to the country from which the alien claimed to be fleeing persecution or makes application with the Attorney General to return to the country from which the alien claimed to fleeing persecution.

(5) ACCEPTANCE BY ANOTHER COUNTRY.—In the case of an alien described in paragraph (2)(C)(v) or paragraph (4)(C), the alien's deportation or return shall be directed by the Attorney General in the sole discretion of the Attorney General, to any country which

is willing to accept the alien into its territory (other than the country described in paragraph (2)).

(b) ASYLUM PROCEDURE.—

(1) APPLICATIONS.—

(A) IN GENERAL.—

(i) DEADLINE.—Subject to clause (ii), an alien's application for asylum shall not be considered under this section unless—

(I) the alien has filed, not later than 30 days after entering or coming to the United States, notice of intention to file such an application, and

(II) such application is actually filed not later than 45 days after entering or coming to the United States.

(ii) EXCEPTION.—An application for temporary asylum may be considered, notwithstanding that the requirements of clause (i) have not been met, only if the alien demonstrates by clear and convincing evidence changed circumstances in the alien's country of nationality (or in the case of an alien with no nationality, in the country where the alien last habitually resided) affecting eligibility for asylum.

(B) REQUIREMENTS.—An application for temporary asylum shall not be considered unless the alien submits to the taking of fingerprints and a photograph in a manner determined by the Attorney General.

(C) FEES.—The Attorney General may provide for a reasonable fee for the consideration of an application for asylum or for any employment authorization under subsection (a)(3)(B).

(D) NOTICE OF PRIVILEGE OF COUNSEL AND CONSEQUENCES OF FRIVOLOUS APPLICATION.—At the time of filing a notice of intention to apply for asylum, the alien shall be advised of the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as the alien shall choose and of the consequences, under subsection (d), of filing a frivolous application for temporary asylum.

(2) CONSIDERATION OF APPLICATIONS; HEARINGS.—

(A) ASYLUM OFFICERS.—Applications for temporary asylum shall be considered by officers of the Service (referred to in this Act as 'asylum officers') who are specially designated by the Service as having special training and knowledge of international conditions and human rights records of foreign countries. Pending the designation of such officers, individuals who as of the date of the enactment of the Immigration Stabilization Act of 1993 are authorized to perform duties as asylum officers shall be deemed to be qualified to be asylum officers for purposes of this Act.

(B) SCHEDULING OF HEARINGS.—

(i) IN GENERAL.—Upon the filing of an application for asylum, an asylum officer, at the earliest practicable time and after consultation with the attorney for the Government and the attorney (if any) for the applicant, shall set the application for hearing on a day certain or list it on a weekly or other short-term calendar, so as to assure a speedy hearing.

(ii) DEADLINE.—Unless the applicant (or an attorney for the applicant) consents in writing to the contrary, the hearing on the asylum application shall commence not later than 45 days after the date the application was filed.

(C) PUBLIC HEARINGS.—A hearing on a temporary asylum application shall be open to the public unless the applicant requests that it be closed to the public.

(D) RIGHTS IN HEARINGS.—The officer shall, to the extent practicable, conduct the hearing in a nonadversarial manner. During such hearing, the applicant shall have the privilege of the assistance and participation of counsel (as provided under paragraph (1)(D)) and both the government and the applicant shall be entitled to present evidence and witnesses, to examine and object to evidence, and to cross-examine all witnesses.

(E) COUNTRY CONDITIONS.—An officer may request opinions regarding country conditions from the Secretary of State, but shall not request or consider recommendations from the Secretary of State as to whether a particular named individual should or should not be granted temporary asylum.

(F) TRANSCRIPT OF HEARINGS.—A complete record of the proceedings and of all testimony and evidence produced at the hearing shall be kept. The hearing shall be recorded verbatim. The Attorney General and the Service shall provide that a transcript of a hearing held under this section is made available not later than 10 days after the date of completion of the hearing.

(G) DEADLINE FOR DETERMINATIONS ON APPLICATIONS.—The officer shall render a determination on the application not later than 30 days after the date of completion of the hearing. The determination of the officer shall be based only on the officer's knowledge of international conditions and human rights records of foreign countries, and evidence produced at the hearing.

(H) RESOURCE ALLOCATION.—The Attorney General shall allocate sufficient resources so as to assure that applications for asylum are heard and determined on a timely basis. However, nothing in this paragraph relating to scheduling or deadlines shall be construed as creating any right or benefit, substantive or procedural, which is legally enforceable by any party against the United States, its agencies, its officers, or any other person.

(I) SANCTIONS FOR FAILURE TO APPEAR.—

(i) Subject to clause (ii), the application for asylum of an alien does not appear for a hearing on such application shall be summarily dismissed unless the alien can show exceptional circumstances (as defined in section 242B(f)(2)) as determined by the asylum officer.

(ii) Clause (i) shall not apply if written and oral notice were not provided as required by section 242B(e)(4)(B).

(iii) Except in exceptional circumstances (as defined in section 242B(f)(2)), an application summarily dismissed in accordance with Clause (i) shall not be reopened or reconsidered nor shall a new application for asylum be entertained by the Attorney General at any time.

(J) FINALITY OF DETERMINATIONS.—

(i) IN GENERAL.—The decision of the asylum officer shall be the final administrative determination of a claim for asylum.

(ii) TREATMENT OF CASES IN EXCLUSION OR DEPORTATION.—If proceedings are instituted against an alien under section 235 or 242 of this Act and the alien files an application for asylum based on circumstances described in subsection (b)(1)(A)(ii), the asylum officer shall render, on an expedited basis, a decision on the application.

(c) ASYLUM STATUS ADJUSTMENTS.—

(1) ADJUSTMENT OF STATUS.—Under such regulations as the Attorney General may prescribe, the Attorney General shall adjust to the status of an alien granted asylum the status of any alien granted asylum under subsection (a)(2)(A) who—

(A) applies for such adjustment;

(B) has been physically present in the United States for at least 3 years after being granted asylum;

(C) continues to be eligible for asylum under this section; and

(D) is admissible under this Act at the time of examination for adjustment of status under this subsection.

(2) TREATMENT OF SPOUSE AND CHILDREN.—A spouse or child (as defined in section 101(b)(A), (B), (C), (D), or (E)) of an alien whose status is adjusted to that of an alien granted asylum under paragraph (a)(2) may be granted the same status as the alien if accompanying, or following to join, such alien.

(3) APPLICATION FEES.—The Attorney General may impose a reasonable fee for the filing of an application for asylum under this subsection.

(d) DENIAL OF IMMIGRATION BENEFITS FOR FRIVOLOUS APPLICATIONS.

(1) IN GENERAL.—If the asylum officer determines that an alien has made a frivolous application for asylum under this section and the alien has received the notice under subsection (b)(1)(D)(i), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

(2) TREATMENT OF FRAUDULENT OR MATERIAL MISREPRESENTATIONS.—For purposes of this subsection, an application considered to be 'frivolous' includes, but is not limited to, an application which is fraudulent or otherwise contains a willful misrepresentation or concealment of a material fact."

SEC. 303. FAILURE TO APPEAR FOR ASYLUM HEARING.

Section 242B(e)(4) (8 U.S.C. 1252b(e)(4)) is amended in subparagraph (A), by striking all after clause (iii) and inserting "shall not be eligible for any benefits under this Act.".

SEC. 304. JUDICIAL REVIEW.

(a) Section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) is amended by adding at the end thereof:

"(d) Notwithstanding any other provision of law, no court shall have jurisdiction to review, except by petition for habeas corpus, any determination made with respect to an alien found excludable pursuant to Titles I or II of this Act. In any such case, review by habeas corpus shall be limited to examination of whether the petitioner (I) is an alien, and (II) was ordered excluded from the United States pursuant to the provisions of this Act. Regardless of the nature of the suit or claim, no court shall have jurisdiction except as provided in this paragraph to consider the validity of any adjudication or determination of exclusion, to certify a class in an action challenging the exclusion provisions of this Act or any portion or implementation thereof, or to provide declaratory or injunctive relief with respect to the exclusion of any alien.

(e) In any action brought for the assessment of penalties for improper entry or reentry of an alien under sections 275, 276, 277 or 278 of the Immigration and Nationality Act, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, or deportation entered under sections 235, 236, or 242 of that Act."

SEC. 305. CONFORMING AMENDMENTS.

(a) LIMITATION ON DEPORTATION.—Section 243 (8 U.S.C. 1253) is amended by striking subsection (h).

(b) ADJUSTMENT OF STATUS.—Section 209(b) of the Immigration and Nationality Act (8 U.S.C. 1159(b)) is amended—

(1) in paragraph (2) by striking "one year" and inserting "5 years"; and

(2) by amending paragraph (3) to read as follows:

"(3) continues to be eligible for asylum under section 208,".

(c) ALIENS INELIGIBLE FOR TEMPORARY PROTECTED STATUS.—Section 244A(c)(2(B)(ii) of the Immigration and Nationality Act (8 U.S.C. 1254a(c)(2)(B)(ii)) is amended by striking "section 243(h)(2)" and inserting "clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(C)".

(d) ELIGIBILITY FOR NATURALIZATION.—Section 316(f)(1) of the Immigration and Nationality Act (8 U.S.C. 1427(f)(1)) is amended by striking "subparagraphs (A) through (D) of paragraph 243(h)(2)" and inserting "clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(C).".

(e) FAMILY UNITY.—Section 301(e) of the Immigration Act of 1990 (P.L. 101-649) is amended by striking "section 243(h)(2)" and inserting "clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(C).".

SEC. 306. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided, the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) EXCEPTIONS.—

(1) The amendments made by this title shall not apply to applications for asylum or withholding of deportation made before the first day of the first month that begins more than 180 days after the date of the enactment of this Act and no application for asylum under section 208 of the Immigration and Nationality Act (as amended by section 201 of this Act) shall be considered before such first day.

(2) In applying section 208(b)(1)(A) of the Immigration and Nationality Act (as amended by this title) in the case of an alien who has entered or came to the United States before the first day described in paragraph (1), notwithstanding the deadlines specified in such section—

(A) the deadline for the filing of a notice of intention to file an application for asylum is 30 days after such first day, and

(B) the deadline for the filing of the application for asylum is 45 days after the date of filing such notice.

(3) The amendments made by section 305(b) (relating to adjustment of status) shall not apply to aliens granted asylum under section 208 of the Immigration and Nationality Act, as in effect before the date of the enactment of this Act.

TITLE IV—CRIMINAL ALIENS

SEC. 401. EXPANSION IN DEFINITION OF "AGGRAVATED FELONY".

(a) EXPANSION IN DEFINITION.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as follows:

"(43) The term 'aggravated felony' means—

(A) murder;

(B) any illicit trafficking in any controlled substance (as defined in section 102 of the Controlled Substances Act), including any drug trafficking crime as defined in section 924(c) of title 18, United States Code;

(C) any illicit trafficking in any firearms or destructive devices as defined in section 921 of title 18, United States Code, or in explosive materials as defined in section 841(c) of title 18, United States Code;

(D) any offense described in (i) section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or (ii) section 1957 of such title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the value of the funds exceeded $100,000;

(E) any offense described in—

(i) subsections (h) or (i) of section 842, title 18, United States Code, or subsection (d), (e), (f), (g), (h), or (i) of section 844 of title 18, United States Code (relating to explosive materials offenses),

(ii) paragraph (1), (2), (3), (4), or (5) of section 922(g), or section 922(j), section 922(n), section 922(o), section 922(p), section 922(r), section 924(b), or section 924(h) of title 18, United States Code (relating to firearms offenses), or

(iii) section 5861 of title 26, United States Code (relating to firearms offenses);

(F) any crime of violence (as defined in section 16 of title 18, United States Code, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years;

(G) any theft offense (including receipt of stolen property) or any burglary offense, where a sentence of 5 years imprisonment or more may be imposed;

(H) any offense described in section 875, section 876, section 877, or section 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

(I) any offense described in section 2251, section 2251A or section 2252 of title 18, United States Code (relating to child pornography);

(J) any offense described in—

(i) section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations), or

(ii) section 1084 (if it is a second or subsequent offense) or section 1955 of such title (relating to gambling offenses), where a sentence of 5 years imprisonment or more may be imposed;

(K) any offense relating to commercial bribery, counterfeiting, forgery or trafficking in vehicles whose identification numbers have been altered, where a sentence of 5 years imprisonment or more may be imposed;

(L) any offense—

(i) described in section 2421, section 2422, or section 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) for commercial advantage, or

(ii) described in section 1581 through 1585, or section 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

(M) any offense relating to perjury or subornation of perjury where a sentence of 5 years imprisonment or more may be imposed;

(N) any offense described in—

(i) section 793 (relating to gathering or transmitting national defense information), section 798 (relating to disclosure of classified information), section 2153 (relating to sabotage) or section 2381 or section 2382 (relating to treason) of title 18, United States Code, or

(ii) section 421 of title 50, United States Code (relating to protecting the identity of undercover intelligence agents);

(O) any offense—

(i) involving fraud or deceit where the loss to the victim or victims exceeded $200,000; or

(ii) described in section 7201 of title 26, United States Code (relating to tax evasion), where the tax loss to the Government exceeds $200,000;

(P) any offense described in section 274(a)(1) of title 18, United States Code (relating to alien smuggling) for the purpose of commercial advantage;

(Q) any violation of section 1546(a) of title 18, United States Code (relating to document fraud), for the purpose of commercial advantage; or

(R) Any offense relating to failing to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony, where a sentence of 2 years or more may be imposed; or any attempt or conspiracy to commit any such act. Such term applies to offenses described in this paragraph whether in violation of Federal or State law and applies to such offenses in violation of the laws of a foreign country for which the term of imprisonment was completed within the previous 15 years.

(S) Any felony committed by an alien on or after the date that alien had received a waiver of deportation under section 212 or 241 of this Act (8 U.S.C. 1182 or 1251) after commission of a prior felony."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to all convictions entered before, on, or after the date of enactment of this Act.

SEC. 402. DEPORTATION PROCEDURES.

(a) ELIMINATION OF ADMINISTRATIVE HEARING FOR CERTAIN CRIMINAL ALIENS.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following:

"(c) DEPORTATION OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

(1) Notwithstanding section 242, and subject to paragraph (5), the Attorney General may issue a final order of deportation against any alien described in paragraph (2) whom the Attorney General determines to be deportable under section 24(a)(2)(A)(iii) (relating to conviction of an aggravated felony).

(2) An alien is described in this paragraph if the alien—

(A) was not lawfully admitted for permanent residence at the time that proceedings under this section commenced, or

(B) had permanent resident status on a conditional basis (as described in section 216) at the time that proceedings under this section commenced.

(3) The Attorney General may delegate the authority in this section to the Commissioner or to any District Director of the Service.

(4) No alien described in this section shall be eligible for—

(A) any relief from deportation that the Attorney General may grant in his discretion, or

(B) relief under section 243(h).

(5) The Attorney General may not execute any order described in paragraph (1) until 14 calendar days have passed from the date that such order was issued, in order that the alien has an opportunity to apply for judicial review under section 106.".

(b) LIMITED JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(1) in the first sentence of subsection (a), by inserting "or pursuant to section 242A" after "under section 242(b)";

(2) in subsection (a)(1) and subsection (a)(3), by inserting "(including an alien described in section 242A)" after "aggravated felony"; and

(3) by adding at the end the following new subsection:

"(d) Notwithstanding subsection (c), a petition for review or for habeas corpus on behalf of an alien described in section 242A(c) may only challenge whether the alien is in fact an alien described in such section, and no court shall have jurisdiction to review any other issue.".

(c) TECHNICAL AND CONFORMING CHANGES.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended as follows:

(1) In subsection (a)—

(A) by striking "(a) IN GENERAL.—" and inserting "(b) DEPORTATION OF PERMANENT RESIDENT ALIENS.—(1) IN GENERAL.—"; and

(B) by inserting in the first sentence "permanent resident" after "correctional facilities for";

(2) In subsection (b)—

(A) by striking "(b) IMPLEMENTATION.—" and inserting "(2) IMPLEMENTATION.—"; and

(B) by striking "respect to an" and inserting "respect to a permanent resident";

(3) By striking out subsection (c);

(4) In subsection (d)—

(A) by striking "(d) EXPEDITED PROCEEDINGS.—(1)" and inserting "(3) EXPEDITED PROCEEDINGS.—(A)";

(B) by inserting "permanent resident" after "in the case of any";

(C) by striking "(2)" and inserting "(B)";

(5) In subsection (e)—

(A) by striking "(e) REVIEW.—(1)" and inserting "(4) REVIEW.—(A)";

(B) by striking the second sentence; and

(C) by striking "(2)" and inserting "(B)".

(6) By inserting after the section heading the following new subsection:

"(a) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.".

(7) The heading of such section is amended to read as follows:

"EXPEDITED DEPORTATION OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act.

SEC. 403. JUDICIAL DEPORTATION.

(a) JUDICIAL DEPORTATION.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by inserting at the end the following new subsection:

"(d) JUDICIAL DEPORTATION.—

(1) AUTHORITY.—In any criminal case subject to the jurisdiction of any court of the United States or of any State, such court may enter a judicial order of deportation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of a felony).

(2) DENIAL OF JUDICIAL ORDER.—Denial of a request for a judicial order of deportation shall not preclude the Attorney General from initiating deportation proceedings pursuant to section 242 upon the same ground of deportability or upon any other ground of deportability provided under section 241(a)."

(b) TECHNICAL AND CONFORMING CHANGES.—The ninth sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by striking out "The" and inserting in lieu thereof, "Except as provided in section 242A(d), the".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act.

SEC. 404. DEFENSES TO DEPORTATION.

(a) DEFENSES BASED ON SEVEN YEARS OF PERMANENT RESIDENCE.—The last sentence of section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended by striking out "has served for such felony or felonies" and all that follows through the period and inserting in lieu thereof "has been sentenced for such felony or felonies to a term of imprisonment of at least 5 years, provided that the time for appealing such conviction or sentence has expired and the sentence has become final.".

(b) DEFENSES BASED ON WITHHOLDING OF DEPORTATION.—Section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)) is amended by—

(1) striking out the final sentence and inserting in lieu thereof the following new subparagraph:

"(E) the alien has been convicted of a felony."; and

(2) striking out the "or" at the end of subparagraph (C) and inserting "or" at the end of subparagraph (D).

SEC. 405. ENHANCED PENALTIES FOR REENTRY OR FAILURE TO DEPART.

(a) FAILURE TO DEPART.—Section 242(e) of the Immigration and Nationality Act (8 U.S.C. 1252(e)) is amended—

(1) by striking out "paragraph (2), (3), or 4 of" the first time it appears, and

(2) by striking out "shall be imprisoned not more than ten years" and inserting in lieu thereof, "shall be imprisoned not more than two years, or shall be imprisoned not more than ten years if the alien is a member of any of the classes described in paragraph (2), (3), or (4) of section 241(a)".

(b) REENTRY.—Section 276(b) of the Immigration and Nationality Act (8 U.S.C. 1326(b)) is amended—

(1) in paragraph (1), by (A) inserting after "commission of" the following: "two or more misdemeanors or", and (B) striking out "5" and inserting in lieu thereof "10",

(2) in paragraph (2), by striking out "15" and inserting in lieu thereof "20", and

(3) by adding at the end the following sentence:

"For the purposes of this subsection, the term 'deportation' shall include any agreement where an alien stipulates to deportation during a criminal trial under either Federal or State law.".

(c) COLLATERAL ATTACKS ON UNDERLYING DEPORTATION ORDER.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by inserting after subsection (b) the following new subsection:

"(c) In any criminal proceeding under this section, no alien may challenge the validity of the deportation order described in subsection (a)(1) or subsection (b).

SEC. 406. DEPORTATION OF IMPRISONED ALIENS.

Section 242(h) of the Immigration and Nationality Act (8 U.S.C. 1252(h)) is amended to read as follows:

"(h)(1) Except as provided in paragraph (2), an alien sentenced to imprisonment may not be deported until such imprisonment has been terminated by the release of the alien from confinement. Parole, supervised release, probation, or possibility of rearrest or further confinement in respect of the same offense shall not be a ground for deferral of deportation.

(2) The Attorney General may deport an alien prior to the completion of a sentence of imprisonment—

(A) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that the alien has been adequately punished and that such deportation of the alien is appropriate; or

(B) in the case of an alien in the custody of a State, if the chief State official exercising authority with respect to the incarceration of the alien determines (i) that the alien has been adequately punished and that such deportation is appropriate, and (ii) submits a written request to the Attorney General that such alien be so deported."

SEC. 407. JUDICIAL ORDER OF DEPORTATION.

(a) IN GENERAL.—Subchapter A of chapter 227 of title 18, United States Code, is amended by adding at the end the following:

"§ 3560. Order of Deportation for certain aliens.

"The court, upon sentencing an individual who is an alien for an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act, shall include in a sentencing order a declaration that the individual is deportable. Any presentence report required under the Rules of Criminal Procedure with respect to the sentencing of any individual for such a felony shall include whether or not such individual is an alien".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter A of chapter 227 of title 18, United States Code, is amended by adding at the end the following new item:

"3560. Order of deportation for certain aliens".

(c) DEPORTATION PROCEDURES.—Section 242A of the Immigration and Nationality Act (18 U.S.C. 1252a) is amended by adding at the end the following:

"(f) DEPORTATION PURSUANT TO A JUDICIAL ORDER.—An alien subject to a judicial order of deportation under section 3560 of title 18, United States Code, shall be deported consistent with section 242(h)".

SEC. 408. FEDERAL INCARCERATION.

(a) FEDERAL INCARCERATION.—Section 242 of the Immigration and Nationality Act (18 U.S.C. 1252) is amended by adding at the end the following:

"(j)(1) The Attorney General shall take into the custody of the Federal Government, and shall incarcerate for a determined sentence of imprisonment, a criminal alien described in paragraph (3) if—

(A) the chief State official exercising authority with respect to the incarceration of the undocumented criminal alien submits a written request to the secretary;

(B) the undocumented criminal alien is sentenced to a determined term of imprisonment;

(C) the State in which the official described in paragraph A exercises authority cooperates, and requires local governments or agencies in such State to cooperate, with federal immigration authorities with respect to the identification, location, arrest, prosecution, detention, and deportation of aliens who are not lawfully present in the United States; and

(D) adequate federal facilities are available for the incarceration of the criminal alien.

(2) Criminal aliens taken into custody of the Attorney General under paragraph (1) may be deported under subsection (h)(2)(A).

(3) An alien is described in this paragraph if the alien—

(A) has been convicted of a felony and sentenced to a term of imprisonment, and

(B)(i) had entered the United States without inspection or at any time or place other than as designated by the Attorney General, or

(ii) was the subject to exclusion or deportation proceedings at the time he or she was taken into custody by the State."

SEC. 409. INCREASED PENALTY FOR VISA FRAUD.

(a) FALSE STATEMENT.—Section 1542 of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(b) FORGERY.—Section 1543 of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(c) MISUSE OF PASSPORT.—Section 1544 of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(d) SAFE CONDUCT VIOLATION.—Section 1545 of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than three years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(e) FRAUD AND MISUSE OF VISAS.—Section 1546(a) of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than five year, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

SEC. 410. NOTIFICATION OF ALIEN ARREST.

Whenever a State or local law enforcement agency arrests an immigrant or non-immigrant alien for the commission of a felony, that State or local law enforcement agency shall provide the District Director of the Immigration and Naturalization Service for the district in which the State or local law enforcement agency has jurisdiction the following information within seventy-two hours of the arrest: the name of the alien; the alien's place of birth; the alien's date of birth; the alien's alien registration number, if any; the nature of the offense for which the alien was arrested; and any available information on bond, future hearings and proceedings.

SEC. 411. EXCLUDABILITY OF UNLAWFUL ENTRANTS.

Section 204(c) of the Immigration and Nationality Act is amended by adding a comma after the word "laws" the first time it appears, striking the work "or" prior to "(2)" and inserting the following before the period:

"or (3) the petition was submitted by or on behalf of any alien who entered or attempted to enter the United States unlawfully, who entered or attempted to enter with fraudulent, forged or stolen documents, who failed to present the immigration officer any document produced when the alien boarded a common carrier for travel to the United States, or who entered the United States lawfully as a non-immigrant but violated the terms of his or her non-immigrant visa".

SEC. 412. EXCLUSION OF IMMIGRATION LAW VIOLATORS.

(a) EXCLUSION OF CRIMINAL ALIEN.—Section 212(a)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)) is amended by striking "or" at the end of subparagraph (I) and inserting the following new subparagraph prior to the phrase "is excludable":

"or (III) any violation of any immigration law or any violation of any federal or State statute prohibiting fraud, including any statutes prohibiting income tax evasion".

(b) EXCLUSION REFORM.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by striking paragraph (c) and inserting the following as new paragraph (c):

"(c) Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation shall not be admitted if that alien is excludable under paragraph (a)".

SEC. 413. MISCELLANEOUS AND TECHNICAL CHANGES.

(a) FORM OF DEPORTATION HEARINGS.—The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: "; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with or without the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien".

(b) CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.—No amendment made by this Act and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i)), shall be construed to create any right or benefit, substantive or procedural, which is legally enforceable by any party against the United States, its agencies, its officers, or any other person.

TITLE V—FINANCIAL RESPONSIBILITY

SEC. 501. PUBLIC CHARGE DEFINED.

Section 212(a) of the Immigration and Nationality Act (8 U.S.C. §1182(a)(4), is amended by striking paragraph (4) and inserting:

"(4) PUBLIC CHARGE.—Any alien who cannot demonstrate to the consular officer at the time of application for a visa, or to the Attorney General at the time of application for admission or adjustment of status, that, taking into account the alien's age and medical condition, he or she has assets, education, skills, or a combination thereof that make it very unlikely that he or she will become eligible for means-tested public assistance of any kind (including, but not limited to, medical care or food and housing assistance) or will otherwise become a public charge is excludable."

SEC. 502. GUARANTEE OF FINANCIAL RESPONSIBILITY.

The Immigration and Nationality Act is amended by striking section 213 (8 U.S.C. §1183) and inserting:

"SEC. 213. FINANCIAL RESPONSIBILITY OF SPONSORS.

(a) An alien excludable under paragraph 4 of Section 212(a) may, if otherwise admissible, be admitted in the discretion of the Attorney General upon the giving of a suitable and proper bond and a guarantee of financial responsibility by an individual (hereinafter in this section referred to as the alien's "sponsor") who is not less than twenty-one nor more than 60 years of age, is of good moral character, has never been convicted of a felony, has never filed for bankruptcy or been adjudicated a bankrupt, and is a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The guarantee of financial responsibility in subsection (a) must provide (1) that the sponsor, and the sponsor's spouse if the sponsor is married, agree in the case of an alien under twenty-one years of age, to assume legal custody for the alien after the alien's departure to the United States and until the alien becomes twenty-one years of age, in accordance with the law of the State where the sponsor resides, and (2) that the sponsor agrees to furnish, during the five-year period beginning on the date of the alien's acquiring the status of an alien lawfully admitted for permanent residence, or during the period beginning on the date of the alien's acquiring the status of an alien lawfully admitted for permanent residence and ending on the date on which the alien becomes twenty-one years of age, whichever period is longer, such financial support as is necessary to prevent the alien's becoming a public charge.

(c) A guarantee of financial responsibility given under subsection (a) may be enforced with respect to an alien by a civil suit against his sponsor by the Attorney General or by any federal or state agency that has provided the alien means-tested public assistance of any kind, including but not limited to medical, food, and housing assistance.

(d) Civil suits under subsection (c) shall be brought in the United States district court for the district in which the defendant resides and may be brought at any time on or before the date that is five years after the date on which the sponsor's period of financial responsibility under subsection (a) expired.

(e) The bond required of an alien's sponsor by subsection (a) shall be in favor of the United States and all States, territories, countries, towns, municipalities, and districts within the United States and shall hold them harmless against the alien's becoming a public charge. The bond shall be in such amount and shall contain such conditions as the Attorney General may prescribe. The bond shall terminate upon (1) the alien's permanent departure from the United States, (2) the death of the alien, or (3) the expiration of the period of financial responsibility described in subsection (b), whichever occurs first, and any sums or other security held to secure performance thereof, except to the extent forfeited for violation of the terms thereof, shall be returned to the person by whom furnished, or to his legal representative.

SEC. 503. LIMITED BENEFITS FOR ILLEGAL ALIENS.

(a) DIRECT FEDERAL FINANCIAL BENEFITS.—Notwithstanding any other provision of law, no direct Federal financial benefit or social insurance benefit may be paid, conferred, or otherwise given, on or after the date of enactment of this Act, to any alien not lawfully admitted to the United States as a permanent resident or a refugee except pursuant to a provision of the Immigration and Nationality Act, provided, however, that Federal reimbursement of emergency medical care provided to such an alien may be provided under such regulations as the Secretary of Health and Human Services may in his or her discretion prescribe.

(b) UNEMPLOYMENT BENEFITS.—No alien who has not been granted employment authorization pursuant to Federal law shall be eligible for unemployment compensation under an unemployment compensation law of a State or the United States.

TITLE VI—EMPLOYER SANCTIONS

SEC. 601. IMPLEMENTATION OF GAO RECOMMENDATIONS.

(a) WORK ELIGIBILITY DOCUMENTS.—Effective January 1, 1995, Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended by striking subparagraphs (A) through (D) of subsection (b)(1) and inserting:

"(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by—

(i) examining the document described in (B) in the case of an individual claiming to be a U.S. citizen, U.S. national,

(ii) examining the document described in paragraph (C) in the case of an individual not claiming to be a U.S. citizen, a U.S. national, or a permanent resident alien, and

(iii) reporting the individual's Social Security account number to the Social Security Administration through the telephone verification system established pursuant to section 602 of the Immigration Stabilization Act of 1993.

(B) DOCUMENTS OF CITIZENS AND NATIONALS.—The document described in this paragraph is an individual's Social Security account number card issued pursuant to section 601(c) of the Immigration Stabilization Act of 1993.

(C) DOCUMENTS OF ALIENS.—The document described in this paragraph is an alien's identification card issued by the Immigration and Naturalization Service pursuant to section 601(b) of the Immigration Stabilization Act of 1993."

(b) IMPROVEMENT OF ALIEN IDENTITY CARDS.—

(1) PERMANENT RESIDENT ALIENS.—The Attorney General shall cause to be issued to every alien acquiring lawful permanent residence in the United States after June 30, 1994, and, upon application, to any alien who acquired lawful permanent residence before July 1, 1994, an alien identification card that shall—

(A) be uniform in appearance,

(B) be as tamper-proof and counterfeit-resistant as practicable,

(C) contain a photograph and fingerprint,

(D) display the name, sex, date of birth, and such other identifying information as the Attorney General shall determine, and

(E) incorporate a machine-readable encoding of the information displayed on the card.

(2) OTHER ALIENS.—The Attorney General shall cause to be issued to every alien who becomes authorized to work in the United States after June 30, 1994 other than by reason of lawful admission for permanent residence, and shall cause to be issued, upon application, to any other alien who is authorized to work in the United States other than by reason of lawful admission for permanent residence an alien identification care that shall—

(A) be uniform in appearance,

(B) be as tamper-proof and counterfeit-resistant as practicable,

(C) contain a photograph and fingerprint,

(D) display the alien's name, sex, date of birth, and such other identifying information as the Attorney General shall determine,

(E) show an expiration date that shall be determined in accordance with regulations issued by the Attorney General, but shall not in any case be later than three calendar years after the date of issuance, and

(F) incorporate a machine-readable encoding of the information displayed on the card.

(c) IMPROVEMENT OF SOCIAL SECURITY CARDS.—

(1) IMPROVED CARD FOR CITIZENS.—The Secretary shall cause to be issued improved Social Security account number cards to United States citizens and United States nationals upon application, proof of identity, proof of citizenship or nationality, and payment of a reasonable fee.

(2) IMPROVED CARD FOR ALIENS.—The Secretary shall cause to be issued improved Social Security account number cards to aliens lawfully admitted for permanent residence upon application, proof of identity, verification of status by the Immigration and Naturalization Service, and payment of a reasonable fee.

(3) REQUIREMENTS.—The cards described in paragraphs (1) and (2) shall—

(A) be uniform in appearance,

(B) be as tamper-proof and counterfeit-resistant as practicable,

(C) contain a photograph and fingerprint,

(D) display the name, sex, date of birth, place of birth, and Social Security account number of the issue, and such other identifying information as the Secretary shall determine, and

(E) incorporate a machine-readable encoding of the information displayed on the card.

(4) SECRETARY DEFINED.—For purposes of this subsection, Secretary means the Secretary of Health and Human Services.

(d) REASONABLE FEE.—The amount of the fee that is to be charged under subsections (b) and (c) shall be the amount (rounded to the nearest whole dollar), not exceeding $50.00, required to cover the costs of issuing the card.

(e) NO OTHER CARDS.—No Social Security account number card or alien identification card shall be issued after June 30, 1994, whether as an original card or as a replacement, that does not satisfy the requirements of this section.

(f) DEFINITIONS.—For purposes of this section,

(1) "State" means one of the United States, the District of Columbia, or Puerto Rico, and

(2) "Place of birth" means, for an individual—

(A) born in a State, the two-letter symbol used by the United States Post Office to identify that State, or

(B) not born in a State, such two-letter symbol as the Secretary shall determine by regulations.

SEC. 602. VERIFICATION BY TELEPHONE.

(a) SOCIAL SECURITY DATABASE.—By September 30, 1994, the Secretary of Health and Human Services shall make such modifications to the Social Security account number data base (NUMIDENT) as are practicable and as enable confirmation through the telephone verification system described in subsection (d) that a Social Security account number has been issued to an individual identified by last name, sex, year of birth, and place of birth and that such individual is not known to the Secretary of Health and Human Services to be an alien not authorized to work in the United States. At a minimum the data base shall be modified to enable confirmation that a Social Security account number is not assigned to an individual authorized to work in the United States because the number—

(1) has not been issued,

(2) was issued to an individual known by the Secretary of Health and Human Services as not authorized to work,

(3) was issued to a person that is deceased and has not been reissued, or

(4) was issued to an alien that any data base of the Immigration and Naturalization Service shows is not authorized to work in the United States.

The Attorney General shall provide such assistance as the Secretary of Health and Human Services may require to merge or otherwise make use of any data base of the Immigration and Naturalization Service for the purposes of this section.

(b) EXCHANGE OF INFORMATION.—The Attorney General shall notify the Secretary of Health and Human Services of the expiration of an alien's authorization to work in the United States not later than 14 calendar days after the date of expiration. The Secretary of Health and Human Services shall furnish the Attorney General with a list of any aliens for whom confirmation of work eligibility has been requested not later than 5 calendar days after such request. Such list shall include the telephone number from which the request was made and the employer identification number of the requester.

(c) ADULT APPLICANTS.—The Secretary of Health and Human Services shall furnish to the Attorney General a copy of any application (including supporting documentation) for a Social Security account number by an alien or by an individual over 16 years of age who claims to be a United States citizen or national and shall not issue a number before the earlier of the following dates:

(1) the date on which the Attorney General confirms in writing that his records do not show that the applicant is an alien unauthorized to work in the United States, or

(2) 60 days after a copy of the application and supporting documentation has been delivered to the Attorney General.

(d) TELEPHONE VERIFICATION SYSTEM.—Before January 1, 1995, the Secretary of Health and Human Services shall test and place in operation a system whereby an employer can report by touch-tone telephone his employer identification number and the Social Security account number, last name, sex, year of birth, and place of birth of any individual who is to be employed and can receive immediate confirmation that the number was issued to the individual having that identity and that such person is not identified within the Social Security account number data base as an individual who is not a United States citizen, a United States national, or an alien authorized to work in the United States. The charge for each call will be sufficient to cover the costs of operating the system, except that it shall not exceed $2.00 plus any line charges payable to the telephone carrier. The system shall provide for access to a live operator if an entry is not accepted or confirmed, shall provide a verification code to the caller, shall create and maintain a record of each inquiry (including the telephone number of the requester) and its verification code for not less than two years, and shall accommodate devices that read the magnetic strip incorporated by a card issued under section 601.

(e) ABUSE OF SYSTEM.—The use of the telephone verification system established by subsection (d) by a person other than

(1) an employer acting pursuant to Section 274A(b)(1) of the Immigration and Nationality Act, or

(2) an officer or employee of an agency of the United States or of any State acting in the performance of official duties,

shall be punishable by a fine of not more than $1,000 per occurrence.

SEC. 603. UNIFORM VITAL STATISTICS.

The Secretary of Health and Human Services shall consult with the State agencies responsible for registration and certification of births and deaths and, within two years of the date of enactment of this Act, shall establish a national electronic network linking the vital statistics records of such States. The network shall provide, where practical, for the matching of deaths with births and shall enable the confirmation of births and deaths of citizens of the United States, or of aliens within the United States, by any federal or State agency or official in the performance of official duties. The Secretary shall institute measures to achieve uniform and accurate reporting of vital statistics into the national network, to protect the integrity of the registration and certification process, and to prevent fraud against the government and other persons through the use of false birth or death certificates.

TITLE VII—BORDER SECURITY

SEC. 701. BORDER PATROL PERSONNEL.

The number of full-time officer positions in the border patrol of the Immigration and Naturalization Service shall be increased to 5,900 in fiscal year 1994, 6,900 in fiscal year 1995, 7,900 in fiscal year 1996, 8,900 in fiscal year 1997, and 9,900 in fiscal year 1998.

SEC. 702. BORDER CROSSING FEE.

The Commissioner shall collect a user fee for each entry into the Unites States by land or by sea after December 31, 1993. The fee shall be $3.00 for each person entering other

than by private automobile, van, or truck and $5.00 for each private automobile, van, or truck. The Commissioner by regulation may establish a reduced fee or a multiple-crossing fee for frequent border crossers.

SEC. 703. BORDER CONTROL TRUST FUND.

There is established a Border Control Trust Fund ("Fund") under the control of the Commissioner. The fees collected under section 702 shall be deposited into the Fund. Amounts deposited into the Fund and the earnings thereon shall be expended by the Commissioner exclusively on (1) measures, personnel, structures, and devices to deter and prevent illegal entry of persons and contraband into the United States by land or by sea, (2) construction and operation of facilities to expedite lawful border traffic and reduce, where practical, extensive delays in the time required for lawful entry of goods and persons, and (3) financial and other assistance to State and local law enforcement agencies that have entered into cooperative arrangements with the Immigration and Naturalization Service. Not less than 80 percent of the sum of (a) amounts deposited into the Fund during a fiscal year and (b) the earnings of the Fund during that fiscal year shall be expended during that or the subsequent fiscal year.

SEC. 704. RESPONSIBILITY OF INTERNATIONAL CARRIERS.

(a) IN GENERAL.—Section 273 of the Immigration and Nationality Act (8 U.S.C. 1323) is amended—

(1) in subsection (a), by striking "other than from foreign contiguous territory)";

(2) by redesignating subsections (c) and (d) as subsections (e) and (f), respectively;

(3) by inserting after subsection (b) the following:

"(c) RECORDS.—The Attorney General shall maintain a record of each undocumented alien arriving on or after the date of enactment of this subsection at a United States port of entry and of the carrier which brought such alien to that port of entry.";

(4) by inserting after subsection (c) (as added by paragraph (4)), the following:

"(d) REPEAT OFFENSES.—(1) If the Attorney General determines that, during the preceding calendar year, any carrier has delivered an average of more than 0.5 undocumented aliens per arrival at United States ports of entry then, for the next calendar year, in lieu of the penalty of $3,000 specified in subsection (b), such carrier shall pay to the Attorney General a penalty of $10,000 for each alien brought in violation of subsection (a) or, alternatively, such carrier may choose to participate in a one-year pilot program intended to reduce the number of undocumented aliens arriving at United States ports of entry via international carriers. If such international carrier chooses to participate in the one-year pilot program, that carrier will be subject to the penalty levels prescribed in subsection (b), rather than the increased penalty levels specified in this subsection, for each alien brought in violation of subsection (a). The one-year pilot program, which can be extended for multiple years at the discretion of the Attorney General, shall consist of a program whereby the international carrier collects the travel documents necessary for entry into the United States from all passengers upon their entry to the carrier and physically returns them to the passengers on an individual basis only at the actual point of inspection at the United States port of entry by U.S. immigration officials.

"(2) If the Attorney General determines that, during the preceding calendar year, any carrier has delivered an average of more than 1.5 undocumented aliens per arrival at United States ports of entry, then, for the next calendar year, in lieu of the penalties specified in subsection (b) and in paragraph (1) of this subsection, such carrier shall pay to the Attorney General a penalty of $20,000 for each alien brought in violation of subsection (a).

"(3) If the Attorney General determines that, in the preceding calendar year, any carrier has delivered an average of more than 2 undocumented aliens per arrival at United States ports of entry, then such carrier shall forfeit all landing rights in the United States for the next calendar year.";

(5) subsection (e) (as redesignated) is amended—

(A) by inserting after "refunded." the following: "Unless the alien transported is granted political asylum status in the United States or"; and

(B) by inserting before the period at the end thereof "or that the visa or other immigration documentation presented to the carrier was forged, counterfeit, altered, falsely made, stolen, or inapplicable to the alien presenting the document".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(4) shall take effect on January 1 of the second calendar year following the date of enactment of this Act.

TITLE VIII—ALIEN SMUGGLING

SEC. 801. COOPERATIVE ARRANGEMENTS.

The Secretary of State shall undertake to enter into, on behalf of the United States, cooperative arrangements with appropriate foreign governments for the purpose of preventing the unlawful entry of aliens by land, air, or sea.

SEC. 802. COAST GUARD INSTRUCTIONS.

The Secretary of Defense, in consultation, when appropriate, with the Attorney General and the Secretary of State, shall instruct the Coast Guard to deter and prevent the unlawful entry of aliens into the United States by sea. Such instructions shall include directives providing for stopping and boarding vessels, making inquiries of persons and inspecting documents and property on board such vessels, and returning a vessel to the country from which it came or to another country. In the case of vessels outside the territorial sea of the United States, such instructions shall be limited to vessels of the United States, vessels without nationality, vessels assimilated to vessels without nationality, and vessels of foreign nations with which the United States has arrangements authorizing the United States to stop and board such vessels. Except as otherwise provided in the preceding sentence, actions pursuant to this section are authorized to be undertaken both within and beyond the territorial sea of the United States.

SEC. 803. APPLICATION OF RICO.

Section 1961(1) of title 18 of the United States Code is amended by striking "or" immediately prior to "(E)", and by adding:

"or (F) any act which is indictable under any of the following provisions of title 8, United States Code: Section 1324(a)(i) (relating to prohibitions on bringing in or harboring certain aliens), Section 1325 (relating to illegal entry, marriage fraud, or establishing a commercial enterprise for the purpose of evading the immigration laws), Section 1327 (relating to aiding or assisting certain aliens to enter the United States), or Section 1328 (relating to the importation of aliens for immoral purpose)."

SEC. 804. INCREASED PENALTIES FOR ALIEN SMUGGLING.

Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines, or amend existing guidelines, to provide that a defendant convicted of violating, or conspiring to violate section 1324(a) of title 8, United States Code, shall be assigned not less than offense level 25 under section 2L1.1 of the United States Sentencing Guidelines if any of the following factors exist—

(1) If the offense involved five or more aliens in a single scheme or otherwise;

(2) If the offense involved other criminal activity including, but not limited to violations of the Controlled Substances Act, prostitution, importation of aliens for immoral purposes, trafficking in firearms, money laundering, illegal gang activities, kidnapping or ransom demands, fraudulent documents, or extortion;

(3) If the offense involves smuggling of persons under the age of 18 years for the purposes of illegal adoption or of sexual or commercial exploitation;

(4) If the offense involves the smuggling of known or suspected terrorists or persons involved in organized crime;

(5) If the offense involves dangerous or inhumane treatment of the persons smuggled; or

(6) If death or serious bodily harm occurs to persons smuggled.

Otherwise, the base offense level shall be 13, except for an offense described in section 1324(a)(2)(A) of title 8, United States Code.

SEC. 805. EXPANDED FORFEITURE FOR SMUGGLING OR HARBORING.

Subsection 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) Any property, real or personal, which facilitates or is intended to facilitate, or which has been used in or is intended to be used in the commission of a violation of subsection (a) or of sections 274A(a)(1) or 274A(a)(2), or which constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of subsection (a), shall be subject to seizure and forfeiture, except that—

"(A) no property, used by any person as a common carrier if the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such property was a consenting party or privy to the illegal act;

"(B) no property shall be forfeited under the provisions of this section by reason of any act of omission established by the owner thereof to have been committed or omitted by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State; and

"(C) no property shall be forfeited under this paragraph to the extent of an interest of any owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of the owner, unless such action or omission was committed by an employee or agent of the owner, and facilitated or was intended to facilitate, or was used in or intended to be used in, the commission of a violation of subsection (a) or of section 274A(a)(1) or 274A(a)(2) which was commited by the owner or which intended to further the business interests of the owner, or to confer any other benefit upon the owner.".

(2) by striking from paragraph (2)—

(A) "conveyance" both places it appears and inserting in lieu thereofff "property"; and

(B) "is being used in" and inserting in lieu thereof "is being used in, is facilitating, has facilitated, or was intended to facilitate";

(3) by striking from paragraphs (4) and (5) "a conveyance" and "conveyance" each place such phrase or word appears and inserting in lieu thereof "property"; and

(4) by striking from paragraph (4)—

(A) "or" at the end of subparagraph (C), and

(B) the period at the end of subparagraph (D) and inserting "; or "; and

(5) by adding after paragraph (4)(E):

"(E) transfer custody and ownership of forfeited property to any Federal, State, or local agency pursuant to the Tariff Act of 1930, as amended (19 U.S.C. 1616a(c)).".

SEC. 806. WIRETAP AUTHORITY FOR ALIEN SMUGGLING INVESTIGATIONS.

(a) Section 2516(1) of title 18, United States Code, is amended

(1) in paragraph (c) by inserting after "weapons)," the following: "or a felony violation of section 1028 (relating to production of false identifciation documentation), section 1546 (relating to fraud and misuse of visas, permits, and other documents),";

(2) by striking "or" after paragraph (l) and redesignating paragraphs (m), (n) and (o) as paragraphs (n), (o) and (p), respectively;

(3) by inserting after paragraph (l) the following new paragraph:

"(m) a violation of section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) (relating to alien smuggling), of section 277 of the Immigration and Nationality Act (8 U.S.C. 1327) (relating to the smuggling of aliens convicted of aggravated felonies or of aliens subject to exclusion on grounds of national security), or of section 278 of the Immigration and Nationality Act (8 U.S.C. 1328) (relating to smuggling of aliens for the purpose of prostitution or other immoral purpose);"; and

(4) by striking "or any Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General" and inserting "or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in, or one other officer or employee of, the Criminal Division specially designated by the Attorney General";

(b) Section 2518(5) of Title 18, United States Code, is amended by inserting "(including personnel of a foreign government or of a State or subdivision of a State)" after "Government personnel"; and

(c) Section 2510(7) of title 18, United States Code, is amended by inserting before the semicolon "and additionally, for purposes of section 2517(1)–(2), any person authorized to perform investigative, law enforcement, or prosecutorial functions by a foreign government".

TITLE IX—LOCAL COOPERATION

SEC. 901. SAVE SYSTEM MANDATED.

Notwithstanding any other provision of law, no Federal financial assistance shall be paid to a State or local government or agency for the aid to families with dependent children program under subchapter IV of Title 42 United States Code, the medicaid program under subchapter XIX of Title 42 United States Code, the unemployment compensation program under section 3304 of Title 26 of United States Code, the food stamp program under the Food Stamp Act of 1977, or the financial assistance programs under the United States Housing Act of 1937, Section 235 or 236 of the National Housing Act, or section 101 of the Housing and Urban Development Act of 1965 if such government or agency does not verify the immigration status of aliens applying for benefits under these programs through use of the automated SAVE system established under section 12 of the Immigration Reform and Control Act of 1986 (Pub. L. No. 99–603).

TITLE X—CITIZENSHIP

SEC. 1001. BASIS OF CITIZENSHIP CLARIFIED.

In the exercise of its powers under section 5 of the Fourteenth Article of Amendment to the Constitution of the United States, the Congress has determined and hereby declares that any person born after the date of enactment of this title to a mother who is neither a citizen of the United States nor admitted to the United States as a lawful permanent resident, and which person is a national or citizen of another country of which either of his or her natural parents is a national or citizen, or is entitled upon application to become a national or citizen of such country, shall be considered as born subject to the jurisdiction of that foreign country and not subject to the jurisdiction of the United States within the meaning of section 1 of such Article and shall therefore not be a citizen of the United States or of any State solely by reason of physical presence within the United States at the moment of birth.

SEC. 1002. VOTING LIMITED TO CITIZENS.

In the exercise of its powers under section 5 of the Fourteenth Article of Amendment to the Constitution of the United States to enforce the prohibition of section 1 of such Article against the making or enforcing of any law that shall abridge the privileges or immunities of citizens of the United States, the Congress determines that the right of citizens to vote is a privilege of citizens of the United States and that voting in elections of the United States or of any State by persons who are not citizens of the United States is an abridgement of that privilege. It shall be unlawful, and a felony punishable by a fine of not more than $10,000 and/or imprisonment of not more than one year for each unlawful vote, for any person who is not a citizen of the United States to vote in any election to which the provisions of the Fifteenth, Nineteenth, Twenty-Fourth, or Twenty-Sixth Article of Amendment to the Constitution applies or in any other election, referendum, ballot, or other procedure of the United States or of any State in which votes are token. Any vote that is cast in violation of this section shall be null, void, and of no effect and shall not be counted.

TITLE-BY-TITLE ANALYSIS OF THE IMMIGRATION STABILIZATION ACT OF 1993 INTRODUCED BY SENATOR REID

The Act may be cited as the Immigration Stabilization Act of 1993. Except where otherwise provided, the provisions of the Act take effect on October 1, 1993.

TITLE I. ADMISSION OF IMMIGRANTS

This title reduces annual legal immigration levels from more than 800,000 admissions per year to approximately 300,000 admissions per year. As under current law, spouses and children of U.S. citizens are admitted without limit. However, parents of U.S. citizens and other relatives of citizens and permanent resident aliens will be admitted only if they are already on immigration waiting lists when the Act takes effect and only to the extent their admission does not raise annual immigration above 300,000. As under current law, up to 40,000 "priority workers" and their families are admissible each year. The 100,000 immigrant visas available to nonpriority workers and million-dollar investors under current law, and the 55,000 immigrant visas available to "diversity" immigrants under current law, are eliminated.

TITLE II. ADMISSION OF REFUGEES

This title operates to de-politicize and discipline the refugee program. Section 201 reimposes the 50,000-per-year ceiling on refugee admissions that applied during the first three years (1980–1982) of the current-law refugee program, but preserves the President's authority to exceed this ceiling in emergency situations. Section 202 forbids racial, religious, and other forms of discrimination in the selection of refugees for admission.

TITLE III. ASYLUM REFORM

The provisions of this title operate to deter aliens from entering the U.S. illegally to pursue asylum claims when they have failed to gain lawful admission through the refugee program. Under section 301, each alien seeking entry to the U.S. shall be inspected by an INS officer. If an alien does not present the required documentation for entry, the alien will be excluded unless the alien indicates a fear of persecution or an intent to claim asylum. An undocumented alien who indicates a fear of persecution or claims asylum will be referred immediately to a trained asylum officer who will interview the alien to determine whether the alien has a credible fear of persecution. The asylum officer's decision is subject to review by another asylum officer. Judicial review is limited to habeas corpus petitions.

Section 302 rewrites the asylum provisions in immigration law to establish a new, streamlined process under which an alien may apply for provisional asylum. Within 30 days of entering the U.S. an alien must file a notice of intent to file an asylum application. The alien then must file the actual application for asylum within 45 days of entry. An alien who does not apply within the required time period may not apply for asylum unless he or she can establish that changed circumstances in his or her home country are the basis for his or her claim of fear of persecution. An alien who files a frivolous application for provisional asylum or who fails to appear for his or her provisional asylum hearing will be ineligible for any benefits under the immigration law.

TITLE IV. CRIMINAL ALIENS

Section 401 of this title expands the list of serious felonies that are considered "aggravated" felonies and requires the exclusion and deportation of criminal aliens who have committed such felonies. Section 402 eliminates the administrative deportation hearing and review process for those aliens convicted of such felonies who are not permanent residents and limits *habeas corpus* proceedings to a determination of whether the deportee is a criminal alien. Section 403 authorizes courts to order the deportation of criminal aliens at the time of sentencing if the alien's criminal conviction causes such alien to be deportable. Section 404 makes imposition of a five-year prison sentence grounds for denying reentry into the U.S. to aliens lawfully admitted for permanent residence even if the sentence has not been served. Section 405 increases the penalties for failing to depart or reentering the U.S. after a final order of deportation and limits the collateral attacks an alien can make against an otherwise final deportation order. Sections 406 and 407 authorize under certain circumstances the deportation of criminal aliens prior to the commencement or completion of their imprisonment. Section 408 authorizes the federal incarceration of undocumented aliens convicted under state law. Section 409 increases the maximum penalties for visa fraud from five years imprisonment to ten years.

Section 410 requires State and local law enforcement agencies to provide their local INS district office with certain information whenever they arrest an alien. Section 411 prohibits those who have violated U.S. immigration laws previously to file a petition for immigrant status on behalf of themselves or another. Section 412 clarifies that aliens who previously have violated U.S. immigration laws are excludable and eliminates the Attorney General's discretion under Section 212(c) of the INA to waive the grounds of excludability for an alien applicant.

TITLE V. FINANCIAL RESPONSIBILITY

This title erects safeguards against (a) the admission of aliens who are likely to be dependent on public services and (b) the use of such services by illegal aliens. Section 501 clarifies that aliens who cannot demonstrably support themselves without public or private assistance are excludable. Section 502 extends to the sponsor of any family-sponsored immigrant who is not demonstrably self-supporting the same degree of financial accountability that current law requires for the sponsors of Amerasian immigrants. (Under current law, a U.S. sponsor's affidavit of support is treated as evidence that the sponsored alien will not become a public charge, but the affidavit is not enforceable in the courts.) Section 503 limits federally funded benefits, other than emergency medical care, to aliens who are lawfully admitted for permanent residence or as refugees.

TITLE VI. EMPLOYER SANCTIONS

This title simplifies and strengthens the provisions of current law that prohibit the knowing employment of illegal aliens. Section 601 implements recommendations of the General Accounting Office to improve current law. It provides for the issuance of improved social security cards to citizens and permanent resident aliens and improved alien identification cards to other aliens. The cards are to be machine-readable and resistant to tampering and counterfeiting. Section 602 establishes a telephone verification system by which a prospective employee's eligibility for employment can be promptly and reliably confirmed. Because the validity of a social security card depends upon the validity of the documents presented by the applicant to demonstrate citizenship, Section 603 provides for a uniform national network of state vital statistic records.

TITLE VII. BORDER SECURITY

This title operates to deter and prevent the unlawful entry of persons and contraband across U.S. borders. Section 701 authorizes an increase over the years to 9,900 in the number of full-time officer positions in the U.S. Border Patrol. Section 702 imposes a schedule of fees for persons or vehicles crossing a U.S. land or sea border. (The fees are lower than the $10 fee charged to persons entering the U.S. by air, and may be reduced for frequent crossers.) Section 703 provides that the border-crossing fees will fund measures to deter and prevent illegal entry of persons and contraband into the United States, expedite lawful traffic by the construction and improvement of border infrastructure and provide financial assistance to local law enforcement authorities that provide assistance or otherwise cooperate with immigration officials in the performance of their duties. Section 704 increases the fines imposed against international carriers that consistently transport undocumented aliens to the United States and authorizes a voluntary pilot program by which an international carrier may establish safeguards to minimize the risk of an alien passenger destroying his or her travel documents prior to inspection by U.S. immigration officials.

TITLE VIII. ALIEN SMUGGLING

This title operates to curtail organized alien smuggling. Sections 801 and 802 codify Executive Order No. 12,807, 57 Fed. Reg. 23,133, authorizing interdiction and repatriation of aliens seeking to enter the U.S. unlawfully by sea, the legality of which was affirmed by the U.S. Supreme Court on June 21, 1993, in *Sale* v. *Haitian Centers Council, Inc.* Section 803 adds "alien smuggling" to the list of crimes subject to sanctions under the Racketeer Influenced and Corrupt Organizations (RICO) Act. Section 804 increases the penalties for alien smuggling under the United States Sentencing Guidelines. Section 805 expands the categories of property that are forfeited when used to facilitate the smuggling or harboring of illegal aliens. Section 806 provides federal wiretap authority to aid in the criminal investigation of alien smuggling and of fraud related to the misuse of visas, permits and other travel documents.

TITLE IX. LOCAL COOPERATION

This title prohibits Federal financial assistance to any State or State agency that does not verify the immigration status of aliens applying for benefits through use of the automated System For Alien Verification of Eligibility (SAVE).

TITLE X. CITIZENSHIP

Section 1001 of this title clarifies that a person physically born within the United States to an alien mother who is not a lawful permanent resident is not a U.S. citizen unless the person would otherwise have no citizenship or nationality, thereby eliminating the incentive for pregnant alien women to enter the United States illegally, often at risk to the health of both mother and child, for the purpose of acquiring citizenship for the child and accompanying federal financial benefits. Section 1002 prohibits voting by aliens in State and Federal elections.

By Mrs. FEINSTEIN:

S. 1352. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) to establish a public-private partnership demonstration project for the cleanup of ground water pollution in the San Gabriel Basin; to the Committee on Environment and Public Works.

THE SAN GABRIEL DEMONSTRATION PROJECT ACT

• Mrs. FEINSTEIN. Mr. President, I rise to introduce the San Gabriel Basin Demonstration Project Act, legislation to address one of the most urgent and serious ground water contamination problems in the State of California and the Nation. I'm pleased to say that Congressman ESTEBAN TORRES is introducing an identical bill in the House of Representatives today.

The San Gabriel Valley is a 195-square-mile area just northeast of downtown Los Angeles. Over 1 million people live in the San Gabriel Valley and 85 percent of them rely on the ground water of the San Gabriel basin as their drinking water supply. The ground water basin also is an important water source for commercial activity in the San Gabriel Valley and can serve as a huge reservoir to store water imported during wet seasons for later use. Thus, it is vital that the San Gabriel basin continue to be a reliable source of clean water for southern California.

Unfortunately, the San Gabriel basin is one of the most heavily contaminated potable ground water basins in the United States. While contamination levels vary throughout the valley, the ground water contains toxic volatile organic compounds such as trichloroethylene, perchloroethylene, and carbon tetrachloride.

In 1984 the Environmental Protection Agency listed four areas of ground water contamination in the San Gabriel Valley on the Superfund National Priority List. The four areas are now treated as one Superfund site. Cleanup has been complicated because 45 different water purveyors take water from the basin and their unregulated pumping affects the movement of contaminants. Additionally, because the ground water lies under many different facilities and communities, identifying the entities responsible for the contamination and apportioning responsibility for cleanup has been complicated.

In sum, the San Gabriel basin presents a unique set of environmental problems.

Under Superfund, EPA must identify those responsible for the contamination and the responsible parties are made to pay for cleanup of the Superfund site. Superfund does not consider whether the discharge or dumping was legal at the time it occurred. Also under Superfund a current property owner can be held liable for contamination which occurred under a prior owner. Once EPA identifies the responsible parties, the agency attempts to negotiate settlements, but often lawsuits ensue. Moreover, entities identified as responsible parties have a strong incentive to identify and sue others in order to reduce their own share of the cleanup costs. This entire legal process can take years, while very little cleanup work occurs. As of March 1991, EPA had identified 318 companies as potentially liable for cleanup in one or more areas of the San Gabriel basin.

I am very concerned about getting the San Gabriel basin cleaned up as soon as possible. And I question our ability to accomplish this cleanup expeditiously under the Superfund Program. The San Gabriel basin is a unique site. The legislation I am introducing today is intended to solve this difficult problem through an innovative public-private partnership.

Here are the basic provisions of the legislation.

The bill directs the Environmental Protection Agency in contracts with the San Gabriel Basin Water Quality Authority, to conduct water treatment

activities to remove the volatile organic compounds from the San Gabriel ground water basin.

The bill directs EPA and the San Gabriel Basin Water Quality Authority to cooperate with local water agencies, such as the Water Replenishment District of Southern California, the Central Basin Municipal Water District, and the Metropolitan Water District of Southern California.

The bill provides that the water treatment activities undertaken shall be consistent with the April 17, 1990, draft Basinwide Technical Plan for the San Gabriel Ground Water Basin prepared by EPA.

The bill directs EPA to identify potentially responsible parties within 6 months. Those identified would have 90 days to respond to the offer to participate in the project.

The bill provides that if 65 percent of the eligible facilities—representing at least 50 percent of the total costs of the project—agree to participate, the project would commence.

The bill establishes a procedure and specifies criteria for EPA to use in allocating costs among parties participating in the project. The allocation formula would be based on the industrial code, proximity to known contaminated wells, ability to pay, and the gross revenue of the facility.

The bill requires anyone participating in the project to conduct an audit to ensure that current industrial practices are in compliance with the law and that soil remediation has occurred.

The bill suspends Superfund liability for any party which contracts with EPA to participate in the San Gabriel basin demonstration project and fulfills its obligation under the contract. Anyone choosing not to participate in the project would still be liable under Superfund.

The bill prohibits any participating facility from trying to recover cleanup costs from any other parties.

The bill provides that the Federal Government pay 20 percent of the cleanup costs and authorizes appropriations for this purpose.

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

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

S. 1352

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 "San Gabriel Basin Demonstration Project Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The San Gabriel Basin presents a unique set of environmental problems.

(2) The San Gabriel Valley is an area of 195 square miles located approximately 10 to 20 miles northeast of downtown Los Angeles in Los Angeles County. It is the home of 1,000,000 to 1,500,000 people who rely on the groundwater of the San Gabriel Basin for their primary drinking water.

(3) The San Gabriel Basin is the most heavily contaminated potable groundwater basin in the United States.

(4) The groundwater in the San Gabriel Basin is heavily contaminated with toxic volatile organic compounds (VOCs) including trichloroethylene (TCE), perchloroethylene (PCE), and carbon tetrachloride (CTC). The contamination levels vary throughout the Valley.

(5) Four separate areas of contamination in the San Gabriel Basin are listed on the National Priority List (NPL) of Superfund. The areas where the VOC contamination exceeds drinking water standards covers approximately 30 to 40 square miles.

(6) The VOCs in the San Gabriel Basin have been generated by hundreds of commercial and industrial facilities scattered throughout the San Gabriel Valley, over a period of more than 30 years.

(7) The San Gabriel Basin is also heavily contaminated with nitrates as a result of hundreds of years of agriculture and ranching in the Valley as well as from industrial and residential septic systems.

(8) Once contaminated, groundwater is very difficult to clean up.

(9) A plume of polluted groundwater will migrate and spread contaminants wherever it flows. The many areas of groundwater contamination throughout the San Gabriel Basin move at different rates and in different directions, depending on the density of the contaminants, the character of the aquifer, and the local flow patterns. In the San Gabriel Basin, flow patterns may be changing directions due to fluctuating pumping rates throughout the Basin and other factors.

(10) Complicating the cleanup in the San Gabriel Basin is the fact that 45 different water purveyors take water from the basin.

(11) Because the groundwater flows under hundreds of different facilities, apportioning responsibility could be very complicated and could ultimately be a very litigious process.

(12) There are approximately 275 public water supply wells in the San Gabriel Basin. Eighty wells have contamination levels exceeding current Federal drinking water standards. Some of these wells have been abandoned and replaced with new wells in clean areas. In other contaminated wells, pumping continues but the groundwater is blended with clean water so that distributed water meets the drinking water standards.

(13) The San Gabriel Basin presents a unique opportunity for the community to solve a difficult problem, by working together with the Federal Government in a public-private partnership.

SEC. 3. SAN GABRIEL BASIN DEMONSTRATION PROJECT.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) is amended by adding at the end the following new section:

"SEC. 127. SAN GABRIEL BASIN DEMONSTRATION PROJECT.

"(a) TREATMENT OF WATER.—(1) As promptly as practicable after the date of enactment of this section but not later than 6 months after such date, the Administrator shall enter into one or more cooperative agreements or contracts with the San Gabriel Basin Water Quality Authority; or a successor public agency, (hereinafter in this Act referred to as the 'Authority') to provide water treatment to remove volatile organic compounds from the groundwater in the San Gabriel Basin. In the case of the projects described in paragraph (3)(B), the contracts or cooperative agreements shall also include the Water Replenishment District of Southern California and the Central Basin Municipal Water District. Implementation of such contracts or cooperative agreements shall be contingent upon a determination by the Administrator that the preconditions of subsection (b) have been met.

"(2) The Authority may contract with other public agencies to provide water treatment services or facilities or related services and facilities, subject to approval by the Administrator and pursuant to the decision rendered in Los Angeles Super Court Case #924128, Upper San Gabriel Valley Municipal Water District v. City of Alhambra, et al.

"(3) Contracts or cooperative agreements under this subsection shall be consistent, insofar as possible, with the April 17, 1990 draft Basin-Wide Technical Plan prepared by the Administrator, and shall include but not be limited to the following elements:

"(A) BALDWIN PARK.—Proposed capital expenditures in the vicinity of Baldwin Park over the next 10 years, including $4,500,000 for monitoring wells, $14,500,000 for up to 7 wellhead treatment plants, and $136,000,000 for a conjunctive-use plant designed to clean up the Basin and at the same time allow utilization of the basin as a storage facility which will increase reliability of water supplies in Southern California. Such expenditures shall include a water supply component jointly funded by the Metropolitan Water District of Southern California and the Bureau of Reclamation (as authorized by Public Law 102–579), and a VOC clean-up component funded by the Project. Proposed operating costs for these projects will increase gradually to about $32,000,000 per year at the end of the 10-year period.

"(B) WHITTIER NARROWS.—Proposed capital expenditures, including $1,000,000 for engineering assessment, $3,000,000 for monitoring wells, $11,500,000 for wellhead projects, and $20,000,000 for regional treatment plants to prevent contaminated groundwater from moving from the San Gabriel Basin toward the Central Basin through the Whittier Narrows and proposed operating costs for such projects which at the end of the 10-year period equal approximately $3,000,000 per year.

"(C) PUENTE BASIN AREA.—Proposed capital expenditures which include $2,000,000 for engineering assessments, $3,000,000 for monitoring wells, and $10,000,000 for regional plants in the Puente Valley area to extract and treat highly contaminated groundwater to meet water supply needs and proposed operating costs for such projects which, at the end of the 10-year period will equal approximately $2,000,000 per year.

"(D) ARCADIA, EL MONTE, MONROVIA, GLENDORA.—Proposed capital expenditures in these areas, including $3,000,000 for monitoring wells and $7,500,000 for up to 5 wellhead treatment plants and proposed operating costs for such projects which will equal about $2,000,000 per year at the end of the 10-year period.

Federal funds made available under provisions of law other than this section or other provisions of this Act for any expenditure referred to in subparagraphs (A), (B), (C), or (D) shall not be treated as costs of remedial action recoverable under section 107(a)(4)(A) of this Act.

"(4) Contracts or cooperative agreements under this subsection shall provide for consultation with—

"(A) the Upper San Gabriel Valley Municipal Water District,

"(B) the Main San Gabriel Basin Watermaster,

"(C) the San Gabriel Valley Municipal Water District,

"(D) the Three Valleys Municipal Water District,

"(E) the Central Basin Municipal Water District,

"(F) the Water Replenishment District of Southern California,

"(G) the San Gabriel Valley Protective Association,

"(H) the San Gabriel River Watermaster,

"(I) the Metropolitan Water District of Southern California,

"(J) the California State Water Resources Control Board, and

"(K) the California Regional Water Quality Control Board, Los Angeles Region.

"(5) If the Basin-Wide Technical Plan is published in final form after the date on which any contract or cooperative agreement under this subsection is entered into, the contract or cooperative agreement shall be modified by the parties to the extent necessary to be consistent with the plan. Pursuant to such contract or cooperative agreement, the Authority shall provide treatment for water withdrawn from the Basin by qualified public water systems unless otherwise provided by the Metropolitan Water District of Southern California.

"(6) No contract or cooperative agreement entered into under this subsection shall take effect unless the Administrator determines that all preconditions for implementing the treatment project under this subsection have been met, as provided in subsection (b), before the date 30 months after the enactment of this section.

"(7) In providing water treatment under this subsection and apportioning costs under this section, the Administrator and the Authority shall give credit for costs incurred in the design, construction, and operation of any previously approved project undertaken with respect to the Basin and shall take appropriate steps to ensure continuity.

"(b) PRECONDITIONS FOR IMPLEMENTATION OF TREATMENT PROJECT.—(1) No water treatment shall be provided pursuant to any contract or cooperative agreement under subsection (a) until the Administrator, in consultation with the Authority, finds that—

"(A) a sufficient number (at least 65%) of the persons notified by the Administrator under this Act prior to the date 6 months after the enactment of this section that they may be potentially responsible parties have entered into long-term cost-sharing contracts with the Administrator under this subsection; and

"(B) those contracts are sufficient to provide annual payment for at least 50 percent of the total costs incurred by the Administrator after the date of the enactment of this section in carrying out water treatment under subsection (a).

"(2) The contracts with participating parties under this subsection shall also require that each participating party entering into such a contract will—

"(A) conduct an environmental site assessment in accordance with subsection (i) of the property owned or operated by that party by reason of which such party has been designated as a potentially responsible party, and

"(B) carry out all removal and remedial action required with respect to hazardous substances in the soil above the water table on such property, to the extent necessary to comply with the standards under section 121.

"(3) Any person, including potentially responsible parties identified by the Administrator after the date 6 months after the enactment of this section, as well as all local government entities within the San Gabriel Basin, who submits a request to the Administrator to participate in the project under this section shall be offered the opportunity to enter into cost sharing contracts under this section and those who enter into such contracts shall be treated as a participating party for purposes of this section.

"(4) Each person desiring to participate under this section shall enter into a contract under this section within 90 days after the date on which the contract is offered by the Administrator to such party.

"(5) The annual payment by each participating party shall be made in accordance with an appropriate schedule of periodic payments established by the Administrator and the Authority to coincide with the funding necessary to carry out this section. Each participating party shall be given the opportunity to fund its periodic payment liability on a present value basis by entering into a structured settlement arrangement. If a participating party funds its periodic payment liability through a structured settlement arrangement, the Authority shall be named as the owner and payee of the funding instrument at the time of the purchase of the instrument. Any such arrangement is subject to the approval of the Administrator and the Authority, particularly as to the schedule of payments and the licensed insurance company utilized for these purposes. A participating party may enter into a structured settlement arrangement as a single entity, or may enter into such an arrangement with other participating parties. Except as provided in subsection (c)(5), if a structured settlement arrangement is established pursuant to the provisions of this section, the participating party to whom the settlement relates shall be released from any and all further liability with respect to the settlement.

"(6) No court shall have jurisdiction to review any challenge to the removal or remedial action selected in any contract or cooperative agreement under this section.

"(c) COST SHARING.—(1) Six months after the enactment of this section, the Administrator shall notify each potentially responsible party and each other person who has submitted notice to the Administrator under subsection (b)(4) of the Administrator's intention to allocate the total costs incurred by the Administrator for water treatment under subsection (a). Within 60 days after the Administrator notifies such potentially responsible parties and other persons, any such parties and other persons desiring to become participating parties shall so notify the Administrator and agree to provide the Administrator with such information as the Administrator deems necessary to allocate costs among participating parties under this subsection. If the Administrator deems the information provided by any such person to be insufficient to permit the Administrator to make cost allocations under this subsection, the Administrator designate such person as ineligible to be a participating party. If the parties and other persons notified by the Administrator agree on an allocation of costs among themselves within 180 days after the expiration of such 60-day period, the Administrator shall allocate costs in accordance with such agreement. If such parties fail to reach an agreement for cost allocation within such 180-day period, within 30 days after the expiration of such 180-day period the Administrator shall allocate costs in accordance with paragraphs (2) and (3).

"(2) In allocating costs to each participating party as provided in paragraph (1), the Administrator shall make 2 allocations. The first allocation shall allocate only those costs associated with the specific zone of contamination located in proximity to the participating party. The allocation shall be made among all participating parties located in proximity to such zone, pursuant to the formula established by the Administrator under paragraph (3). The second allocation shall allocate those costs not associated with specific zones of contamination. The allocation shall be made among all participating parties, pursuant to the formula established by the Administrator under paragraph (3).

"(3) When no agreement has been reached pursuant to paragraph (1), the Administrator shall established a formula for allocating costs under this subsection. The formula shall require that the share of the total costs to be paid by a participating party shall be based upon the following factors:

"(A) The Standard Industrial Code Number (as determined by the Secretary of Commerce) of the participating party and the Administrator's estimate of the likelihood that industrial operations having that SIC Number contributed to contamination of the Basin.

"(B) The revenues attributable to the participating party's facility in the San Gabriel Valley in a baseline year established by the Administrator.

"(C) The ability of the participating party to pay.

"(D) Prior expenditures made by the participating party for groundwater mediation in the Basin (not including any costs of litigation or other attorney's fees).

"(4) In allocating costs under this subsection the Administrator shall also allocate a share of the total costs of carrying out the water treatment project under subsection (a) to potentially responsible parties who do not agree to become participating parties under this section. The Administrator shall recover cost from such nonparticipating parties pursuant to other provisions of this Act. The total of all shares contributed by participating parties under this subsection shall not be more than 80 percent of the total costs of carrying out the water treatment project authorized under subsection (a), except as provided in paragraph (5).

"(5) At the time the Administrator enters into a contract or cooperative agreement with the Authority under subsection (a), the Administrator shall estimate the total costs expected to be incurred by the Administrator under subsection (a). Each contract with a participating party under this section shall provide that the maximum obligation of that participating party under such contract shall not exceed 200 percent of that participating party's share of such estimated total costs.

"(6) Amounts received from participating parties shall be paid to the Authority and deposited in an interest bearing account which shall be available only for purposes of the water treatment project carried out under subsection (a).

"(d) LEVEL OF TREATMENT.—The water treatment provided pursuant to contracts and cooperative agreements under this section shall be adequate to insure that the treated water will comply with the most stringent standards applicable to drinking water under title XIV of the Public Health Service Act (the Safe Drinking Water Act) or under any provision of State law governing drinking water quality.

"(e) RECOVERY OF FEDERAL SHARE OF COST.—There are authorized to be appropriated to the Administrator such sums as

may be necessary to cover 20 percent of the total cost of carrying out the water treatment project carried out under subsection (a). For purposes of section 107, the Federal share of costs made available pursuant to this subsection shall be included as costs of remedial action within the meaning of section 107(a)(4)(A) which are recoverable by the United States Government in an action under section 107 against potentially responsible parties who are not participating parties. For purposes of section 107 all actions taken by the Administrator and the Authority in conformity with this section shall be deemed to have been taken in conformity with the National Contingency Plan.

"(f) EXEMPTION FROM OTHER LIABILITY.—No participating party making contributions pursuant to an agreement under this section and complying with subsection (b)(2) shall be liable, under any other provision of this Act or the Solid Waste Disposal Act or under any State statutory laws or rules of common law, for the costs of any removal or remediation with respect to hazardous substances released into the San Gabriel Basin, or for costs or damages to natural resources associated with such Basin, to the extent such release occurred before the enactment of this section and is identified in a site assessment, and no participating party shall be required to abate any such prior release of any hazardous substances into the Basin (except to the extent required by subsection (b)(2)(B)). The exemption provided by the preceding sentence for any participating party shall cease to apply to such participating party upon a determination by the Administrator that such participating party—

"(1) has failed or refused to make any portion of the contribution required of such party pursuant to an agreement under this section,

"(2) has failed or refused to carry out the activities required under subsection (b)(2), or

"(3) has filed a suit against another person for contribution of costs as described in subsection (f).

"(g) CONTRIBUTION.—No participating party may bring an action against any other person to require such other person to contribute any part of the costs required to be paid to the Administrator by such participating party under this section.

"(h) RELATIONSHIP TO OTHER LAWS.—Except as provided in subsection (f), nothing in this section shall be construed to affect the liability of any person under any other provision of this Act or under any other provision of law with respect to hazardous substances, pollutants, or contaminants in the San Gabriel Basin. Nothing in this section shall be construed to affect the authority of the Administrator to carry out removal or remedial action or any other response action with respect to such hazardous substances, pollutants, or contaminants in addition to the demonstration project authorized by this section.

"(i) LIABILITY EXEMPTION FOR PUBLIC WATER SYSTEMS.—Neither the owner or operator of a qualified public water system shall be liable under any provision of Federal statutory or common law affording rights of contribution for costs or damages in any suit for recovery of costs for a removal or remedial action with respect to hazardous substances in the San Gabriel Basin if such a suit is brought by a potentially responsible party that is not a participating party under this section.

"(j) COMPREHENSIVE ENVIRONMENTAL COMPLIANCE PROGRAM.—

"(1) GENERAL REQUIREMENTS.—To qualify as a participating party under this section, a potentially responsible party must establish a Comprehensive Environmental Compliance Program and agree to conduct an Environmental Site Assessment.

"(2) REGISTERED ENVIRONMENTAL ASSESSORS.—The Comprehensive Environmental Compliance Program and Environmental Site Assessment shall be prepared, signed, and dated by a registered civil engineer or registered geologist In accordance with State law, and the Program shall be certified by a person who is capable of committing the financial resources necessary to implement the Program, such as the owner, operator, or responsible corporate officer, or in the case of a government agency, a principal executive official or a ranking elected official.

"(3) CONTENT OF ENVIRONMENTAL SITE ASSESSMENT.—The Environmental Site Assessment required under this section shall contain—

"(A) an evaluation of practices and procedures established by the current owner or operator of the facility for which the assessment is conducted to—

"(i) ensure continuing compliance with applicable environmental requirements; and

"(ii) identify and implement hazardous waste reduction opportunities for the facility.

"(B) the results of Level I Preliminary Assessment (noninvasive investigation and regulatory search), and if site conditions warrant, the Level II Assessment (invasive sampling for suspected hazardous materials and preparation of remedial design specifications) and the Level III Assessment (on-site remediation); and

"(C) demonstration of compliance with all applicable State and Federal laws, such as, but not limited to the 'Community Right-to-Know Act' and 'California Hazardous Waste Reduction Act and Management Review' (SB 14);

"(4) COPIES.—Copies of each environmental site assessment shall be provided to the Administrator and the appropriate State official.

"(k) DEFINITIONS.—As used in this section—

"(1) QUALIFIED PUBLIC WATER SYSTEM.—The term 'qualified public water system' means a 'public water system', as defined in title XIV of the Public Health Service Act (the Safe Drinking Water Act), which is entitled, as of May 15, 1991, to withdraw water from or store water in the San Gabriel Valley Groundwater Basin, as determined under State law.

"(2) BASIN.—The terms 'San Gabriel Basin' and 'the Basin' means the San Gabriel Valley Groundwater Basin underlying the San Gabriel Valley in Los Angeles County, California.

"(3) POTENTIALLY RESPONSIBLE PARTY.—The term 'potentially responsible party' means a person who is identified by the Administrator as a person who may be liable under section 107, or under any provision of State law, for any amount with respect to cleanup of hazardous substances in the San Gabriel Basin.

"(4) PARTICIPATING PARTY.—The term 'participating party' means a person who has requested to participate as provided in subsection (b)(4) and who has entered into a contract with the Administrator under subsection (b).

"(5) STRUCTURED SETTLEMENT ARRANGEMENT.—The term "structured settlement arrangement" means an arrangement where the Authority owns—

"(A) a settlement annuity or similar instrument issued by a company licensed to do business as an insurance company under the laws of any State which has a financial stability rating from a nationally recognized insurance company rating organization which rating is satisfactory to the Administrator or

"(B) any obligation of the United States,

that has a defined schedule of periodic payments which coincides with the schedule of periodic payments determined to be appropriate for the Basin cleanup.".●

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 1353. A bill to amend title 23, United States Code, to permit the use of funds under the Highway Bridge Replacement and Rehabilitation Program for seismic retrofit of bridges, and for other purposes; to the Committee on Environment and Public Works.

THE SEISMIC RETROFIT ACT

● Mrs. BOXER. Mr. President, one of many progressive elements of the Intermodal Surface Transportation and Efficiency Act of 1991 [ISTEA] was the provision including seismic repairs as an eligible activity under the Federal Highway Bridge Rehabilitation and Replacement Program [HBRR]. Unfortunately, since passage of that landmark legislation the Federal Highways Administration [FHWA] interpreted that provision in a way that restricts these funds, when used for seismic retrofit, to those bridges that are otherwise listed as structurally deficient.

However, for many States, particularly my State of California, although a bridge may not be considered structurally deficient under the FHWA standard, it is deficient in terms of its ability to withstand an earthquake. That is why today Senator FEINSTEIN and I are introducing legislation to correct this misinterpretation of the law.

Our bill would simply insert language that says, "a State may carry out a project for seismic retrofit of a bridge under this section without regard to whether the bridge is eligible for replacement or rehabilitation under this section".

The Loma Prieta earthquake of 1989 demonstrated the vulnerability of our infrastructure to earthquakes. Both the Cypress Viaduct and the San Francisco Bay Bridge suffered severe damage in that incident. Two-thirds of the 63 people who died in the earthquake perished when the viaduct collapsed. California has more than 9,770 bridges constructed before the higher earthquake building code was established. In addition, no bridges in the Eastern United States has been built with seismic safety in mind, yet experts predict there is a 40- to 60-percent chance of an earthquake of at least a magnitude of 6.0 in the Eastern United States by the year 2020.

There are 24,000 bridges in my state of California. The State Department of Transportation has determined that about 1,500 will need seismic retrofit, and of those, about 300 are not otherwise structurally deficient. California

needs as much as $1.5 billion to correct seismic deficiencies on its bridges, excluding the Golden Gate Bridge which is a special case. California receives about $127 million a year from the Highway Bridge Rehabilitation and Repair Program.

However, under this interpretation by the FHWA, California cannot spend even the $20 to $25 million a year from HBRR funds that it would like to on any of those 300 bridges which need to be strengthened to withstand the periodic earthquakes in my State. One of those bridges is the 5-mile-long section of Interstate 10 in Los Angeles known as the Santa Monica Viaduct. That stretch of Federal highway carries more than 200,000 vehicles a day—hundreds of thousands of people—but the Federal Highways Administration said that Federal funds cannot be spent to protect them from a possible earthquake while they are traveling. No one who ever saw the pictures of those cars tumbling off the Bay Bridge during the 1989 earthquake could understand why the Federal Government cannot permit funds to be used solely for seismic protection of bridges.

You cannot see a seismic problem in a structure like you can see rust. When rust or a scouring problem appears on a bridge and its supports, you have time to correct the deficiency. A seismic problem is beneath the surface, but it is a deficiency nonetheless. This bill will make sure that FHWA will consider seismic retrofit as much a safety factor as any other kind of deficiency. Passage of this legislation will enable States to better protect their motorists and infrastructure by providing seismic retrofit. California will be able to protect about 12 to 20 bridges a year, depending on the bridge. Mr. President, all we have to do is look at the flood devastation in the Midwest to see why public works projects need to be protected by the best engineering possible to withstand natural disasters. It is a small cost to pay now compared to the financial—and human—costs we could face in the future.

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

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

S. 1353

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

SECTION 1. HIGHWAY BRIDGE REPLACEMENT AND REHABILITATION PROGRAM.

(a) ELIGIBILITY OF SEISMIC RETROFIT PROJECTS.—Section 144(d) of title 23, United States Code, is amended by inserting before the period at the end of the third sentence the following: ", except that a State may carry out a project for seismic retrofit of a bridge under this section without regard to whether the bridge is eligible for replacement or rehabilitation under this section".

(b) APPORTIONMENT FACTOR ADJUSTMENT.—Section 144(e) of such title is amended by inserting before the period at the end of the fourth sentence the following: "and by the total cost of all projects carried out under this section in the State for seismic retrofit of highway bridges not eligible for replacement or rehabilitation under this section".●

By Mrs. KASSEBAUM (for herself, Mr. JEFFORDS, Mr. COCHRAN, and Mr. PRESSLER):

S. 1354. A bill to amend the Fair Labor Standards Act of 1938 relating to the minimum wage and overtime exemption for employees subject to certain leave policies, and for other purposes; to the Committee on Labor and Human Resources.

THE WORKPLACE LEAVE FAIRNESS ACT

Mrs. KASSEBAUM. Mr. President, I am pleased to introduce today, along with my colleagues Senator COCHRAN, Senator JEFFORDS, and Senator PRESSLER, the Workplace Leave Fairness Act. This bill would eliminate a Department of Labor rule prohibiting employers from providing salaried employees with partrial-day unpaid leave. Similar legislation has been introduced in the House by Representatives ROBERT ANDREWS and THOMAS PETRI.

The Department of Labor's regulations in this area are complex, allowing deductions from pay for some reasons and not for others. While the regulations are not clear on their face, the Department and several courts have prohibited employers from allowing salaried employees to take a partial day's leave without pay. If an employer does grant such leave—or even if it merely has a policy which permits it—salaried employees lose their exempt status under the Fair Labor Standards Act.

This means that all salaried employees would be automatically converted to hourly employees who are then owed overtime, even if they a six-figure income and are employed at the highest levels of the organization. The employer will owe them back pay for any overtime worked as far back as the statute of limitations—2 years or, in cases of willful violations, 3 years.

The 1991 appeals court decision in Lynn Martin, Secretary of Labor versus Malcolm Pirnie, Inc., illustrates the severity of the problem. Malcolm Pirnie, a 900-employee, privately held engineering company docked less than $3,300 in pay from 24 salaried employees over 19 months. Most of the pay reductions resulted from employees voluntarily taking leave without pay.

When the company learned that its pay deductions were illegal, it immediately took steps to reimburse all 24 workers and to change the company's pay policy. But the Department of Labor took the company to court and won an appeals court decision stating that, because the company's written policy permitted pay deductions from salaried employees for partial-day absences, such workers are considered hourly employers. If forced to pay damages, Malcolm Pirnie will owe nearly $750,000 in overtime pay and accrued interest to employees whose annual pay ranges from $40,000 to $70,000.

The result of the Department of Labor's policy and the court decisions has been to confront small and large businesses and State and local governments with billions of dollars in liability for back-pay owed to employees who themselves thought they were exempt from overtime pay requirements. According to a recent study by the Employment Policy Foundation, the potential damages for private sector employers alone approaches $20 billion per year. In the public sector, the scenario is just as grim. The Governor of California, for example, has stated that the liability facing his State alone exceeds $3 billion.

Earlier this May, the Governors of the following States asked Secretary of Labor Robert Reich for relief: California, Iowa, Maryland, Nevada, New York, Nebraska, Oklahoma, Texas, New Jersey, and Wisconsin. The issue was also raised recently by Labor Department wage and hour compliance officers in an arbitration decision, since the Federal Government has a policy of allowing unpaid partial day leave. The potential liability, facing not only the Department of Labor but other Federal agencies as well, is enormous, enough, for example, to swallow the Department of Labor's job training budget in one bite.

Like a number of other States, Kansas is currently involved in litigation seeking back overtime pay. The payment of such unforeseen liabilities, not including the years of expensive litigation contesting these claims, seriously threatens the fiscal integrity of State and local treasuries. In this time of extreme budgetary pressure, State and local governments simply cannot afford this waste of their precious public resources. Moreover, the diversion of scarce resources to provide windfalls to a small segment of highly paid, white collar employees does not constitute wise public policy. These funds could be better used to create jobs and spur economic growth.

The Family and Medical Leave Act [FMLA], which will take effect tomorrow, recognized this problem by specifically providing that salaried employees of businesses with 50 or more employees will be able to take partial-day unpaid leave to handle their family and medical needs. Yet this is only the narrowest of possible solutions. There are many situations not covered by this legislation. For example, salaried employees of businesses with less than 50 employees will not be eligible for unpaid leave of less than a day. Additionally, leave not covered under the FMLA, including more generous leave requirements mandated by State or local laws, would still result in salaried employees losing their salaried status.

Certainly, these situations are no less deserving of protection than those expressly covered by the act.

The Workplace Leave Fairness Act will eliminate the Department of Labor's pay docking rule, thereby allowing public and private sector employers to provide flexible leave policies for their salaried workers. This legislation also addresses parallel issues, such as tracking time of salaried employees for purposes of billing clients, creating standard work hours for firms, and disciplinary suspensions without pay so that none of these practices result in salaried employees being converted into hourly workers.

Additionally, the Workplace Leave Fairness Act would apply retroactively to relieve public and private employers from liability for back pay who have had flexible leave policies, but have been unaware of these Department of Labor rules.

Mr. President, this problem requires prompt congressional action. The House Subcommittee on Labor Standards already held a hearing on this issue last month. I know the chairman of the Senate Committee on Labor and Human Resources is aware of this issue, and has, on more than one occasion, indicated his willingness to hold hearings in the Senate. As the ranking Republican member on the Senate Committee on Labor and Human Resources, I hope that we can hold hearings on this issue early this fall and take congressional action to solve the problem this year. The Workplace Leave Fairness Act would do just that, and I urge my colleagues to join with me in supporting this legislation.

Mr. PRESSLER. Mr. President, I am pleased to join with the distinguished ranking member of the Senate Labor Committee as an original cosponsor of the Workplace Leave Fairness Act. This vital legislation is needed to reverse bad public policy and ensure flexibility and productivity in the American workplace.

Specifically, the bill we are introducing today would reverse how the courts and a Government bureaucracy—the Department of Labor—have interpreted how workplace is covered under the Fair Labor Standards Act, of FLSA. Now, at first glance, the issue of workplace leave can be somewhat complicated. The FLSA and its progeny of technical regulations are not known to be the most exciting of subjects. However, for State and local governments, and the private sector, these subjects are serious business.

As my colleagues well know, employers can opt to pay their workers hourly wages or a yearly salary. The FLSA was crafted in 1938 by then Senator Hugo Black to protect the rights of hourly wage earners, particularly with respect to work hours and overtime pay.

Employees paid an annual salary generally are on the higher end of the pay scale. Traditionally, salaried workers have been exempted from the FLSA. I say traditionally, Mr. President, because that is not the case now. A Department of Labor interpretation has altered the exempt status, entitling salaried employees to overtime, back pay, and other benefits.

Rather than get mired in complex legalisms, let me explain the issue in question by way of some everyday, commonplace examples. Many employers provide their workers the option of taking a partial day off for personal reasons. In today's world of single parents, or two working parent families, this flexibility is needed. In fact, it's good common sense. Some workers may need a few hours away from work to take their children to a doctor, or pick them up from school or day care. Others may need a partial day off for physical exams or preventive health care. In many of these cases, this partial day, or flexible leave, is provided on an unpaid basis.

Clearly, flexible leave policies are designed for convenience. Labor management experts see flexible leave as an effective measure to improve productivity and employer/employee relations. However, a few Federal courts and the Department of Labor see flexible leave as a way to circumvent the FLSA. According to a Department of Labor regulation known as the pay docking rule, providing flexible leave to salaried employees eliminates their exemption from the overtime requirements of the FLSA. The Labor Department argues that flexible leave treats salaried employees as hourly workers. As a result, employers who offer flexible leave may be forced to pay overtime liability awards to all their salaried employees. This liability could be up to 3 years of back pay for any overtime hours worked at the overtime pay rates. Let me emphasize that these awards can be made to salaried employees regardless of whether they utilize the employer's leave policy. The mere existence of such a policy exposes an employer to liability under the pay docking rule.

If this sounds farfetched, it is. Even the bureaucrats in the Department of Labor who dreamed up the pay docking rule know it is bad policy. They were quick to exempt themselves and all Federal employees from the pay docking rule. However, the Department of Labor is enforcing the pay docking rule on everyone else. A Dayton, OH, firm was ordered by the Department to pay overtime back pay to its 14 salaried employees because the firm allowed these workers to take unpaid partial-day leave. An engineering firm with 400 salaried employees also was sued by the Department for having a similar policy. Though only 24 employees took unpaid leave totaling $3,300 under this policy, the Department ordered the firm to distribute $875,000 in back pay to all 400 employees.

Of course, employers could stop providing flexible leave to salaried workers, but that doesn't make them immediately immune from liability. Federal law exposes an employer to liability for policies in place as far back as 2 years ago. In fact, the Employment Policy Foundation estimates that current liability among private businesses with flexible leave could be as high as $39 billion.

The pay docking rule also has been applied with vigor to State and local governments. A number of State and local governments already face enormous penalties for providing their salaried work force flexible unpaid leave. The State of California, for example, faces liabilities totaling more than $3 billion.

Mr. President, the pay docking rule is yet another example of why the people who live and work beyond the Washington beltway think those inside it are out of touch. The rule has wreaked havoc on State and local governments struggling to balance their budgets. The rule is proving to be a boon for labor lawyers, and a bust for businesses. The rule is a slap in the face on employers trying to provide flexibility to a segment of their work force. The rule is a serious inconvenience to salaried employees, who now must take a full day of unpaid leave even if personal obligations only require a few hours away from work. And ironically, the rule is being used as a windfall for salaried employees—those professionals usually on the higher end of the pay scale.

Well, I have good news and bad news. The good news is that the Department of Labor is learning the errors of its ways. Unfortunately, the bad news is that the Federal Government is slow in correcting its mistakes. Last September, the Department eliminated the pay docking rule for State and local governments. However, State and local governments still remain vulnerable to past liability. Relief was made available to some segments of the private sector earlier this year. The new Family and Medical Leave Act exempts from the pay docking rule any leave taken under the act. However, this relief does not help employers not covered under the Family and Medical Leave Act, and does not address all situations where employees need to take flexible leave. The act also does not solve the problem of past liability.

Mr. President, this patchwork quilt of half-hearted solutions just adds to business frustration. The pay docking rule is bad public policy. The time for a real solution is long overdue. In fact, earlier this year, I attempted to offer an amendment to the Family and Medical Leave Act that would have enabled all employers to offer flexible family leave. However, I withdrew my amendment when I received the assurance of Senator DODD that the Senate Labor

Committee would hold hearings and work to achieve a solution before the end of this year.

I remain hopeful the Labor Committee will demonstrate leadership on this issue. They, and the full Senate, can fix this problem very quickly by passing the Workplace Leave Fairness Act, which the Senator from Kansas and I are introducing today.

Specifically, the Workplace Leave Fairness Act would eliminate the Department of Labor pay docking rule. In addition, this bill would be applied retroactively so that the private sector and State and local governments need not fear past liability.

Mr. President, we hear plenty of talk about change and new directions. Permit me to offer a possible new direction for this Congress. Let's quickly fix unintended consequences of Federal laws that punish employer flexibility and undermine employee productivity. We cannot expect State and local governments to fulfill their missions if they are forced to spend scarce taxpayer dollars because of bad policies made here in Washington. We cannot expect the private sector to lift itself from economic sluggishness if misguided Federal policies force it to pad the pockets of higher paid workers and labor lawyers. And we cannot expect all employers to have faith in the Federal Government when we're slow to correct our own mistakes.

We can restore faith, productivity, and flexibility in the American work force by passing the Workplace Leave Fairness Act. I urge my colleagues to join with me and the Senator from Kansas to support this needed reform measure.

By Mr. HEFLIN:

S. 1355. A bill to amend chapter 91 of title 28, United States Code, to provide that the U.S. Court of Federal Claims may have jurisdiction over certain pending claims, and for other purposes; to the Committee on the Judiciary.

COURT OF FEDERAL CLAIMS JURISDICTION MODIFICATION

Mr. HEFLIN. Mr. President, I rise today to introduce legislation to amend title 28 of the United States Code to improve the Federal claims litigation process before the U.S. Court of Federal claims and to assist the court in providing better and more efficient service to its litigants.

The Court of Federal Claims is the Nation's primary forum for monetary claims against the Federal Government. The court has jurisdiction to entertain suits for money against the United States that are founded upon the Constitution, an act of Congress, an Executive order, a regulation of an executive department, or contract with the United States and that do not sound in tort. The court hears major patent cases, Government contract suits, tax refund suits, fifth amendment takings cases and Indian claims, among many other types of lawsuits. The court has national jurisdiction, and the judges hear cases around the country at locations that are most convenient to the litigants and the witnesses.

The legislation that I am introducing today will repeal 28 U.S.C. 1500, which has heretofore denied Court of Federal Claims jurisdicton over any claim with respect to which the plaintiff has pending a suit in any other court. Although, on its face, section 1500 may appear to prevent wasteful duplication, in practice it has had precisely the opposite effect. Elimination of this jurisdictional bar to suits related to cases in other courts will eliminate much wasteful litigation over nonmerits issues and will leave the court free to deal with potential duplication through the discretionary means of staying arguable duplicative litigation, if the matter is being addressed in another forum, or of proceeding with the case, if the matter appears to be stalled in the other forum.

As currently construed section 1500 does not permit duplication of suits even if the Court of Federal Claims action was filed first and has received concentrated attention over a number of years. This situation can result in a major waste of resources by litigants and the court. The bill would also allow the plaintiff to protect itself against the running of the statute of limitations by the wrong initial choice in this confusing area.

In this day of electronic communication, computer tracking of cases and centralized docket control by the Justice Department, the Government will always know if a related claim is pending in two different courts and can request exercise of discretion by one or both courts to prevent duplicative litigation. Repeal of section 1500 would save untold wasted effort litigating over such marginal issues as whether a claim in the district court really is the same as one in the Court of Federal Claims.

I urge my colleagues to support this legislation, which I believe will promote efficiency and fairness. This change will assist the court of Federal Claims in providing improved service to litigants and to the entire country.

By Mr. DOLE (for himself, Mr. HATCH, Mr. THURMOND, Mr. GRAMM, Mr. MACK, Mr. SIMPSON, Mr. COCHRAN, Mrs. KASSEBAUM, Mr. HELMS, Mr. D'AMATO, Mr. STEVENS, Mr. LOTT, Mr. GRASSLEY, Mr. DOMENICI, Mr. BROWN, Mr. NICKLES, and Mr. WALLOP):

S. 1356. A bill to restore order, deter crime, and make our neighborhoods and communities safer and more secure places in which to live and work; to the Committee on the Judiciary.

NEIGHBORHOOD SECURITY ACT OF 1993

Mr. DOLE. Mr. President, "We have nothing to fear but fear itself." Those words, spoken by Franklin Roosevelt over 60 years ago, inspired America in a time of crisis.

Today, America faces another crisis. It's a crisis caused by the fact that Roosevelt's words no longer are true. For across the Nation—be it on the streets of our major cities, our suburbs, and even our rural communities—there is something to fear besides fear.

It is the fear that causes us to lock our doors at all times. It is the fear that makes parents worry when they send their children off to school. It is the fear that like so many of our friends and neighbors, we, too, will be the victims of violent crime.

It is a fear that each and every day becomes a reality for many Americans, and that this past February became a reality for Timothy Riley.

A 33-year-old husband and father of two young children, Timothy Riley was kidnaped outside his home in Topeka, and forced at gunpoint into the trunk of his own car.

Shortly after the kidnaping, Mr. Riley was shot to death, his lifeless body dumped on the side of a highway, just south of Topeka. Two teenagers, both with prior criminal records, have been arrested in connection with the carjacking and murder.

The murder of Timothy Riley, like all murders, is a tragedy. And another sad tragedy is the fact that the story of what befell Timothy Riley probably does not shock anyone here today.

Americans have become used to crime. We have become used to the fact that two teenagers would brutally take a man's life simply because they could do it.

Instead of outrage, far too many Americans now react with a shrug, with an attitude that random murder is normal or routine.

As a result, the war against crime must now be fought on two fronts. First, we must do all we can to give our law enforcement community the laws and the tools they need. And second, we must convince our citizens that crime is not a price we have to pay for living in a free society—that the carnage can be stopped.

For 4 years, Congress has debated anticrime legislation. Unfortunately, that's all we've done. In fact, we've all but debated ourselves to the point of irrelevancy.

WINDOW OF OPPORTUNITY

I believe, however, this is a window of opportunity—a small sliver of hope that Americans still hold. Hope that Government can restore the most basic civil right—the right to be safe and secure in our homes, on our streets, and in our communities.

Clearly, the Federal Government cannot provide all the answers. Some must come from the States, and from

ourselves. And clearly we cannot given our present budget deficit, provide all the money.

But we can do a great deal. We can take the lead. We can let Americans know that if there is a true emergency in America, it is crime.

Today, I will be joining with my Republican colleagues in introducing a legislative package which I believe will begin to restore some sanity to our streets. It is tough. It contains some ideas that are tried and true. And it contains some ideas that have never been tried before.

Yes, the legislation I am introducing today is expensive. But, unlike other crime bills, it is fully paid for—first, by cutting overhead across-the-board in the Federal Government by 5 percent and second, by modestly reducing overhead payments for Federally funded university research.

And, Mr. President, rather than asking "Can we afford it?," we should be asking "Can we afford not to do it?"

I believe the package can and should earn bipartisan support. Crime does not discriminate by politically party. A criminal does not ask whether you're Republican or Democrat before he robs you or shoots you.

Mr. President, this package—the Neighborhood Security Act of 1993—is the first installment of a two-pronged approach to crime—one short-term and one long-term.

THE SHORT-TERM SOLUTION: POLICE, PRISONS, AND PROSECUTORS

The short-term solution recognizes that one of the strongest deterrents to crime is more police on the streets. We can talk all we want about the causes of crime, but talk can't catch a thief or prevent a murder.

The first obligation of Government is to restore order, and there is no better prescription for order and less crime than a larger and more visible police presence.

For a new generation of police officers, America can look to its military, where a pool of skilled manpower waits to be tapped as defense cuts force thousands into civilian life. Our fighting men and women have discipline and weapons training—two key skills necessary for effective law enforcement. They are up to the challenge.

As a result, my legislation proposes an American safe streets program giving our fighting men and women the opportunity to continue their contribution by serving instead on State and local police forces.

Under this program, the Federal Government will help pick up the tab for members of the Armed Services who are hired by State and local police forces to perform neighborhood patrol duties. For the first 3 years of police service, the Federal Government will pay up to the full annual salary of the new police officer. During the subsequent 3 years, the Federal share will be up to 50 percent of the annual salary, with the State or local police force picking up the remaining 50 percent.

My package will also provide Federal assistance to community policing—the cop-on-the-beat approach to law enforcement that has proven so successful on the local level. And it endorses the Police Corps, a program I have supported for many years now.

Sounds expensive? Perhaps. But we should ask ourselves "Can we afford to waste the talents and energies of our young vets whose biggest challenge is suddenly not the firing line, but the unemployment line? And can we truly afford to fight a real war on crime without using all the weapons at our disposal?"

Mr. President, if we increase the number of police on the front end of the criminal justice system, we must have an adequate supply of prison space on the back end—and we must put the prison space to use.

During the 1960's, parole and rehabilitation grew in popularity and the crime rate soared. In the late 1970's and throughout the 1980's, the trend shifted back to incarceration. As a result, the growth in the overall crime rate slowed considerably and the rate of some violent crimes actually decreased.

In too many States, however, prison overcrowding has forced the early release of some of our most dangerous criminals. These predators now stalk our neighborhoods—simply because government has failed to devote the resources necessary to protect its citizens. This must stop.

My legislation authorizes $2 billion for the construction of 10 new Federal prisons for violent criminals and for illegal aliens who have been convicted of a violent crime.

States with prison overcrowding problems will be able to send their prisoners to these new prisons, if they adopt tough, anticrime measures, such as truth-in-sentencing and pretrial detention. To get access to these new Federal prisons, States must also impose mandatory minimum sentences for gun offenders, violent criminals, and child abuse offenders.

In addition, the Neighborhood Security Act sets aside another $1 billion in Federal money to assist the States in their own efforts to construct and operate new prisons. To be eligible for the Federal grants, these new State prisons must be principally dedicated to housing repeat violent criminals.

Mr. President, if we want the security, we must pay for it. It is not cheap. But can we afford anything less?

Unfortunately, the Clinton administration has proposed to cut back—not expand—funding for Federal prison construction, at the very time President Clinton himself has called for 100,000 more police on the streets. This approach, focusing on the front-end but ignoring the back-end of the criminal justice system—prisons—is unwise and, ultimately, at war with itself.

By increasing prison space, and by providing incentives for States to put that space to use, the American criminal justice system can return to its basic objective of protecting the innocent and punishing the guilty.

FEDERAL SAFE SCHOOL DISTRICTS

Mr. President, another objective of Government is to teach the youth of our country.

Unfortunately, learning and teaching are becoming increasingly more difficult, and increasingly more dangerous, in America's all-too-violent schools.

Years ago, gum chewing and talking in class were the main school discipline problems. Today, gun possession, drug use, and gang-related violence top the discipline-problem list.

Although statistics are not officially compiled on school violence, State and Federal officials estimate that at least 30 people were murdered last year in our Nation's schools.

Hundreds of other students and teachers have been injured, some seriously, by gun-related violence.

As the first step in taking back our schools, the Neighborhood Security Act would allow any local school district to elect to qualify as a Federal safe school district.

In a Federal safe school district, any juvenile 16 years of age, or older, who uses or carries a gun, in or near a school, would be prosecuted as an adult. No exceptions. If convicted of a gun-related crime, certain tough, new penalties would apply. Again, no exceptions.

To enhance security within the schools, $500 million in Federal grants would be available for metal detectors, closed-circuit cameras, increased police patrols in and around schools, gun hotlines, and mailings to parents warning them that their children must not carry a gun or weapon on school grounds.

School districts throughout the country are eager to purchase the latest in school-security technology, but fiscal constraints often get in the way.

By offering Federal funding for security equipment, the Neighborhood Security Act would help ensure that going to school is not an occupational hazard.

No doubt about it, it is a sad day when metal detectors and closed-circuit cameras take the place of books and writing pads as the most important purchases a school administrator can make. But let's face it: If we are to turn things around in our Nation's schools, we must adopt a zero-tolerance policy on school violence.

THE LONG-TERM SOLUTION: RESTORING THE AMERICAN FAMILY

Now, Mr. President, I have outlined the short-term solution to the crime epidemic, which is the focus of the Neighborhood Security Act.

The long-term solution is much more complex and much less amenable to Government solution. It recognizes that the most effective deterrents to crime are not necessarily police, prosecutors, and prisons—the three p's, as I like to call them—but strong families and the set of values that strong families transmit to their children.

This is where it all starts. This is the deepest root cause of them all.

Unfortunately, the American family today is in tatters. Since 1960, illegitimate births have increased by more than 400 percent. In 1990, a staggering two-thirds of all black children, and 25 percent of all white children, entered the world without the benefit of a resident father and mother. These illegitimacy rates continue to rise.

Not only is there a clear link between family structure and poverty, as my distinguished colleague from New York, Senator MOYNIHAN, pointed out 25 years ago, but there is also a link between family structure and crime. It is no wonder that 70 percent of the juveniles in State reformatories today come from homes without fathers.

Government is not the Nation's nanny. It cannot, and should not, be responsible for raising our Nation's children. No Government agency can implant personal morality, nor can a congressional committee build character. But Government can take certain steps that will discourage illegitimacy and encourage fathers to take their parental responsibilities seriously. This can only help to strengthen families and reduce crime as a result.

A real crime bill builds not only prisons, but tries to build families as well.

Later this year, I will be introducing the second installment of a two-pronged approach to the crime problem.

This second installment will offer a set of legislative ideas aimed at achieving the long-term goal of strengthening and nurturing America's families.

My goal is not to renew the debate over family values, but rather to emphasize the need to start valuing the family, an essential ingredient of any serious approach to the crime epidemic.

AMERICA: TIRED OF BEING THE HOSTAGE OF FEAR

Mr. President, America breathed a collective sigh of relief when Los Angeles remained calm after the second Rodney King jury verdict. But this calm should not lull us into forgetting the orgy of lawlessness that took place last year.

No one can deny the economic realities that bred, and still breed, this violence.

When a person has no stake in a community, he will often flout the conventions of that community.

But the community plays a dangerous game when it tells that same citizen he is not personally responsible for his own actions, that he is merely a hapless victim of the forces of supply and demand, and that his feelings of rage are legitimate and can be expressed through violence.

With an attitude of acceptance, the community invites death, destruction, and yes, more poverty.

As my colleague in the House, JOHN LEWIS, once explained:

> It is not only poverty that has caused crime. In a very real sense, it is crime that has caused poverty, and crime is the most powerful cause of poverty in America today.

So, Mr. President, crime causes poverty. It also causes fear—a fear so great that we have become hostages in our homes, on our own streets, in our own neighborhoods.

F.D.R. may have been right 60 years ago when he said, "We have nothing to fear but fear itself." But, today, sadly, the greatest danger is not the fear itself, but our complacency and silent acceptance of that fear.

Mr. President, I ask unanimous consent that the full text of the Neighborhood Security Act of 1993 and an executive summary of the bill be inserted in the RECORD immediately after my remarks.

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

S. 1356

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 "Neighborhood Security Act of 1993".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—SAFE STREETS

Subtitle A—Police

CHAPTER 1—DEFENSE CONVERSION

Sec. 101. Definition.
Sec. 102. America's Safe Streets Program.

CHAPTER 2—COPS ON THE STREET

Sec. 111. Short title.
Sec. 112.- Enhanced local law enforcement.

CHAPTER 3—POLICE CORPS PROGRAM

Sec. 121. Purposes.
Sec. 122. Definitions.
Sec. 123. Establishment of Office of the Police Corps and Law Enforcement Education.
Sec. 124. Designation of lead agency and submission of State plan.
Sec. 125. Scholarship assistance.
Sec. 126. Selection of participants.
Sec. 127. Service obligation.
Sec. 128. State plan requirements.
Sec. 129. Reports to Congress.
Sec. 130. Authorization of appropriations.

CHAPTER 4—COMMUNITY POLICING GRANTS

Sec. 141. Community policing grants.

CHAPTER 5—IMPROVED TRAINING AND TECHNICAL AUTOMATION

Sec. 151. Grants.
Sec. 152. Training courses.
Sec. 153. Authorization of appropriations.

Subtitle B—Prisons

CHAPTER 1—REGIONAL PRISONS FOR VIOLENT CRIMINALS AND VIOLENT CRIMINAL ALIENS

Sec. 161. Definitions.
Sec. 162. Construction of prisons.
Sec. 163. Acceptance of prisoners.
Sec. 164. Qualifying State.
Sec. 165. Authorization of appropriations.

CHAPTER 2—FEDERAL GRANTS FOR STATE PRISON CONSTRUCTION AND OPERATION

Sec. 171. Definition.
Sec. 172. Grants.
Sec. 173. Construction grants.
Sec. 174. Operating grants.
Sec. 175. Canceling grants.
Sec. 176. Distribution of grants.
Sec. 177. Authorization of appropriations.

CHAPTER 3—JUDICIAL REMEDIES FOR PRISON CROWDING

Sec. 181. Purpose.
Sec. 182. Findings.
Sec. 183. Appropriate remedies.

CHAPTER 4—SENTENCES TO ACCOUNT FOR COSTS TO THE GOVERNMENT OF IMPRISONMENT, RELEASE, AND PROBATION

Sec. 191. Imposition of sentence.
Sec. 192. Duties of the sentencing commission.

TITLE II—SAFE SCHOOLS

Sec. 201. Definition.
Sec. 202. America's Safe Schools Program.
Sec. 203. Federal safe school districts.

TITLE III—CRIMINAL ALIENS AND ALIEN SMUGGLING

Subtitle A—Deportation of Criminal Aliens

Sec. 301. Deportation procedures for certain criminal aliens who are not permanent residents.
Sec. 302. Judicial deportation.
Sec. 303. Restricting defenses to deportation for certain criminal aliens.
Sec. 304. Enhancing penalties for failing to depart, or reentering, after final order of deportation.
Sec. 305. Miscellaneous and technical changes.

Subtitle B—Prevention and Punishment of Alien Smuggling

Sec. 311. Increased penalties for alien smuggling.
Sec. 312. Smuggling aliens for commission of crimes.
Sec. 313. Addition of alien smuggling to RICO.
Sec. 314. Expanded forfeiture for smuggling or harboring illegal aliens.
Sec. 315. Expansion of definition of aggravated felony.
Sec. 316. Amendment of sentencing guidelines.
Sec. 317. Increased penalty for Visa fraud.
Sec. 318. Training of airline personnel in detection of fraudulent documents.

Subtitle C—Border Patrol

Sec. 321. Border Patrol agents.
Sec. 322. Immigration and Naturalization Service criminal investigators.
Sec. 323. Criminal alien tracking center.

TITLE IV—GANGS, JUVENILES, DRUGS, AND PROSECUTORS

Sec. 401. Short title.

Subtitle A—Criminal Youth Gangs

Sec. 411. Criminal street gangs offenses.
Sec. 412. Crimes involving the use of minors as RICO predicates.
Sec. 413. Serious juvenile drug offenses as Armed Career Criminal Act predicates.
Sec. 414. Adult prosecution of serious juvenile offenders.
Sec. 415. Increased penalties for employing children to distribute drugs near schools and playgrounds.

Sec. 416. Increased penalties for drug trafficking near public housing.
Sec. 417. Increased penalties for Travel Act crimes involving violence and conspiracy to commit contract killings.
Sec. 418. Amendments concerning records of crimes committed by juveniles.
Sec. 419. Addition of anti-gang Byrne Grant funding objective.

Subtitle B—Gang Prosecution

Sec. 431. Additional prosecutors.
Sec. 432. Gang investigation coordination and information collection.
Sec. 433. Continuation of Federal-State funding formula.
Sec. 434. Grants for multijurisdictional drug task forces.

TITLE V—DRUG CONTROL AND RURAL CRIME

Subtitle A—Drug Trafficking in Rural Areas

Sec. 501. Authorizations for rural law enforcement agencies.
Sec. 502. Rural crime and drug enforcement task forces.
Sec. 503. Cross-designation of Federal officers.
Sec. 504. Rural drug enforcement training.

Subtitle B—Rural Drug Prevention and Treatment

Sec. 511. Rural substance abuse treatment and education grants.

Subtitle C—Rural Areas Enhancement

Sec. 521. Asset forfeiture.
Sec. 522. Prosecution of clandestine laboratory operators.

Subtitle D—Chemical Control

Sec. 531. Short title.
Sec. 532. Definition amendments.
Sec. 533. Registration requirements.
Sec. 534. Reporting of listed chemical manufacturing.
Sec. 535. Reports by brokers and traders; criminal penalties.
Sec. 536. Exemption authority; additional penalties.
Sec. 537. Amendments to list I.
Sec. 538. Elimination of regular supplier status and creation of regular importer status.
Sec. 539. Administrative inspections and authority.
Sec. 540. Threshold amounts.
Sec. 541. Management of listed chemicals.
Sec. 542. Forfeiture expansion.
Sec. 543. Attorney General access to the national practitioner data bank.
Sec. 544. Regulations and effective date.

Subtitle E—Personnel

Sec. 551. More agents for the Drug Enforcement Administration.
Sec. 552. Adequate staffing of the Office of National Drug Policy.

TITLE VI—PUNISHMENT AND DETERRENCE

Subtitle A—Death Penalty

Sec. 601. Short title.
Sec. 602. Death penalty procedures.
Sec. 603. Conforming amendment relating to destruction of aircraft or aircraft facilities.
Sec. 604. Conforming amendment relating to espionage.
Sec. 605. Conforming amendment relating to transporting explosives.
Sec. 606. Conforming amendment relating to malicious destruction of Federal property by explosives.
Sec. 607. Conforming amendment relating to malicious destruction of interstate property by explosives.
Sec. 608. Conforming amendment relating to murder.
Sec. 609. Conforming amendment relating to killing official guests or internationally protected persons.
Sec. 610. Murder by Federal prisoner.
Sec. 611. Conforming amendment relating to kidnapping.
Sec. 612. Conforming amendment relating to hostage taking.
Sec. 613. Conforming amendment relating to mailability of injurious articles.
Sec. 614. Conforming amendment relating to Presidential assassination.
Sec. 615. Conforming amendment relating to murder for hire.
Sec. 616. Conforming amendment relating to violent crimes in aid of racketeering activity.
Sec. 617. Conforming amendment relating to wrecking trains.
Sec. 618. Conforming amendment relating to bank robbery.
Sec. 619. Conforming amendment relating to terrorist acts.
Sec. 620. Conforming amendment relating to aircraft hijacking.
Sec. 621. Conforming amendment to Controlled Substances Act.
Sec. 622. Conforming amendment relating to genocide.
Sec. 623. Protection of court officers and jurors.
Sec. 624. Prohibition of retaliatory killings of witnesses, victims, and informants.
Sec. 625. Death penalty for murder of Federal law enforcement officers.
Sec. 626. Death penalty for murder of State or local law enforcement officers assisting Federal law enforcement officers.
Sec. 627. Implementation of the 1988 protocol for the suppression of unlawful acts of violence at airports serving international civil aviation.
Sec. 628. Amendment to Federal Aviation Act.
Sec. 629. Offenses of violence against maritime navigation or fixed platforms.
Sec. 630. Torture.
Sec. 631. Weapons of mass destruction.
Sec. 632. Homicides and attempted homicides involving firearms in Federal facilities.
Sec. 633. Death penalty for civil rights murders.
Sec. 634. Death penalty for murder of Federal witnesses.
Sec. 635. Drive-by shootings.
Sec. 636. Death penalty for gun murders during Federal crimes of violence and drug trafficking crimes.
Sec. 637. Death penalty for rape and child molestation murders.
Sec. 638. Protection of jurors and witnesses in capital cases.
Sec. 639. Inapplicability to Uniform Code of Military Justice.
Sec. 640. Death penalty for causing death in the sexual exploitation of children.
Sec. 641. Murder by escaped prisoners.
Sec. 642. Death penalty for murders in the District of Columbia.

Subtitle B—Equal Justice Act

Sec. 651. Short title.
Sec. 652. Prohibition of racially discriminatory policies concerning capital punishment or other penalties.
Sec. 653. General safeguards against racial prejudice or bias in the tribunal.
Sec. 654. Federal capital cases.
Sec. 655. Extension of protection of civil rights statutes.

Subtitle C—Enhanced Penalties for Criminal Use of Firearms and Explosives

Sec. 661. Smuggling firearms in aid of drug trafficking.
Sec. 662. Prohibition against theft of firearms or explosives.
Sec. 663. Increased penalty for knowingly false, material statement in connection with the acquisition of a firearm from a licensed dealer.
Sec. 664. Summary destruction of explosives subject to forfeiture.
Sec. 665. Elimination of outmoded language relating to parole.
Sec. 666. Receipt of firearms by nonresident.
Sec. 667. Prohibition of theft of firearms or explosives from licensee.
Sec. 668. Increased penalty for interstate gun trafficking.
Sec. 669. Prohibition of transactions involving stolen firearms which have moved in interstate or foreign commerce.
Sec. 670. Possession of explosives by felons and others.
Sec. 671. Disposition of forfeited firearms.
Sec. 672. Definition of burglary under the armed career criminal statute.

Subtitle D—Exclusionary Rule

Sec. 681. Admissibility of certain evidence.

Subtitle E—Pre-Trial Interrogation

Sec. 691. Pre-trial interrogation.

TITLE VII—ELIMINATION OF DELAYS IN CARRYING OUT SENTENCES

Subtitle A—General Habeas Corpus Reform

Sec. 701. Short title.
Sec. 702. Period of limitation.
Sec. 703. Appeal.
Sec. 704. Amendment of Federal rules of appellate procedure.
Sec. 705. Section 2254 amendments.
Sec. 706. Section 2255 amendments.

Subtitle B—Death Penalty Litigation Procedures

Sec. 711. Short title.
Sec. 712. Death penalty litigation procedures.

Subtitle C—Equalization of Capital Habeas Corpus Litigation Funding

Sec. 721. Funding for death penalty prosecutions.

TITLE VIII—PREVENTION OF TERRORISM

Subtitle A—Penalties and Offenses

Sec. 801. Providing material support to terrorism.
Sec. 802. Enhanced penalties for certain offenses.
Sec. 803. Sentencing guidelines increase for terrorist crimes.
Sec. 804. Extension of the statute of limitations for certain terrorism offenses.
Sec. 805. Forfeiture of assets used to support terrorists.
Sec. 806. Alien witness cooperation.
Sec. 807. Territorial sea extending to 12 miles included in special maritime and territorial jurisdiction.
Sec. 808. Assimilated crimes in extended territorial sea.
Sec. 809. Jurisdiction over crimes against United States nationals on certain foreign ships.
Sec. 810. Penalties for international terrorist acts.

Sec. 811. Authorization of appropriations.
Sec. 812. International parental kidnapping.
Sec. 813. Foreign murder of United States nationals.
Sec. 814. Extradition.
Sec. 815. FBI access to telephone subscriber information.

Subtitle B—Removal of Alien Terrorists

Sec. 821. Removal of alien terrorists.

Subtitle C—Enhanced Entry Controls

Sec. 831. Admissions fraud.
Sec. 832. Inspection and exclusion by immigration officers.
Sec. 833. Judicial review.
Sec. 834. Conforming amendments.
Sec. 835. Effective date.

TITLE IX—VICTIMS' RIGHTS AND CHILD ABUSE

Subtitle A—Victims' Rights

Sec. 901. Restitution amendments.
Sec. 902. Right of the victim to an impartial jury.
Sec. 903. Mandatory restitution and other provisions.

Subtitle B—National Child Protection Act

Sec. 911. Short title.
Sec. 912. Findings and purposes.
Sec. 913. Definitions.
Sec. 914. Reporting by the States.
Sec. 915. Background checks.
Sec. 916. Funding for improvement of child abuse crime information.

Subtitle C—Jacob Wetterling Crimes Against Children Registration Act

Sec. 921. Short title.
Sec. 922. Establishment of program.
Sec. 923. State compliance.

TITLE X—VIOLENT CRIMES AND LAW ENFORCEMENT SUPPORT

Subtitle A—Violent Crimes

Sec. 1001. Addition of attempted robbery, kidnapping, smuggling, and property damage offenses to eliminate inconsistencies and gaps in coverage.
Sec. 1002. Increase in maximum penalty for assault.
Sec. 1003. Increased maximum penalty for manslaughter.
Sec. 1004. Increased penalty for Travel Act violations.
Sec. 1005. Increased penalty for conspiracy to commit murder for hire.
Sec. 1006. Federal penalties for carjacking.
Sec. 1007. Increased mandatory minimum sentences for criminals using firearms.
Sec. 1008. Life imprisonment without release for criminals convicted a third time.

Subtitle B—National Commission to Support Law Enforcement

Sec. 1021. Short title.
Sec. 1022. Findings.
Sec. 1023. Establishment of Commission.
Sec. 1024. Duties.
Sec. 1025. Membership.
Sec. 1026. Experts and consultants.
Sec. 1027. Powers of Commission.
Sec. 1028. Report.
Sec. 1029. Termination.
Sec. 1030. Authorization of appropriations.
Sec. 1031. Repeals.

TITLE XI—CIVIL RIGHTS OFFENSES

Sec. 1101. Increased maximum penalties for civil rights violations.

TITLE XII—PUBLIC CORRUPTION

Sec. 1201. Short title.
Sec. 1202. Public corruption.
Sec. 1203. Interstate commerce.
Sec. 1204. Narcotics-related public corruption.

TITLE XIII—FUNDING

Sec. 1301. Reduction in overhead costs incurred in federally sponsored research.
Sec. 1302. Overhead expense reduction.
Sec. 1303. Funding of programs authorized by this Act.

TITLE I—SAFE STREETS

Subtitle A—Police

CHAPTER 1—DEFENSE CONVERSION

SEC. 101. DEFINITION.

In this chapter, "former member of the Armed Forces" means a member of the Armed Forces of the United States who is involuntarily separated from the Armed Forces within the meaning of section 1141 of title 10, United States Code.

SEC. 102. AMERICA'S SAFE STREETS PROGRAM.

(a) PROGRAM ESTABLISHMENT.—

(1) AMERICA'S SAFE STREETS PROGRAM.—The program established by this section shall be referred to as "America's Safe Streets Program".

(2) AGREEMENTS.—The Attorney General, in consultation with the Secretary of Defense, may enter into an agreement with a State or local law enforcement agency to pay, and may pay, for a period of 6 years, including any required periods of training, the salaries of former members of the Armed Forces who are hired within 5 years after the date of enactment of this Act as police officers assigned to neighborhood patrol duties.

(b) AMOUNT.—

(1) MAXIMUM.—(A) The maximum Federal share of an annual salary for the first 3 years that a police officer may be paid under an agreement described in subsection (a) is the annual salary earned by the officer during his or her last year as a member of the Armed Forces.

(B) The maximum Federal share of an annual salary for the 4th through 6th years that a police officer may be paid under an agreement described in subsection (a) is 50 percent of the annual salary earned by the officer during his or her last year as a member of the Armed Forces.

(2) ENTRY LEVEL.—To the extent that it is practicable to do so, a State or local law enforcement agency shall hire a former member of the Armed Forces whose salary is to be paid under an agreement described in subsection (a) at a level of seniority, in consideration of the former member's years of service and training as a member of the Armed Forces, that will permit the former member to be paid at least the maximum amount of annual salary under paragraph (1).

(3) PRIORITY.—In making awards under this section, the Attorney General may give priority to agencies located in communities that are adversely affected by the recent closing of a military base or facility.

(4) FORMULA.—In making awards under this section, the Attorney General shall insure that no State receives less than .50 percent of the funds appropriated under this section.

(c) ENLARGEMENT OF POLICE FORCE.—It shall be a condition to payment of salaries under an agreement described in subsection (a) that the number of police officers assigned to neighborhood patrol duties (not including any officers whose salaries in whole or in part are paid under this title), and the size of the law enforcement agency's staff overall, shall not be diminished during the term of the agreement.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the program authorized by this section—

(1) $100,000,000 for fiscal year 1994;
(2) $125,000,000 for fiscal year 1995;
(3) $175,000,000 for fiscal year 1996;
(4) $200,000,000 for fiscal year 1997; and
(5) $200,000,000 for fiscal year 1998.

CHAPTER 2—COPS ON THE STREET

SEC. 111. SHORT TITLE.

This chapter may be cited as the "Cops on the Street Act of 1993".

SEC. 112. ENHANCED LOCAL LAW ENFORCEMENT.

(a) IN GENERAL.—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 Q as part R;

(2) by redesignating section 1701 as section 1801; and

(3) by inserting after part P the following:

"PART Q—COPS ON THE STREET GRANTS

"SEC. 1701. GRANT AUTHORIZATION.

"The Director of the Bureau of Justice Assistance may make not less than 50, but not more than 100 grants to units of local government for the purposes of increasing police presence in the community. The Director shall take steps to ensure, to the extent practicable, that each State receives at least 1 grant.

"SEC. 1702. APPLICATION.

"(a) IN GENERAL.—To be eligible to receive a grant under this part, a chief executive of a unit of local government, shall submit an application to the Director. The application shall contain the information required under subsection (b) and be in such form and contain such other information as the Director may reasonably require.

"(b) GENERAL CONTENTS.—Each application under subsection (a) shall include—

"(1) a request for funds available under this part for the purposes described in section 1701;

"(2) a description of the areas and populations to be served by the grant and a description of the crime problems within the areas targeted for assistance;

"(3) information required to be considered by the Director under section 1704;

"(4) 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;

"(5) detailed accounts of expenditures for law enforcement for the preceding 5-year period prior to receiving a grant under this part;

"(6) detailed accounts of local expenditures for law enforcement during any prior years in which grants were received under this part; and

"(7) a description of how a portion of the grant would be used to ensure the safety of public and private elementary and secondary schools.

"SEC. 1703. ADMINISTRATIVE COSTS; GRANT RENEWAL.

"(a) ADMINISTRATIVE COST LIMITATION.—The Director shall use not more than 5 percent of the funds available under this part for the purposes of administration, technical assistance, and evaluation.

"(b) RENEWAL OF GRANTS.—A grant under this part may be renewed, subject to the availability of funds, if the Director determines that the funds made available to the recipient during the previous year were used in a manner required under the approved application and the requirements of this part.

"SEC. 1704. SELECTION OF RECIPIENTS.

"In awarding grants to units of local government under this part, the Director shall consider—

"(1) the crime rate per capita in the unit of local government for violent crime, including murder, rape, robbery, assault with a weapon, and kidnapping; and

"(2) the rate of increase of violent crime in such unit of local government over the most recent 3-year period for which statistics are available.

"SEC. 1705. REPORTS.

"(a) REPORT TO DIRECTOR.—Recipients who receive funds under this part shall submit to the Director not later than March 1 of each year a report that describes progress achieved in carrying out the plan required under section 1702(c).

"(b) REPORT TO CONGRESS.—The Director shall submit to the Congress a report by October 1 of each year that shall contain a detailed statement regarding grant awards, activities of grant recipients, and an evaluation of projects established under this part.

"SEC. 1706. DEFINITION.

"For the purposes of this part, the term 'Director' means the Director of the Bureau of Justice Assistance.".

(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 Q and inserting the following:

"PART Q—COPS ON THE STREET GRANTS

"Sec. 1701. Grant authorization.
"Sec. 1702. Application.
"Sec. 1703. Allocation of funds; limitation on grants.
"Sec. 1704. Award of grants.
"Sec. 1705. Reports.
"Sec. 1706. Definition.

"PART R—TRANSITION; EFFECTIVE DATE; REPEALER

"Sec. 1801. 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) is amended—

(1) in paragraph (3) by striking "and O" and inserting "O, P, and Q"; and

(2) by adding at the end the following new paragraph:

"(11) There are authorized to be appropriated to carry out projects under part Q—

"(A) $100,000,000 for fiscal year 1994;
"(B) $100,000,000 for fiscal year 1995;
"(C) $150,000,000 for fiscal year 1996;
"(D) $150,000,000 for fiscal year 1997; and
"(E) $150,000,000 for fiscal year 1998.".

CHAPTER 3—POLICE CORPS PROGRAM

SEC. 121. PURPOSES.

The purposes of this chapter are to—

(1) address violent crime in urban and rural areas by increasing the number of police with advanced education and training on community patrol; and

(2) provide educational assistance to law enforcement personnel and to students who possess a sincere interest in public service in the form of law enforcement.

SEC. 122. DEFINITIONS.

In this chapter—

"academic year" means a traditional academic year beginning in August or September and ending in the following May or June.

"dependent child" means a natural or adopted child or stepchild of a law enforcement officer who at the time of the officer's death—

(1) was no more than 21 years old; or

(2) if older than 21 years, was in fact dependent on the child's parents for at least one-half of the child's support (excluding educational expenses), as determined by the Director.

"Director" means the Director of the Office of the Police Corps and Law Enforcement Education appointed under section 123.

"educational expenses" means expenses that are directly attributable to—

(1) a course of education leading to the award of the baccalaureate degree in legal- or criminal justice-related studies; or

(2) a course of graduate study legal or criminal justice studies following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses.

"institution of higher education" has the meaning stated in the first sentence of section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

"participant" means a participant in the Police Corps program selected pursuant to section 126.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

"State Police Corps program" means a State police corps program approved under section 138.

SEC. 123. ESTABLISHMENT OF OFFICE OF THE POLICE CORPS AND LAW ENFORCEMENT EDUCATION.

(a) ESTABLISHMENT.—There is established in the Department of Justice, under the general authority of the Attorney General, an Office of the Police Corps.

(b) APPOINTMENT OF DIRECTOR.—The Office of the Police Corps and Law Enforcement Education shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) RESPONSIBILITIES OF DIRECTOR.—The Director shall be responsible for the administration of the Police Corps program established in this chapter and shall have authority to promulgate regulations to implement this chapter.

SEC. 124. DESIGNATION OF LEAD AGENCY AND SUBMISSION OF STATE PLAN.

(a) LEAD AGENCY.—A State that desires to participate in the Police Corps program shall designate a lead agency that will be responsible for—

(1) submitting to the Director a State plan described in subsection (b); and

(2) administering the program in the State.

(b) STATE PLANS.—A State plan shall—

(1) contain assurances that the lead agency shall work in cooperation with the local law enforcement liaisons, representatives of police management organizations, and other appropriate State and local agencies to develop and implement interagency agreements designed to carry out the program;

(2) contain assurances that the State shall advertise the assistance available under this chapter;

(3) contain assurances that the State shall screen and select law enforcement personnel for participation in the program;

(4) if the State desires to participate in the Police Corps program, meet the requirements of section 128; and

(5) demonstrate that the State has the capacity to employ the participants in the Police Corps program from that State.

SEC. 125. SCHOLARSHIP ASSISTANCE.

(a) SCHOLARSHIPS AUTHORIZED.—(1) The Director may award scholarships to participants who agree to work in a State or local police force in accordance with agreements entered into pursuant to subsection (d).

(2)(A) Except as provided in subparagraph (B) each scholarship payment made under this section for each academic year shall not exceed the lesser of—

(i) $7,500; or

(ii) the cost of the educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed $10,000.

(C) The total amount of scholarship assistance received by any 1 student under this section shall not exceed $30,000.

(3) Recipients of scholarship assistance under this section shall continue to receive such scholarship payments only during such periods as the Director finds that the recipient is maintaining satisfactory progress as determined by the institution of higher education the recipient is attending.

(4)(A) The Director shall make scholarship payments under this section directly to the institution of higher education that the student is attending.

(B) Each institution of higher education receiving a payment on behalf of a participant pursuant to subparagraph (A) shall remit to such student any funds in excess of the costs of tuition, fees, and room and board payable to the institution.

(b) REIMBURSEMENT AUTHORIZED.—(1) The Director may make payments to a participant to reimburse such participant for the costs of educational expenses if such student agrees to work in a State or local police force in accordance with the agreement entered into pursuant to subsection (d).

(2)(A) Each payment made pursuant to paragraph (1) for each academic year of study shall not exceed—

(i) $7,500; or

(ii) the cost of educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed $10,000.

(C) The total amount of payments made pursuant to subparagraph (A) to any 1 student shall not exceed $30,000.

(c) USE OF SCHOLARSHIP.—Scholarships awarded under this subsection shall only be used to pay educational expenses incurred while in attendance at an institution of higher education—

(1) in a course of education leading to the award of a baccalaureate degree in the area of legal or criminal justice related studies, including attendance at such an institution that does not itself award such a degree if the courses taken there are acceptable for credit toward a degree at an institution that does award such a degree, and including, in the discretion of the Director, such expenses incurred prior to enrollment in the Police Corps program; and

(2) for graduate and professional study.

(d) AGREEMENT.—(1) Each participant receiving a scholarship or a payment under this section shall enter into an agreement with the Director. Each such agreement shall contain assurances that the participant shall—

(A) after successful completion of a baccalaureate program, work for 4 years in a State or local police force without there having arisen sufficient cause for the participant's dismissal under the rules applicable to members of the police force of which the participant is a member;

(B) complete satisfactorily an educational course of study and receipt of a baccalaureate degree (in the case of undergraduate study) or the reward of credit to the participant for having completed one or more graduate courses (in the case of graduate study); and

(C) repay all of the scholarship or payment received plus interest at the rate of 10 percent in the event that the conditions of subparagraphs (A) and (B) are not complied with.

(2)(A) A recipient of a scholarship or payment under this section shall not be considered in violation of the agreement entered into pursuant to paragraph (1) if the recipient—

(i) dies; or

(ii) becomes permanently and totally disabled as established by the sworn affidavit of a qualified physician.

(B) The Director shall expeditiously seek repayment from participants who violate the agreement described in paragraph (1).

(e) DEPENDENT CHILD.—A dependent child of a law enforcement officer—

(1) who is a member of a State or local police force or is a Federal criminal investigator or uniformed police officer,

(2) who is not a participant in the Police Corps program, but

(3) who serves in a State for which the Director has approved a Police Corps plan, and

(4) who is killed in the course of performing police duties,

shall be entitled to the scholarship assistance authorized in this section for any course of study in any institution of higher education. Such dependent child shall not incur any repayment obligation in exchange for the scholarship assistance provided in this section.

(f) GROSS INCOME.—For purposes of section 61 of the Internal Revenue Code of 1986, a participant's or dependent child's gross income shall not include any amount paid as scholarship assistance under this section.

(g) APPLICATION.—Each participant desiring a scholarship or payment under this section shall submit an application as prescribed by the Director in such manner and accompanied by such information as the Director may reasonably require.

SEC. 126. SELECTION OF PARTICIPANTS.

(a) IN GENERAL.—Participants in State Police Corps programs shall be selected on a competitive basis by each State under regulations prescribed by the Director. A State may only select as many participants as State police or local law enforcement agencies are willing to accept and are capable of accepting. A State shall certify that for each participant selected, a State police or local law enforcement agency has agreed to accept a participant.

(b) SELECTION CRITERIA AND QUALIFICATIONS.—(1) In order to participate in a State Police Corps program, a participant shall—

(A) be a citizen of the United States;

(B) meet the requirements for admission as a trainee of the State or local police force to which the participant will be assigned pursuant to the State Police Corps plan, including achievement of satisfactory scores on any applicable examination, except that failure to meet the age requirement for a trainee of the State or local police shall not disqualify the applicant if the applicant will be of sufficient age upon completing an undergraduate course of study;

(C) possess the necessary mental and physical capabilities and emotional characteristics to discharge effectively the duties of a law enforcement officer;

(D) be of good character and demonstrate sincere motivation and dedication to law enforcement and public service;

(E) in the case of an undergraduate, agree in writing that the participant will complete an educational course of study leading to the award of a baccalaureate degree in law- or criminal justice-related studies and will then accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State;

(F) in the case of a participant desiring to undertake or continue graduate study in law- or criminal justice-related studies, agree in writing that the participant will accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State before undertaking or continuing graduate study;

(G) contract, with the consent of the participant's parent or guardian if the participant is a minor, to serve for 4 years as an officer in the State police or in a local police department, if an appointment is offered; and

(H) except as provided in paragraph (2), be without previous law enforcement experience; and

(2)(A) Until the date that is 5 years after the date of enactment of this Act, up to 10 percent of the applicants accepted into the Police Corps program may be persons who—

(i) have had some law enforcement experience; and

(ii) have demonstrated special leadership potential and dedication to law enforcement.

(B)(i) The prior period of law enforcement of a participant selected pursuant to subparagraph (A) shall not be counted toward satisfaction of the participant's 4-year service obligation under section 127, and such a participant shall be subject to the same benefits and obligations under this subtitle as other participants, including those stated in paragraph (1) (E) and (F).

(ii) Clause (i) shall not be construed to preclude counting a participant's previous period of law enforcement experience for purposes other than satisfaction of the requirements of section 127, such as for purposes of determining such a participant's pay and other benefits, rank, and tenure.

(3) It is the intent of this chapter that there shall be no more than 20,000 participants in each graduating class. The Director shall approve State plans providing in the aggregate for such enrollment of applicants as shall ensure, as nearly as possible, that there will be annual graduating classes of 20,000. Each State shall be entitled to at least 250 participants. In a year in which applications are received in a number greater than that which will produce, in the judgment of the Director, a graduating class of more than 20,000, the Director shall, in deciding which applications to grant, give preference to those who will be participating in State plans that provide law enforcement personnel to urban and rural areas of greatest need.

(c) RECRUITMENT OF MINORITIES.—Each State participating in the Police Corps program shall make special efforts to seek and recruit qualified applicants from among members of all racial, ethnic or gender groups. This subsection does not authorize an exception from the competitive standards for admission established pursuant to subsections (a) and (b).

(d) ENROLLMENT OF APPLICANT.—(1) An applicant shall be accepted into a State Police Corps program on the condition that the applicant will be matriculated in, or accepted for admission at, an institution of higher education—

(A) as a full-time student in an undergraduate program leading to the award of a baccalaureate degree; or

(B) for purposes of taking a graduate or professional course.

(2) If the applicant is not matriculated or accepted as set forth in paragraph (1), the applicant's acceptance in the program shall be revoked.

(e) LEAVE OF ABSENCE.—(1) A participant in a State Police Corps program who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) due to temporary physical or emotional disability shall be granted such leave of absence by the State.

(2) A participant who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) for any reason other than those listed in paragraph (1) may be granted such leave of absence by the State.

(3) A participant who requests a leave of absence from educational study or training for a period not to exceed 30 months to serve on an official church mission may be granted such leave of absence.

(f) ADMISSION OF APPLICANTS.—An applicant may be admitted into a State Police Corps program either before commencement of or during the applicant's course of educational study.

SEC. 127. SERVICE OBLIGATION.

(a) SWEARING IN.—Upon completing satisfactorily the participant's course of education and meeting the requirements of the police force to which the participant is assigned, a participant shall be sworn in as a member of the police force to which the participant is assigned pursuant to the State Police Corps plan, and shall serve for 4 years as a member of that police force.

(b) RIGHTS AND RESPONSIBILITIES.—A participant shall have all of the rights and responsibilities of and shall be subject to all rules and regulations applicable to other members of the police force of which the participant is a member, including those contained in applicable agreements with labor organizations and those provided by State and local law.

(c) DISCIPLINE.—If the police force of which the participant is a member subjects the participant to discipline such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 125, the Director may, upon a showing of good cause, permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, if such service is satisfactorily completed, section 125(d)(1)(C) shall not apply.

(d) LAYOFFS.—If the police force of which the participant is a member lays off the participant such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 125, the Director may permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, if such service is satisfactorily completed, section 125(d)(1)(C) shall not apply.

SEC. 128. STATE PLAN REQUIREMENTS.

A State Police Corps plan shall—

(1) provide for the screening and selection of participants in accordance with the criteria set out in section 126;

(2) state procedures governing the assignment of participants in the Police Corps program to State and local police forces (no more than 10 percent of all the participants assigned in each year by each State to be assigned to a statewide police force or forces);

(3) provide that participants shall be assigned to those geographic areas in which—

(A) there is the greatest need for additional law enforcement personnel; and

(B) the participants will be used most effectively;

(4) provide that to the extent consistent with paragraph (3), a participant shall be assigned to an area near the participant's home or such other place as the participant may request;

(5) provide that to the extent feasible, a participant's assignment shall be made at the time the participant is accepted into the program, subject to change—

(A) prior to commencement of a participant's fourth year of undergraduate study, under such circumstances as the plan may specify; and

(B) from commencement of a participant's fourth year of undergraduate study until completion of 4 years of police service by participant, only for compelling reasons or to meet the needs of the State Police Corps program and only with the consent of the participant;

(6) provide that no participant shall be assigned to serve with a local police force—

(A) the size of which has declined by more than 5 percent during the preceding year; or

(B) which has members who have been laid off but not retired;

(7) provide that participants shall be placed and to the extent feasible kept on community and preventive patrol;

(8) assure that participants will receive effective training and leadership;

(9) provide that the State may decline to offer a participant an appointment or may remove a participant from the Police Corps program at any time, only for good cause (including failure to make satisfactory progress in a course of educational study) and after following reasonable review procedures stated in the plan;

(10) provide for the direct involvement of law enforcement officials in determining the number of participants and their assignments; and

(11) provide that a participant shall, while serving as a member of a police force, be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other police officers of the same rank and tenure in the police force of which the participant is a member.

SEC. 129. REPORTS TO CONGRESS.

(a) ANNUAL REPORTS.—(1) Not later than April 1 of each year, the Director shall submit a report to the Attorney General, the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate.

(2) The report described in paragraph (1) shall—

(A) state the number of current and past participants in the Police Corps program, categorized according to the levels of educational study in which they are engaged and years of service they have served on police forces (including service following completion of the 4-year service obligation); and

(B) describe the geographic dispersion of participants in the Police Corps program.

SEC. 130. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Justice to carry out this chapter—

(1) $50,000,000 for fiscal year 1994;

(2) $100,000,000 for fiscal year 1995; and

(3) $100,000,000 for fiscal year 1996.

CHAPTER 4—COMMUNITY POLICING GRANTS

SEC. 141. COMMUNITY POLICING GRANTS.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 112(a), is amended—

(1) by redesignating part R as part S;

(2) by redesignating section 1801 as section 1901; and

(3) by inserting after part Q the following new part:

"PART R—COMMUNITY POLICING GRANTS

"SEC. 1801. GRANT AUTHORIZATION.

"(a) GRANT PROJECTS.—The Director of the Bureau of Justice Assistance may make grants to units of local government and to community groups to establish or expand cooperative efforts between police and a community for the purposes of increasing police presence in the community, including—

"(1) developing innovative neighborhood-oriented policing programs;

"(2) providing new technologies to reduce the amount of time officers spend processing cases instead of patrolling the community;

"(3) purchasing equipment to improve communications between officers and the community and to improve the collection, analysis, and use of information about crime-related community problems;

"(4) developing policies that reorient police emphasis from reacting to crime to preventing crime;

"(5) creating decentralized police substations throughout the community to encourage interaction and cooperation between the public and law enforcement personnel on a local level;

"(6) providing training and problem solving for community crime problems;

"(7) providing training in cultural differences for law enforcement officials;

"(8) developing community-based crime prevention programs, such as safety programs for senior citizens, community anticrime groups, and other anticrime awareness programs;

"(9) developing crime prevention programs in communities that have experienced a recent increase in gang-related violence; and

"(10) developing projects following the model under subsection (b).

"(b) MODEL PROJECT.—The Director shall develop a written model that informs community members regarding—

"(1) how to identify the existence of a drug or gang house;

"(2) what civil remedies, such as public nuisance violations and civil suits in small claims court, are available; and

"(3) what mediation techniques are available between community members and individuals who have established a drug or gang house in the community.

"SEC. 1802. APPLICATION.

"(a) IN GENERAL.—(1) To be eligible to receive a grant under this part, a chief executive of a unit of local government, a duly authorized representative of a combination of local governments within a geographic region, or a community group shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(2) In an application under paragraph (1), a single office, or agency (public, private, or nonprofit) shall be designated as responsible for the coordination, implementation, administration, accounting, and evaluation of services described in the application.

"(b) GENERAL CONTENTS.—Each application under subsection (a) shall include—

"(1) a request for funds available under this part for the purposes described in section 1801;

"(2) a description of the areas and populations to be served by the grant; and

"(3) 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.

"(c) COMPREHENSIVE PLAN.—Each application shall include a comprehensive plan that contains—

"(1) a description of the crime problems within the areas targeted for assistance;

"(2) a description of the projects to be developed;

"(3) a description of the resources available in the community to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources;

"(4) an explanation of how the requested grant shall be used to fill those gaps;

"(5) a description of the system the applicant shall establish to prevent and reduce crime problems; and

"(6) an evaluation component, including performance standards and quantifiable goals the applicant shall use to determine project progress, and the data the applicant shall collect to measure progress toward meeting project goals.

"SEC. 1803. ALLOCATION OF FUNDS; LIMITATIONS ON GRANTS.

"(a) ALLOCATION.—The Director shall allocate not less than 75 percent of the funds available under this part to units of local government or combinations of such units and not more than 20 percent of the funds available under this part to community groups. Each State shall receive at least .50 percent of the funds available under this part.

"(b) ADMINISTRATIVE COST LIMITATION.—The Director shall use not more than 5 percent of the funds available under this part for the purposes of administration, technical assistance, and evaluation.

"(c) RENEWAL OF GRANTS.—A grant under this part may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant, subject to the availability of funds, if the Director determines that the funds made available to the recipient during the previous year were used in a manner required under the approved application and if the recipient can demonstrate significant progress toward achieving the goals of the plan required under section 1802(c).

"(d) FEDERAL SHARE.—The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 1802 for the fiscal year for which the projects receive assistance under this part.

"SEC. 1804. AWARD OF GRANTS.

"The Director shall consider the following factors in awarding grants to units of local government or combinations of such units under this part:

"(1) NEED AND ABILITY.—Demonstrated need and evidence of the ability to provide the services described in the plan required under section 1802(c).

"(2) COMMUNITY-WIDE RESPONSE.—Evidence of the ability to coordinate community-wide response to crime.

"(3) MAINTAIN PROGRAM.—The ability to maintain a program to control and prevent crime after funding under this part is no longer available.

"SEC. 1805. REPORTS.

"(a) REPORT TO DIRECTOR.—Recipients who receive funds under this part shall submit to the Director not later than March 1 of each year a report that describes progress achieved in carrying out the plan required under section 1802(c).

"(b) REPORT TO CONGRESS.—The Director shall submit to the Congress a report by October 1 of each year containing—

"(1) a detailed statement regarding grant awards and activities of grant recipients; and

"(2) an evaluation of projects established under this part.

"SEC. 1806. DEFINITIONS.

"In this part—

"'community group' means a community-based nonprofit organization that has a primary purpose of crime prevention.

"'Director' means the Director of the Bureau of Justice Assistance.".

(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.), as amended by section 112(b), is amended by striking the matter relating to part R and inserting the following:

"PART R—COMMUNITY POLICING GRANTS

"Sec. 1801. Grant authorization.
"Sec. 1802. Application.
"Sec. 1803. Allocation of funds; limitations on grants.
"Sec. 1804. Award of grants.
"Sec. 1805. Reports.
"Sec. 1806. Definitions.

"PART S—TRANSITION; EFFECTIVE DATE; REPEALER

"Sec. 1901. 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)), as amended by section 112(c), is amended—

(1) in paragraph (3) by striking "and Q" and inserting "Q and R"; and

(2) by adding at the end the following new paragraph:

"(12) There are authorized to be appropriated to carry out projects under part R $60,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.".

CHAPTER 5—IMPROVED TRAINING AND TECHNICAL AUTOMATION

SEC. 151. GRANTS.

(a) IN GENERAL.—The Attorney General shall make grants to units of State and local law enforcement for the purposes of improving law enforcement agency efficiency through computerized automation and technological improvements.

(b) TYPES OF PROGRAMS.—Grants under this section may include programs to—

(1) increase use of mobile digital terminals;

(2) improve communications systems;

(3) accomplish paper-flow reduction;

(4) establish or improve ballistics identification programs; and

(5) increase the application of automated fingerprint identification systems and their communications on an interstate and intrastate basis.

SEC. 152. TRAINING COURSES.

(a) IN GENERAL.—The Attorney General shall expand and improve investigative and managerial training courses for State and local law enforcement agencies.

(b) IMPROVEMENT OF FACILITIES.—The improvement described in subsection (a) shall include improvements of the training facilities of the Federal Bureau of Investigation Academy at Quantico, Virginia.

SEC. 153. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this chapter $100,000,000 for fiscal year 1994.

Subtitle B—Prisons

CHAPTER 1—REGIONAL PRISONS FOR VIOLENT CRIMINALS AND VIOLENT CRIMINAL ALIENS

SEC. 161. DEFINITIONS.

In this chapter—

"child abuse offense" means an offense under Federal or State law that constitutes sexual exploitation of children or selling or buying of children within the meaning of chapter 110 of title 18, United States Code.

"firearm offense" means an offense under Federal or State law committed while the offender is in possession of a firearm or while an accomplice of the offender, to the knowledge of the offender, is in possession of a firearm.

"crime of violence" means a felony offense under Federal or State law that is a crime of violence within the meaning of section 16 of title 18, United States Code.

"qualifying prisoner" means—

(A) an alien who is in this country illegally or unlawfully and who has been convicted of a crime of violence (as defined in section 924(c)(3) of title 18, United States Code) or a serious drug offense (as defined in section 924(e)(2)(A) of title 18, United States Code); and

(B) a violent criminal.

"sex offense" means an offense under Federal or State law that constitutes aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, or abusive sexual contact within the meaning of chapter 109A of title 18, United States Code.

"violent criminal"—

(A) means a person convicted under Federal law of an offense described in, under the circumstances described in, the provisions of section 924 (c) or (e) of title 18 or section 994(h) of title 28, United States Code, or under State law for the same or a similar offense; and

(B) insofar as any of the circumstances described in an offense described in subparagraph (A) is the prior conviction of an offense, includes a person who had been adjudicated as a juvenile delinquent by reason of the commission of an act that, if committed by an adult, would constitute such an offense.

SEC. 162. CONSTRUCTION OF PRISONS.

The Attorney General shall construct a minimum of 10 regional prisons, situated throughout the United States, each containing space for at least 2,500 inmates. At least 50 percent of the overall capacity of such prisons in the aggregate shall be dedicated to qualifying prisoners from qualifying States.

SEC. 163. ACCEPTANCE OF PRISONERS.

Any qualifying State may apply to the Attorney General to accept any qualifying prisoner. If, in the Attorney General's judgment there are likely to be more qualifying prisoners than there is space available, then to the extent that the Attorney General deems it practicable, the Attorney General should seek to allocate space among qualifying States in a proportion similar to the number of qualifying prisoners held by that State in relation to the total number of qualifying prisoners from qualifying States.

SEC. 164. QUALIFYING STATE.

(a) IN GENERAL.—The Attorney General shall not certify a State as a qualifying State under this chapter unless the State is providing—

(1) truth in sentencing with respect to any crime of violence that is consistent with that provided in the Federal system in chapter 229 of title 18, United States Code, which provides that defendants will serve at least 85 percent of the sentence ordered and which provides for a binding sentencing guideline system in which sentencing judges' discretion is limited to ensure greater uniformity in sentencing;

(2) pretrial detention similar to that provided in the Federal system under section 3142 of title 18, United States Code;

(3) sentences for firearm offenders, violent criminals, sex offenders, and child abuse offenders that, after application of relevant sentencing guidelines, result in the imposition of sentences that are at least as long as those imposed under Federal law (after application of relevant sentencing guidelines); and

(4) suitable recognition for the rights of victims, including consideration of the victim's perspective at all appropriate stages of criminal proceedings.

(b) DISQUALIFICATION.—The Attorney General shall withdraw a State's status as a qualifying State if the Attorney General finds that the State no longer appropriately provides for the matters described in subsection (a) or has ceased making substantial progress toward attaining them, in which event the State shall no longer be entitled to the benefits of this chapter, except to the extent the Attorney General otherwise directs.

(c) WAIVER.—The Attorney General may waive any of the requirements of this section with respect to a particular State if the Attorney General certifies that, in the Attorney General's judgment, there are compelling law enforcement reasons for doing so. Any State granted any such waiver shall be treated as a qualifying State for all purposes of this chapter, unless the Attorney General otherwise directs.

SEC. 165. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this chapter—

(1) $200,000,000 for fiscal year 1994;
(2) $400,000,000 for fiscal year 1995;
(3) $400,000,000 for fiscal year 1996;
(4) $500,000,000 for fiscal year 1997; and
(5) $500,000,000 for fiscal year 1998.

CHAPTER 2—FEDERAL GRANTS FOR STATE PRISON CONSTRUCTION AND OPERATION

SEC. 171. DEFINITION.

In this chapter, "new prison" means—

(1) a prison or city or county detention facility, including an addition to an existing prison or city or county detention facility, certified by the State, and approved by the Attorney General, as providing additional prison capacity beyond that which the State previously had available or had already planned to construct; and

(2) a prison that is principally dedicated, as determined by the Attorney General, to housing repeat violent offenders and sex offenders.

SEC. 172. GRANTS.

The Attorney General may enter into agreements with any qualifying State to provide construction grants or operating grants for new prisons.

SEC. 173. CONSTRUCTION GRANTS.

The Attorney General may make construction grants for up to 50 percent of the construction costs, as approved by the Director of the Federal Bureau of Prisons, for new prisons.

SEC. 174. OPERATING GRANTS.

The Attorney General may make operating grants for up to 50 percent of the operating costs, as approved by the Director of the Federal Bureau of Prisons, for new prisons.

SEC. 175. CANCELING GRANTS.

The Attorney General may, in the Attorney General's sole discretion, cancel any construction grant or operating grant if the Attorney General finds that a State is using those funds to substitute for existing funds or to provide prison space that substitutes for existing prison space.

SEC. 176. DISTRIBUTION OF GRANTS.

The Attorney General shall ensure that each State receives no less than .50 percent of the funds made available under this chapter.

SEC. 177. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this chapter $200,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998, of which 50 percent shall be used for construction grants and 50 percent shall be used for operating grants, except that the Attorney General may alter those allocations if the Attorney General certifies that there are compelling law enforcement reasons for doing so.

CHAPTER 3—JUDICIAL REMEDIES FOR PRISON CROWDING

SEC. 181. PURPOSE.

The purpose of this chapter is to provide for reasonable and proper enforcement of the eighth amendment.

SEC. 182. FINDINGS.

The Congress finds that—

(1) the Federal courts are unreasonably endangering the community by issuing sweeping prison and jail cap orders as a remedy for detention conditions that they hold are in conflict with the eighth amendment; and

(2) eighth amendment holdings frequently are unjustified because of the absence of a plaintiff inmate who has proven that detention conditions inflict cruel and unusual punishment of that inmate.

SEC. 183. APPROPRIATE REMEDIES.

(a) AMENDMENT OF TITLE 18, UNITED STATES CODE.—Subchapter C of chapter 229 of part 2 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 3626. Appropriate remedies with respect to prison crowding

"(a) REQUIREMENT OF SHOWING WITH RESPECT TO THE PLAINTIFF IN PARTICULAR.—

"(1) HOLDING.—A Federal court shall not hold prison or jail crowding unconstitutional under the eighth amendment except to the extent that an individual plaintiff inmate proves that the crowding causes the infliction of cruel and unusual punishment of that inmate.

"(2) RELIEF.—The relief in a case described in paragraph (1) shall extend no further than necessary to remove the conditions that are causing the cruel and unusual punishment of the plaintiff inmate.

"(b) INMATE POPULATION CEILINGS.—

"(1) REQUIREMENT OF SHOWING WITH RESPECT TO PARTICULAR PRISONERS.—A Federal court shall not place a ceiling on the inmate population of any Federal, State, or local detention facility as an equitable remedial measure for conditions that violate the eighth amendment unless crowding is inflicting cruel and unusual punishment on particular identified prisoners.

"(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed to have any effect on Federal judicial power to issue equitable relief other than that described in paragraph (1), including the requirement of improved medical or health care and the imposition of civil contempt fines or damages, where such relief is appropriate.

"(c) PERIODIC REOPENING.—Each Federal court order seeking to remedy an eighth amendment violation shall be reopened at the behest of a defendant for recommended modification at a minimum of 2-year intervals.".

(b) APPLICATION OF AMENDMENT.—Section 3626 of title 18, United States Code, as added by paragraph (1), shall apply to all outstanding court orders on the date of enactment of this Act. Any State or municipality shall be entitled to seek modification of any outstanding eighth amendment decree pursuant to that section.

(c) TECHNICAL AMENDMENT.—The subchapter analysis for subchapter C of chapter 229 of title 18, United States Code, is amended by adding at the end the following new item:

"3626. Appropriate remedies with respect to prison crowding.".

(d) SUNSET PROVISION.—This chapter and the amendments made by this chapter are repealed effective as of the date that is 5 years after the date of enactment of this Act.

CHAPTER 4—SENTENCES TO ACCOUNT FOR COSTS TO THE GOVERNMENT OF IMPRISONMENT, RELEASE, AND PROBATION

SEC. 191. IMPOSITION OF SENTENCE.

Section 3572(a) of title 18, United States Code, is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(2) by inserting after paragraph (5) the following new paragraph:

"(6) the expected costs to the government of any imprisonment, supervised release, or probation component of the sentence;".

SEC. 192. DUTIES OF THE SENTENCING COMMISSION.

Section 994 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(y) The Commission, in promulgating guidelines pursuant to subsection (a)(1), may include, as a component of a fine, the expected costs to the Government of any imprisonment, supervised release, or probation sentence that is ordered.".

TITLE II—SAFE SCHOOLS

SEC. 201. DEFINITION.

In this title, "former member of the Armed Forces" means a member of the Armed Forces of the United States who is involuntarily separated from the Armed Forces within the meaning of section 1141 of title 10, United States Code.

SEC. 202. AMERICA'S SAFE SCHOOLS PROGRAM.

(a) PROGRAM ESTABLISHMENT.—

(1) AMERICA'S SAFE SCHOOLS PROGRAM.—The program established by this section shall be referred to as "America's Safe Schools Program".

(2) AGREEMENTS.—The Secretary of Education, in consultation with the Secretary of Defense, may enter into an agreement with a local educational agency to pay, and may pay, for a period of 6 years, including any required periods of training, the salaries of former members of the Armed Forces who are hired within 5 years after the date of enactment of this Act as teachers assigned to public elementary and secondary schools.

(b) AMOUNT.—

(1) MAXIMUM.—(A) The maximum Federal share of an annual salary for the first 3 years that a teacher may be paid under an agreement described in subsection (a) is the annual salary earned by the teacher during his or her last year as a member of the Armed Forces.

(B) The maximum Federal share of an annual salary for the 4th through 6th years that a teacher may be paid under an agreement described in subsection (a) is 50 percent of the annual salary earned by the teacher during his or her last year as a member of the Armed Forces.

(2) ENTRY LEVEL.—To the extent that it is practicable to do so, a local educational agency shall hire a former member of the Armed Forces whose salary is to be paid under an agreement described in subsection (a) at a level of seniority, in consideration of the former member's years of service and training as a member of the Armed Forces, that will permit the former member to be paid at least the maximum amount of annual salary under paragraph (1).

(3) PRIORITY.—In making awards under this section the Attorney General may give priority to agencies located in communities that are adversely affected by the recent closing of a military base or facility.

(4) FORMULA.—The Attorney General shall ensure that each State receives no less than .50 percent of the funds made available under this title.

(c) ENLARGEMENT OF TEACHING STAFF.—It shall be a condition to payment of salaries under an agreement described in subsection (a) that the number of teachers in the public elementary and secondary schools in the school district served by the local educational agency (not including teachers whose salaries are paid in whole or in part under this title) shall not be diminished during the term of the agreement.

(d) PRIORITY FOR SAFE SCHOOL DISTRICTS.—The Secretary of Education shall give priority to school districts that have qualified as a safe school district under section 104 in entering into agreements under this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the program authorized by this section $100,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

SEC. 203. FEDERAL SAFE SCHOOL DISTRICTS.

(a) ELECTION TO QUALIFY.—

(1) IN GENERAL.—By decision of a local educational agency or by referendum of the voters in a school district served by a local educational agency, a school district may elect to qualify as a Federal safe school district under this section.

(2) DEFINITION.—In this section, "local educational agency" has the meaning stated in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891).

(b) FUNDING FOR ENHANCED SCHOOL SECURITY.—

(1) IN GENERAL.—The Attorney General may make a grant to a local educational agency serving a Federal safe school district or to a local law enforcement agency with jurisdiction over the school district, as appropriate, to pay for enhanced school security measures.

(2) ENHANCED SCHOOL SECURITY MEASURES.—The measures that may be funded by a grant under paragraph (1) include—

(A) equipping schools with metal detectors, fences, closed circuit cameras, and other physical security measures;

(B) providing increased police patrols in and around schools, including police hired pursuant to this title;

(C) mailings to parents at the beginning of the school year stating that the possession of a gun or other weapon in school will not be tolerated by school authorities;

(D) signs on each school indicating that the school is part of a Federal Safe School District; and

(E) gun hotlines.

(c) ENHANCED MANDATORY PENALTIES FOR DRUG TRAFFICKING AND WEAPONS OFFENSES.—

(1) APPLICATION OF FEDERAL LAW.—Notwithstanding any other provision of law, in a Federal safe school district—

(A) the offenses enacted by paragraph (2) shall apply;

(B) the United States attorney for the judicial district in which the school district is located shall prosecute as an adult any juvenile 16 years of age or older who uses or carries a firearm in or within 1,000 feet of a public or private elementary or secondary school.

(2) OFFENSES.—(A) Section 922 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(s) It shall be unlawful for—

"(1) a person who is less than 18 years of age; or

"(2) a person who is 18 years of age or older who does not have lawful authority to do so, to carry a firearm or otherwise cause a firearm to be transported into a public or private elementary or secondary school, or to possess a firearm within such a school, that is located within a school district that has elected to qualify as a Federal safe school district under section 203 of the Neighborhood Security Act of 1993.".

(B) Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(i)(1) A person who knowingly violates section 922(s) shall be fined under this title, imprisoned not more than 5 years, or both.

"(2) A person who knowingly violates section 922(s) by using a firearm shall be imprisoned for not more than 10 years.".

(C) The United States Sentencing Commission shall review and amend its sentencing guidelines to assign an offense level of at least 26 to a first offense under section 924(i)(2) of title 18, United States Code, as added by subparagraph (B).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the program authorized by this section $100,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

TITLE III—CRIMINAL ALIENS AND ALIEN SMUGGLING

Subtitle A—Deportation of Criminal Aliens

SEC. 301. DEPORTATION PROCEDURES FOR CERTAIN CRIMINAL ALIENS WHO ARE NOT PERMANENT RESIDENTS.

(a) ELIMINATION OF ADMINISTRATIVE HEARING FOR CERTAIN CRIMINAL ALIENS.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following new subsection:

"(c) DEPORTATION OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

"(1) Notwithstanding section 242, and subject to paragraph (5), the Attorney General may issue a final order of deportation against any alien described in paragraph (2) whom the Attorney General determines to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony).

"(2) An alien is described in this paragraph if the alien—

"(A) was not lawfully admitted for permanent residence at the time that proceedings under this section commenced, or

"(B) had permanent resident status on a conditional basis (as described in section 216) at the time that proceedings under this section commenced.

"(3) The Attorney General may delegate the authority in this section to the Commissioner or to any District Director of the Service.

"(4) No alien described in this section shall be eligible for—

"(A) any relief from deportation that the Attorney General may grant in his discretion, or

"(B) relief under section 243(h).

"(5) The Attorney General may not execute any order described in paragraph (1) until 14 calendar days have passed from the date that such order was issued, in order that the alien has an opportunity to apply for judicial review under section 106.".

(b) LIMITED JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(1) in the first sentence of subsection (a), by inserting "or pursuant to section 242A" after "under section 242(b)";

(2) in subsection (a)(1) and subsection (a)(3), by inserting "(including an alien described in section 242A)" after "aggravated felony"; and

(3) by adding at the end the following new subsection:

"(d) Notwithstanding subsection (c), a petition for review or for habeas corpus on behalf of an alien described in section 242A(c) may only challenge whether the alien is in fact an alien described in such section, and no court shall have jurisdiction to review any other issue.".

(c) TECHNICAL AMENDMENTS.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended—

(1) in subsection (a)—

(A) by striking "(a) IN GENERAL.—" and inserting the following:

"(b) DEPORTATION OF PERMANENT RESIDENT ALIENS.—

"(1) IN GENERAL.—"; and

(B) by inserting in the first sentence "permanent resident" after "correctional facilities for";

(2) in subsection (b)—

(A) by striking "(b) IMPLEMENTATION.—" and inserting "(2) IMPLEMENTATION.—"; and

(B) by striking "respect to an" and inserting "respect to a permanent resident";

(3) by striking subsection (c);

(4) in subsection (d)—

(A) by striking "(d) EXPEDITED PROCEEDINGS.—(1)" and inserting "(3) EXPEDITED PROCEEDINGS.—(A)";

(B) by inserting "permanent resident" after "in the case of any"; and

(C) by striking "(2)" and inserting "(B)";

(5) in subsection (e)—

(A) by striking "(e) REVIEW.—(1)" and inserting "(4) REVIEW.—(A)";

(B) by striking the second sentence; and

(C) by striking "(2)" and inserting "(B)";

(6) by inserting after the section heading the following new subsection:

"(a) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States."; and

(7) by amending the heading to read as follows:

"EXPEDITED DEPORTATION OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act.

SEC. 302. JUDICIAL DEPORTATION.

(a) JUDICIAL DEPORTATION.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following new subsection:

"(d) JUDICIAL DEPORTATION.—

"(1) AUTHORITY.—Notwithstanding any other provision of this Act, a United States district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony), if such an order has been requested prior to sentencing by the United States Attorney with the concurrence of the Commissioner.

"(2) PROCEDURE.—

"(A) The United States Attorney shall provide notice of intent to request judicial deportation promptly after the entry in the record of an adjudication of guilt or guilty plea. Such notice shall be provided to the court, to the alien, and to the alien's counsel of record.

"(B) Notwithstanding section 242B, the United States Attorney, with the concurrence of the Commissioner, shall file at least 20 days prior to the date set for sentencing a charge containing factual allegations regarding the alienage of the defendant and satisfaction by the defendant of the definition of aggravated felony.

"(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from deportation under section 212(c), the Commissioner shall provide the court with a recommendation and report regarding the alien's eligibility for relief under such section. The court shall either grant or deny the relief sought.

"(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

"(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to section 242(b).

"(iii) Nothing in this subsection shall limit the information a court of the United States may receive or consider for the purposes of imposing an appropriate sentence.

"(iv) The court may order the alien deported if the Attorney General demonstrates by clear and convincing evidence that the alien is deportable under this Act.

"(3) NOTICE, APPEAL, AND EXECUTION OF JUDICIAL ORDER OF DEPORTATION.—

"(A)(i) A judicial order of deportation or denial of such order may be appealed by either party to the court of appeals for the circuit in which the district court is located.

"(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements described in section 106.

"(iii) Upon execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of deportation is based, the expiration of the period described in section 106(a)(1), or the final dismissal of an appeal from such conviction, the order of deportation shall become final and shall be executed at the end of the prison term in accordance with the terms of the order.

"(B) As soon as is practicable after entry of a judicial order of deportation, the Commissioner shall provide the defendant with written notice of the order or deportation, which shall designate the defendant's country of choice for deportation and any alternate country pursuant to section 243(a).

"(4) DENIAL OF JUDICIAL ORDER.—Denial of a request for a judicial order of deportation

shall not preclude the Attorney General from initiating deportation proceedings pursuant to section 242 upon the same ground of deportability or upon any other ground of deportability provided under section 241(a).".

(b) TECHNICAL AMENDMENT.—The ninth sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by striking "The" and inserting "Except as provided in section 242A(d), the".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act.

SEC. 303. RESTRICTING DEFENSES TO DEPORTATION FOR CERTAIN CRIMINAL ALIENS.

(a) DEFENSES BASED ON SEVEN YEARS OF PERMANENT RESIDENCE.—The last sentence of section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended by striking "has served for such felony or felonies" and all that follows through the period and inserting "has been sentenced for such felony or felonies to a term of imprisonment of at least 5 years, if the time for appealing such conviction or sentence has expired and the sentence has become final.".

(b) DEFENSES BASED ON WITHHOLDING OF DEPORTATION.—Section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)) is amended—

(1) by striking the final sentence and inserting the following new subparagraph:

"(E) the alien has been convicted of an aggravated felony."; and

(2) by striking "or" at the end of subparagraph (C) and inserting "or" at the end of subparagraph (D).

SEC. 304. ENHANCING PENALTIES FOR FAILING TO DEPART, OR REENTERING, AFTER FINAL ORDER OF DEPORTATION.

(a) FAILURE TO DEPART.—Section 242(e) of the Immigration and Nationality Act (8 U.S.C. 1252(e)) is amended—

(1) by striking "paragraph (2), (3), or 4 of" the first time it appears; and

(2) by striking "shall be imprisoned not more than ten years" and inserting "shall be imprisoned not more than four years, or shall be imprisoned not more than ten years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 241(a).".

(b) REENTRY.—Section 276(b) of the Immigration and Nationality Act (8 U.S.C. 1326(b)) is amended—

(1) in paragraph (1)—

(A) by inserting after "commission of" the following: "three or more misdemeanors or"; and

(B) by striking "5" and inserting "10";

(2) in paragraph (2), by striking "15" and inserting "20"; and

(3) by adding at the end the following sentence:

"For the purposes of this subsection, the term 'deportation' includes any agreement in which an alien stipulates to deportation during a criminal trial under either Federal or State law.".

(c) COLLATERAL ATTACKS ON UNDERLYING DEPORTATION ORDER.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by adding after subsection (b) the following new subsection:

"(c) In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that—

"(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

"(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

"(3) the entry of the order was fundamentally unfair.".

SEC. 305. MISCELLANEOUS AND TECHNICAL CHANGES.

(a) FORM OF DEPORTATION HEARINGS.—The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: "; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with or without the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien.".

(b) CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.—No amendment made by this Act and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i)) shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

Subtitle B—Prevention and Punishment of Alien Smuggling

SEC. 311. INCREASED PENALTIES FOR ALIEN SMUGGLING.

Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) is amended—

(1) in paragraph (1)—

(A) by striking "or" at the end of subparagraph (C);

(B) by striking the comma at the end of subparagraph (D) and all that follows through the period and inserting "; or"; and

(C) by adding at the end the following:

"(E) engages in any conspiracy to commit any of the preceding acts, or aids or abets the commission of any of the preceding acts, shall be fined under title 18, United States Code, and shall be imprisoned not more than 10 years, for each alien with respect to whom any violation of this paragraph occurs."; and

(2) by adding at the end the following new paragraphs:

"(3) Any person who commits an act described in paragraph (1) who willfully subjects any alien to a substantial risk of death or serious bodily harm shall be subject to a term of imprisonment of not more than 10 years in addition to any term of imprisonment imposed under that paragraph.

"(4) Any person who in the perpetration of, or in the attempt to perpetrate, any violation of paragraph (1), causes the death of an alien shall be subject to the penalty of death, or life imprisonment, subject to appropriate procedures under chapter 228 of title 18, United States Code.

"(5) Any person who hires for employment an alien—

"(A) knowing that the alien is an unauthorized alien (as defined in section 274A(h)(3)); and

"(B) knowing that the alien has been brought into the United States in violation of this subsection,

shall be fined under title 18, United States Code, and shall be imprisoned for not more than 5 years.".

SEC. 312. SMUGGLING ALIENS FOR COMMISSION OF CRIMES.

Section 274(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(2)) is amended—

(1) in subparagraph (B)—

(A) by striking "or" at the end of clause (ii);

(B) by redesignating clause (iii) as clause (iv); and

(C) by inserting after clause (ii) the following:

"(iii) an offense committed with the intent that the alien unlawfully brought into the United States will commit an offense against the United States punishable for more than 1 year, including violations of or attempted violations of or aiding and abetting violations of or conspiring to violate the Controlled Substances Act (21 U.S.C. 802) or laws against prostitution, importation of aliens for immoral purposes, trafficking in firearms, money laundering, gang activities, kidnapping or ransom demands, fraudulent documents, or extortion, the smuggling of known or suspected terrorists or persons involved in organized crime,"; and

(2) at the end by striking "be fined" and all that follows through the period and inserting the following: "be fined under title 18, United States Code, and shall be imprisoned not more than 10 years.".

SEC. 313. ADDITION OF ALIEN SMUGGLING TO RICO.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or" after "law of the United States,";

(2) by inserting "or" at the end of subparagraph (E); and

(3) by adding at the end the following:

"(F) any act in violation of section 274 of the Immigration and Nationality Act.".

SEC. 314. EXPANDED FORFEITURE FOR SMUGGLING OR HARBORING ILLEGAL ALIENS.

Subsection 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)) is amended—

(1) by striking "(b)(1) Any conveyance" and all that follows through "of any State." and inserting the following:

"(b) SEIZURE AND FORFEITURE.—(1) Any property, real or personal, which facilitates or is intended to facilitate, or which has been used in or is intended to be used in the commission of a violation of subsection (a) or of sections 274A(a)(1) or 274A(a)(2), or which constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of subsection (a), shall be subject to seizure and forfeiture, except that—

"(A) no property used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under this paragraph unless it appears that the owner or other person in charge of the property was a consenting party or privy to the illegal act;

"(B) no property shall be forfeited under this paragraph by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than the owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State; and

"(C) no property shall be forfeited under this paragraph to the extent of an interest of any owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of the owner, unless the action or omission was committed by an employee or agent of the owner, and facilitated or was intended to facilitate, or was used in or intended to be used in, the commission of a violation of subsection (a) or of section 274A(a)(1) or 274A(a)(2) which was committed by the owner or which intended to further

the business interests of the owner, or to confer any other benefit upon the owner.";

(2) in paragraph (2)—

(A) by striking "conveyance" both places it appears and inserting "property"; and

(B) by striking "is being used in" and inserting "is being used in, is facilitating, has facilitated, or was intended to facilitate";

(3) in paragraphs (4) and (5) by striking "a conveyance" and "conveyance" each place either of them appears and inserting "property"; and

(4) in paragraph (4)—

(A) by striking "or" at the end of subparagraph (C);

(B) by striking the period at the end of subparagraph (D) and inserting "; or"; and

(C) by inserting at the end the following new subparagraph:

"(E) transfer custody and ownership of forfeited property to any Federal, State, or local agency pursuant to the Tariff Act of 1930 (19 U.S.C. 1616a(c)).".

SEC. 315. EXPANSION OF DEFINITION OF AGGRAVATED FELONY.

(a) EXPANSION OF DEFINITION.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as follows:

"(43) The term 'aggravated felony' means—

"(A) murder;

"(B) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code);

"(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18, United States Code) or in explosive materials (as defined in section 841(c) of that title);

"(D) an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $100,000;

"(E) an offense described in—

"(i) section 842 (h) or (i) of title 18, United States Code, or section 844 (d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

"(ii) section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924 (b) or (h) of title 18, United States Code (relating to firearms offenses); or

"(iii) section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);

"(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years;

"(G) a theft offense (including receipt of stolen property) or burglary offense for which a sentence of 5 years' imprisonment or more may be imposed;

"(H) an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

"(I) an offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to child pornography);

"(J) an offense described in—

"(i) section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations); or

"(ii) section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses),

for which a sentence of 5 years' imprisonment or more may be imposed;

"(K) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which a sentence of 5 years' imprisonment or more may be imposed;

"(L) an offense that—

"(i) relates to the owning, controlling, managing or supervising of a prostitution business;

"(ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) for commercial advantage; or

"(iii) is described in section 1581, 1582, 1583, 1584, 1585, or 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

"(M) an offense relating to perjury or subornation of perjury for which a sentence of 5 years' imprisonment or more may be imposed;

"(N) an offense described in—

"(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code; or

"(ii) section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents);

"(O) an offense that—

"(i) involves fraud or deceit in which the loss to the victim or victims exceeds $200,000; or

"(ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss to the Government exceeds $200,000;

"(P) an offense described in section 274(a)(1) of title 18, United States Code (relating to alien smuggling) for the purpose of commercial advantage;

"(Q) an offense described in section 1546(a) of title 18, United States Code (relating to document fraud), for the purpose of commercial advantage;

"(R) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

"(S) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to convictions entered before, on, or after the date of enactment of this Act.

SEC. 316. AMENDMENT OF SENTENCING GUIDELINES.

The United States Sentencing Commission shall review and, amend its sentencing guidelines to assign an offense level of at least 19 to a first offense under—

(1) section 274(a)(1) of the Immigration and Nationality Act, as amended by section 311(1);

(2) section 274(a) (3) and (5) of the Immigration and Nationality Act, as added by section 311(2); and

(3) section 274(a)(2) of the Immigration and Nationality Act, as amended by section 312.

SEC. 317. INCREASED PENALTY FOR VISA FRAUD.

(a) FALSE STATEMENT.—Section 1542 of title 18, United States Code, is amended by striking "fined not more than $2,000, imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(b) FORGERY.—Section 1543 of title 18, United States Code, is amended by striking "fined not more than $2,000, imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(c) MISUSE OF PASSPORT.—Section 1544 of title 18, United States Code, is amended by striking "fined not more than $2,000, imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(d) SAFE CONDUCT VIOLATION.—Section 1545 of title 18, United States Code, is amended by striking "fined not more than $2,000, imprisoned not more than three years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(e) FRAUD AND MISUSE OF VISAS.—Section 1546(a) of title 18, United States Code, is amended by striking "fined not more than $2,000, imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

SEC. 318. TRAINING OF AIRLINE PERSONNEL IN DETECTION OF FRAUDULENT DOCUMENTS.

(a) USE OF FUNDS.—Section 286(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1356(h)(2)) is amended—

(1) in subparagraph (A)(iv), by inserting ", including training of, and technical assistance to, commercial airline personnel on such detection" after "United States", and

(2) by adding at the end the following new subparagraph:

"(C) The Attorney General shall provide for expenditures for training and assistance described in subparagraph (A)(iv) in an amount for any fiscal year that is not less than 5 percent of the total of the amounts that are required to be refunded under subparagraph (A) for that fiscal year.".

(b) COMPLIANCE WITH DETECTION REGULATIONS.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by adding at the end the following new subsection:

"(o) Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.".

(c) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall apply to expenses incurred during or after fiscal year 1994.

(2) The Attorney General shall first issue, in proposed form, regulations referred to in section 212(o) of the Immigration and Nationality Act, as added by subsection (b), by not later than the date that is 90 days after the date of enactment of this Act.

Subtitle C—Border Patrol

SEC. 321. BORDER PATROL AGENTS.

There is authorized to be appropriated $60,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998 for the hiring of 1,000 additional Border Patrol agents.

SEC. 322. IMMIGRATION AND NATURALIZATION SERVICE CRIMINAL INVESTIGATORS.

There is to be authorized $77,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998 for the hiring of 1,000 additional Immigration and Naturalization Service criminal inspectors.

SEC. 323. CRIMINAL ALIEN TRACKING CENTER.

(a) OPERATION.—The Commissioner of Immigration and Naturalization, with the cooperation of the Director of the Federal Bureau of Investigation and the heads of other agencies, shall, under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a criminal alien tracking center.

(b) PURPOSE.—The criminal alien tracking center shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their conviction of aggravated felonies.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 1994 and $2,000,000 for each of fiscal years 1995, 1996, 1997, and 1998.

TITLE IV—GANGS, JUVENILES, DRUGS, AND PROSECUTORS

SEC. 401. SHORT TITLE.

This title may be cited as the "Anti-Gang and Youth Protection Act of 1993".

Subtitle A—Criminal Youth Gangs

SEC. 411. CRIMINAL STREET GANGS OFFENSES.

(a) OFFENSE.—Title 18, United States Code, is amended by inserting after chapter 93 the following new chapter:

"CHAPTER 94—PROHIBITED PARTICIPATION IN CRIMINAL STREET GANGS AND GANG CRIME

"Sec.
"1930. Crimes in furtherance of gangs.
"1931. Prohibited activity.
"1932. Penalties.
"1933. Investigative authority.

"§ 1930. Crimes in furtherance of gangs

"(a) FINDINGS.—The Congress makes the following findings:

"(1) Criminal street gangs have become increasing prevalent and entrenched in our society in the last several decades. In many areas of the country, these gangs exert considerable control over other members of their community, particularly through the use of violence and drugs. Criminal street gangs have also become more national in scope, extending their influence beyond the urban areas in which they originated.

"(2) The major activities of criminal street gangs are crimes of violence and the distribution and use of illegal drugs. It is through these activities that criminal street gangs directly affect interstate and foreign commerce, even when their particular activities, viewed in isolation, appear to be purely intrastate in character.

"(b) BASIS FOR CHAPTER.—On the basis of the findings stated in subsection (a), the Congress determines that the provisions of this chapter are necessary and proper for the purpose of carrying into execution the powers of Congress to regulate commerce and to establish criminal law.

"§ 1931. Prohibited activity

"(a) DEFINITIONS.—In this chapter—

"'criminal street gang' means an organization or group of 5 or more persons, whether formal or informal, who act in concert, or agree to act in concert, for a period in excess of 30 days, with a purpose that any of those persons alone, or in any combination, commit or will commit, 2 or more predicate gang crimes, 1 of which must occur after the date of enactment of this chapter and the last of which occurred within 10 years (excluding any period of imprisonment) after the commission of a prior predicate gang crime.

"'participate in a criminal street gang' means to act in concert with a criminal street gang with intent to commit, or with the intent that any other person associated with the criminal street gang will commit, 1 or more predicate gang crimes.

"'predicate gang crime' means—

"(A) any act or threat, or attempted act or threat, which is chargeable under Federal or State law and punishable by imprisonment for more than 1 year, involving murder, assault, kidnapping, robbery, extortion, burglary, arson, property damage or destruction, obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or manufacturing, importing, receiving, concealing, purchasing, selling, possessing, or otherwise dealing in a controlled substance or controlled substance analogue (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(B) any act punishable by imprisonment for more than 1 year under section 922 or 924 (a)(2), (b), (c), (g), or (h) (relating to receipt, possession, and transfer of firearms), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1512 (relating to tampering with a witness, victim, or informant), or section 1513 (relating to retaliating against a witness, victim, or informant); or

"(C) any act punishable under subsection (b)(5).

"'State' means a State, the District of Columbia, and any commonwealth, territory, or possession of the United States.

"(b) UNLAWFUL ACTS.—It shall be unlawful—

"(1) to commit, or to attempt to commit, a predicate gang crime with intent to promote or further the activities of a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such a gang;

"(2) to participate, or attempt to participate, in a criminal street gang, or conspire to do so;

"(3) to command, counsel, persuade, induce, entice, or coerce any individual to participate in a criminal street gang;

"(4) to employ, use, command, counsel, persuade, induce, entice, or coerce any individual to commit, cause to commit, or facilitate the commission of, a predicate gang crime, with intent to promote the activities of a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such a gang; or

"(5) to use any communication facility, as defined in section 403(b) of the Controlled Substances Act (21 U.S.C. 843(b)), in causing or facilitating the commission, or attempted commission, of a predicate gang crime with intent to promote or further the activities of a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such a gang. Each separate use of a communication facility shall be a separate offense under this subsection.

"§ 1932. Penalties

"(a) PENALTIES OF UP TO 20 YEARS OR LIFE IMPRISONMENT.—A person who violates section 1931(b) (1) or (2) shall be punished by imprisonment for not more than 20 years, or by imprisonment for any term of years or for life if the violation is based on a predicate gang crime for which the maximum penalty includes life imprisonment, and if a person commits such a violation after 1 or more prior convictions for such a predicate gang crime, that is not part of the instant violation, such person shall be sentenced to a term of imprisonment which shall not be less than 10 years and which may be for any term of years exceeding 10 years or for life.

"(b) PENALTIES BETWEEN 5 AND 10 YEARS.—A person who violates section 1931(b) (3) or (4) shall be sentenced to imprisonment for not less than 5 nor more than 10 years, and if a person who was the subject of the act was less than 18 years of age, to imprisonment for 10 years. A term of imprisonment under this subsection shall run consecutively to any other term of imprisonment, including that imposed for any other violation of this chapter.

"(c) PENALTIES OF UP TO 5 YEARS.—A person who violates section 1931(b)(5) shall be punished by imprisonment for not more than 5 years.

"(d) ADDITIONAL PENALTIES.—

"(1) IN GENERAL.—In addition to the other penalties authorized by this section—

"(A) a person who violates section 1931(b)(1) or (2), 1 of whose predicate gang crimes involves murder or conspiracy to commit murder which results in the taking of a life, and who commits, counsels, commands, induces, procures, or causes that murder, shall be punished by death or by imprisonment for life;

"(B) a person who violates section 1931(b)(1) or (2), 1 of whose predicate gang crimes involves attempted murder or conspiracy to commit murder, shall be sentenced to a term of imprisonment which shall not be less than 20 years and which may be for any term of years exceeding 20 years or for life; and

"(C) a person who violates section 1931(b)(1) or (2), and who at the time of the offense occupied a position of organizer or supervisor, or other position of management in that street gang, shall be sentenced to a term of imprisonment which shall not be less than 15 years and which may be for any term of years exceeding 15 years or for life.

"(2) PRESUMPTION.—For purposes of paragraph (1)(C), if it is shown that the defendant counseled, commanded, induced, or procured 5 or more individuals to participate in a street gang, there shall be a rebuttable presumption that the defendant occupied a position of organizer, supervisor, or other position of management in the gang.

"(e) FORFEITURE.—

"(1) IN GENERAL.—A person who violates section 1931(b) (1) or (2) shall, in addition to any other penalty and irrespective of any provision of State law, forfeit to the United States—

"(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as a result of the violation; and

"(B) any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the violation.

"(2) APPLICATION OF CONTROLLED SUBSTANCES ACT.—Section 413 (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), and (p) of the Controlled Substances Act (21 U.S.C. 853 (b), (c), and (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), and (p)) shall apply to a forfeiture under this section.

"§ 1933. Investigative authority

"The Attorney General and the Secretary of the Treasury may investigate offenses under this chapter in accordance with an agreement that shall be entered into by the Attorney General and the Secretary of the Treasury.".

(b) TECHNICAL AMENDMENT.—The part analysis for part I of title 18, United States Code, is amended by inserting after the item for chapter 93 the following new item:

"94. Prohibited participation in criminal street gangs and gang crimes 1930".

(c) SENTENCING GUIDELINES INCREASE FOR GANG CRIMES.—The United States Sentencing Commission shall at the earliest opportunity amend the sentencing guidelines to increase by at least 4 levels the base offense level for any felony committed for the purpose of gaining entrance into, or maintaining or increasing position in, a criminal street gang. For purposes of this subsection, "criminal street gang" means any organization, or group, of 5 or more individuals, whether formal or informal, who act in concert, or agree to act in concert, for a period in excess of 30 days, with the intent that any of those individuals alone, or in any combination, commit or will commit, 2 or more acts punishable under State or Federal law by imprisonment for more than 1 year.

SEC. 412. CRIMES INVOLVING THE USE OF MINORS AS RICO PREDICATES.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or" before "(E)"; and

(2) by inserting before the semicolon at the end of the paragraph the following: ", or (F) any offense against the United States that is punishable by imprisonment for more than 1 year and that involved the use of a person below the age of 18 years in the commission of the offense".

SEC. 413. SERIOUS JUVENILE DRUG OFFENSES AS ARMED CAREER CRIMINAL ACT PREDICATES.

Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) by striking "or" at the end of clause (i);

(2) by striking "and" at the end of clause (ii) and inserting "or"; and

(3) by adding at the end the following:

"(iii) any act of juvenile delinquency that if committed by an adult would be a serious drug offense described in this paragraph; and".

SEC. 414. ADULT PROSECUTION OF SERIOUS JUVENILE OFFENDERS.

Section 5032 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by striking "an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3))," and inserting "an offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844, or 846), section 1002(a), 1003, 1005, 1009, 1010(b)(1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), or (3), or 963),"; and

(B) by striking "922(p)" and inserting "924(b), (g), or (h)";

(2) in the fourth undesignated paragraph—

(A) by striking "an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959)" and inserting "an offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844, or 846), section 1002(a), 1005, 1009, 1010(b)(1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959, 960(b)(1), (2), or (3), or 963), or section 924(b), (g), or (h) of this title,"; and

(B) by striking "subsection (b)(1)(A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), (3))" and inserting "or an offense (or conspiracy or attempt to commit an offense) described in section 401(b)(1)(A), (B), or (C), (d), or (e), or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), (B), or (C), (d), or (e), 844, or 846) or section 1002(a), 1003, 1009, 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), or (3), or 963)"; and

(3) in the fifth undesignated paragraph by adding at the end the following: "In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh heavily in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.".

SEC. 415. INCREASED PENALTIES FOR EMPLOYING CHILDREN TO DISTRIBUTE DRUGS NEAR SCHOOLS AND PLAYGROUNDS.

Section 419 of the Controlled Substances Act (21 U.S.C. 860) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c) Notwithstanding any other law, any person at least 18 years of age who knowingly and intentionally—

"(1) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to violate this section; or

"(2) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to assist in avoiding detection or apprehension for any offense under this section by any Federal, State, or local law enforcement official,

is punishable by a term of imprisonment, a fine, or both, up to triple those authorized by section 401.".

SEC. 416. INCREASED PENALTIES FOR DRUG TRAFFICKING NEAR PUBLIC HOUSING.

Section 419 of the Controlled Substances Act (21 U.S.C. 860) is amended—

(1) in subsection (a) by striking "playground, or within" and inserting "playground, or housing facility owned by a public housing authority, or within"; and

(2) in subsection (b) by striking "playground, or within" and inserting "playground, or housing facility owned by a public housing authority, or within".

SEC. 417. INCREASED PENALTIES FOR TRAVEL ACT CRIMES INVOLVING VIOLENCE AND CONSPIRACY TO COMMIT CONTRACT KILLINGS.

(a) TRAVEL ACT PENALTIES.—Section 1952(a) of title 18, United States Code, is amended by striking "and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both." and inserting "and thereafter performs or attempts to perform—

"(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or

"(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.".

(b) MURDER CONSPIRACY PENALTIES.—Section 1958(a) of title 18, United States Code, is amended by inserting "or who conspires to do so" before "shall be fined" the first place it appears.

SEC. 418. AMENDMENTS CONCERNING RECORDS OF CRIMES COMMITTED BY JUVENILES.

(a) Section 5038 of title 18, United States Code, is amended by striking subsections (d) and (f), redesignating subsection (e) as subsection (d), and by adding at the end new subsections (e) and (f) as follows:

"(e) Whenever a juvenile has been found guilty of committing an act which if committed by an adult would be an offense described in clause (3) of the first paragraph of section 5032 of this title, the juvenile shall be fingerprinted and photographed, and the fingerprints and photograph shall be sent to the Federal Bureau of Investigation, Identification Division. The court shall also transmit to the Federal Bureau of Investigation, Identification Division, the information concerning the adjudication, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matter was a juvenile adjudication. The fingerprints, photograph, and other records and information relating to a juvenile described in this subsection, or to a juvenile who is prosecuted as an adult, shall be made available in the manner applicable to adult defendants.

"(f) In addition to any other authorization under this section for the reporting, retention, disclosure, or availability of records or information, if the law of the State in which a Federal juvenile delinquency proceeding takes place permits or requires the reporting, retention, disclosure, or availability of records or information relating to a juvenile or to a juvenile delinquency proceeding or adjudication in certain circumstances, then such reporting, retention, disclosure, or availability is permitted under this section whenever the same circumstances exist.".

(b) Section 3607 of title 18, United States Code, is repealed, and the corresponding item in the chapter analysis for chapter 229 of title 18 is deleted.

(c) Section 401(b)(4) of the Controlled Substances Act (21 U.S.C. 841(b)(4)) is amended by striking "and section 3607 of title 18".

SEC. 419. ADDITION OF ANTI-GANG BYRNE GRANT FUNDING OBJECTIVE.

Section 501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751) is amended—

(1) in paragraph (20) by striking "and" at the end;

(2) in paragraph (21) by striking the period and inserting "; and"; and

(3) by inserting after paragraph (21) the following new paragraph:

"(22) law enforcement and prevention programs relating to gangs, or to youth who are involved or at risk of involvement in gangs.".

Subtitle B—Gang Prosecution

SEC. 431. ADDITIONAL PROSECUTORS.

There is authorized to be appropriated $20,000,000 for each of fiscal years 1994, 1995,

1996, 1997, and 1998 for the hiring of additional Assistant United States Attorneys to prosecute violent youth gangs.

SEC. 432. GANG INVESTIGATION COORDINATION AND INFORMATION COLLECTION.

(a) COORDINATION.—The Attorney General (or the Attorney General's designee), in consultation with the Secretary of the Treasury (or the Secretary's designee), shall develop a national strategy to coordinate gang-related investigations by Federal law enforcement agencies.

(b) DATA COLLECTION.—The Director of the Federal Bureau of Investigation shall acquire and collect information on incidents of gang violence for inclusion in an annual uniform crime report.

(c) REPORT.—The Attorney General shall prepare a report on national gang violence outlining the strategy developed under subsection (a) to be submitted to the President and Congress by January 1, 1995.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $1,000,000 for fiscal year 1994.

SEC. 433. CONTINUATION OF FEDERAL-STATE FUNDING FORMULA.

Section 504(a)(1) of title I of the Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3754(a)(1)) is amended by striking "1992" and inserting "1993".

SEC. 434. GRANTS FOR MULTIJURISDICTIONAL DRUG TASK FORCES.

Section 504(f) of title I of the Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3754(f)) is amended by inserting "and gang" after "Except for grants awarded to State and local governments for the purpose of participating in multijurisdictional drug".

TITLE V—DRUG CONTROL AND RURAL CRIME

Subtitle A—Drug Trafficking in Rural Areas

SEC. 501. AUTHORIZATIONS FOR RURAL LAW ENFORCEMENT AGENCIES.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a)(9) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

"(9) There are authorized to be appropriated to carry out part O $50,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.".

(b) AMENDMENT TO BASE ALLOCATION.—Section 1501(a)(2)(A) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking "$100,000" and inserting "$250,000".

SEC. 502. RURAL CRIME AND DRUG ENFORCEMENT TASK FORCES.

(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act, the Attorney General, in consultation with the Governors, mayors, and chief executive officers of State and local law enforcement agencies, shall establish a Rural Crime and Drug Enforcement Task Force in each of the Federal judicial districts which encompass significant rural lands.

(b) TASK FORCE MEMBERSHIP.—The task forces established under subsection (a) shall be chaired by the United States Attorney for the respective Federal judicial district. The task forces shall include representatives from—

(1) State and local law enforcement agencies;

(2) the Drug Enforcement Administration;

(3) the Federal Bureau of Investigation;

(4) the Immigration and Naturalization Service;

(5) the Customs Service;

(6) the United States Marshals Service; and

(7) law enforcement officers from the United States Park Police, United States Forest Service and Bureau of Land Management, and such other Federal law enforcement agencies as the Attorney General may direct.

SEC. 503. CROSS-DESIGNATION OF FEDERAL OFFICERS.

(a) IN GENERAL.—The Attorney General may cross-designate up to 100 law enforcement officers from each of the agencies specified under section 1502(b)(6) of the Omnibus Crime Control and Safe Streets Act of 1968 with jurisdiction to enforce the provisions of the Controlled Substances Act on non-Federal lands and title 18 of the United States Code to the extent necessary to effect the purposes of this Act.

(b) ADEQUATE STAFFING.—The Attorney General shall ensure that each of the task forces established in accordance with this title are adequately staffed with investigators and that additional investigators are provided when requested by the task force.

SEC. 504. RURAL DRUG ENFORCEMENT TRAINING.

(a) SPECIALIZED TRAINING FOR RURAL OFFICERS.—The Director of the Federal Law Enforcement Training Center shall develop a specialized course of instruction devoted to training law enforcement officers from rural agencies in the investigation of drug trafficking and related crimes.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out subsection (a) $1,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

Subtitle B—Rural Drug Prevention and Treatment

SEC. 511. RURAL SUBSTANCE ABUSE TREATMENT AND EDUCATION GRANTS.

Part A of title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end the following new section:

"SEC. 509H. RURAL SUBSTANCE ABUSE TREATMENT.

"(a) IN GENERAL.—The Director of the Office for Treatment Improvement (referred to in this section as the 'Director') shall establish a program to provide grants to hospitals, community health centers, migrant health centers, health entities of Indian tribes and tribal organizations (as defined in section 1913(b)(5)), and other appropriate entities that serve nonmetropolitan areas to assist such entities in developing and implementing projects that provide, or expand the availability of, substance abuse treatment services.

"(b) REQUIREMENTS.—To receive a grant under this section a hospital, community health center, or treatment facility shall—

"(1) serve a nonmetropolitan area or have a substance abuse treatment program that is designed to serve a nonmetropolitan area;

"(2) operate, or have a plan to operate, an approved substance abuse treatment program;

"(3) agree to coordinate the project assisted under this section with substance abuse treatment activities within the State and local agencies responsible for substance abuse treatment; and

"(4) prepare and submit an application in accordance with subsection (c).

"(c) APPLICATION.—

"(1) IN GENERAL.—To be eligible to receive a grant under this section an entity shall submit an application to the Director at such time, in such manner, and containing such information as the Director shall require.

"(2) COORDINATED APPLICATIONS.—State agencies that are responsible for substance abuse treatment may submit coordinated grant applications on behalf of entities that are eligible for grants pursuant to subsection (b).

"(d) PREVENTION PROGRAMS.—

"(1) IN GENERAL.—Each entity receiving a grant under this section may use a portion of such grant funds to further community-based substance abuse prevention activities.

"(2) REGULATIONS.—The Director, in consultation with the Director of the Office of Substance Abuse Prevention, shall promulgate regulations regarding the activities described in paragraph (1).

"(e) SPECIAL CONSIDERATION.—In awarding grants under this section the Director shall give priority to—

"(1) projects sponsored by rural hospitals that are qualified to receive rural health care transition grants as provided for in section 4005(e) of the Omnibus Budget Reconciliation Act of 1987;

"(2) projects serving nonmetropolitan areas that establish links and coordinate activities between hospitals, community health centers, community mental health centers, and substance abuse treatment centers; and

"(3) projects that are designed to serve areas that have no available existing treatment facilities.

"(f) DURATION.—Grants awarded under subsection (a) shall be for a period not to exceed 3 years, except that the Director may establish a procedure for renewal of grants under subsection (a).

"(g) GEOGRAPHIC DISTRIBUTION.—To the extent practicable, the Director shall provide grants to fund at least one project in each State.

"(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section there is authorized to be appropriated $25,000,000 for each of fiscal years 1994 and 1995 and $20,000,000 for each of fiscal years 1996, 1997, and 1998.".

Subtitle C—Rural Areas Enhancement

SEC. 521. ASSET FORFEITURE.

The assets seized as a result of investigations initiated by a Rural Drug Enforcement Task Force shall be used primarily to enhance the operations of the task force and its participating State and local enforcement agencies.

SEC. 522. PROSECUTION OF CLANDESTINE LABORATORY OPERATORS.

(a) CRIMINAL CHARGES.—State and Federal prosecutors, when bringing charges against the operators of clandestine methamphetamine and other dangerous drug laboratories, shall, to the fullest extent possible, include, in addition to drug-related counts, counts involving infringements of the Resource Conservation and Recovery Act or any other environmental protection Act, including—

(1) illegal disposal of hazardous waste; and

(2) knowing endangerment of the environment.

(b) CIVIL ACTIONS.—Federal prosecutors may bring suit against the operators of clandestine methamphetamine and other dangerous drug laboratories for environmental and health related damages caused by the operators in their manufacture of illicit substances.

Subtitle D—Chemical Control

SEC. 531. SHORT TITLE.

This title may be cited as the "Chemical Control Amendments Act of 1993".

SEC. 532. 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. 533. 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. 534. 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. 535. 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. 536. 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. 537. 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. 538. 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. 539. 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. 540. 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. 541. 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. 542. 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. 543. ATTORNEY GENERAL ACCESS TO THE NATIONAL PRACTITIONER DATA BANK.

Part B of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11131 et seq.) is amended by adding at the end the following new section:

"SEC. 428. DISCLOSURE OF INFORMATION TO THE ATTORNEY GENERAL.

"Information respecting physicians or other licensed health care practitioners reported to the Secretary (or to the agency designated under section 424(b)) under this part or section 1921 of the Social Security Act (42 U.S.C. 1396r-2) shall be provided to the Attorney General. The Secretary shall—

"(1) transmit to the Attorney General such information as the Attorney General may designate or request to assist the Drug Enforcement Administration in the enforcement of the Controlled Substances Act (21 U.S.C. 801 et seq.) and other laws enforced by the Drug Enforcement Administration; and

"(2) transmit such information related to health care providers as the Attorney General may designate or request to assist the Federal Bureau of Investigation in the enforcement of title 18, the Act entitled 'An Act to regulate the practice of pharmacy and the sale of poison in the consular districts of the United States in China', approved March 3, 1915 (21 U.S.C. 201 et seq.), and chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.).".

SEC. 544. REGULATIONS AND EFFECTIVE DATE.

(a) REGULATIONS.—The Attorney General shall, not later than 90 days after the date of enactment of this subtitle, issue regulations necessary to carry out this subtitle.

(b) EFFECTIVE DATE.—This subtitle and the amendments made by this subtitle shall become effective on the date that is 120 days after the date of enactment of this subtitle.

Subtitle E—Personnel

SEC. 551. MORE AGENTS FOR THE DRUG ENFORCEMENT ADMINISTRATION.

There are authorized to be appropriated for the hiring of additional Drug Enforcement Administration agents $20,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

SEC. 552. ADEQUATE STAFFING OF THE OFFICE OF NATIONAL DRUG POLICY.

Section 1003(d)(1) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502(d)(1) is amended by striking "such" and inserting "at least 75 and such additional".

TITLE VI—PUNISHMENT AND DETERRENCE

Subtitle A—Death Penalty

SEC. 601. SHORT TITLE.

This title may be cited as the "Federal Death Penalty Act of 1993".

SEC. 602. DEATH PENALTY PROCEDURES.

(a) ADDITION OF CHAPTER TO TITLE 18, UNITED STATES CODE.—Title 18, United States Code, is amended by inserting after chapter 227 the following new chapter:

"CHAPTER 228—DEATH PENALTY PROCEDURES

"Sec.
"3591. Sentence of death.
"3592. Factors to be considered in determining whether a sentence of death is justified.
"3593. Special hearing to determine whether a sentence of death is justified.
"3594. Imposition of a sentence of death.
"3595. Review of a sentence of death.
"3596. Implementation of a sentence of death.
"3597. Use of State facilities.
"3598. Appointment of counsel.
"3599. Collateral attack on judgment imposing sentence of death.
"3600. Application in Indian country.

"§ 3591. Sentence of death

"A defendant who has been found guilty of—

"(1) an offense described in section 794 or section 2381;

"(2) an offense described in section 1751(c) if the offense, as determined beyond a reasonable doubt at a hearing under section 3593, constitutes an attempt to murder the President of the United States and results in bodily injury to the President or comes dangerously close to causing the death of the President;

"(3) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21

U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section which involved not less than twice the quantity of controlled substance described in subsection (b)(2)(A) or twice the gross receipts described in subsection (b)(2)(B);

"(4) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer, or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or members of the family or household of such a person;

"(5) an offense constituting a felony violation of the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), where the defendant, intending to cause death or acting with reckless disregard for human life, engages in such a violation, and the death of another person results in the course of the violation or from the use of the controlled substance involved in the violation; or

"(6) any other offense for which a sentence of death is provided if the defendant, as determined beyond a reasonable doubt at a hearing under section 3593, caused the death of a person intentionally, knowingly, or through recklessness manifesting extreme indifference to human life, or caused the death of a person through the intentional infliction of serious bodily injury,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense or who is mentally retarded.

"§ 3592. Factors to be considered in determining whether a sentence of death is justified

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) MENTAL CAPACITY.—The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

"(2) DURESS.—The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

"(3) PARTICIPATION IN OFFENSE MINOR.—The defendant's participation in the offense, which was committed by another, was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

"(4) NO SIGNIFICANT CRIMINAL HISTORY.—The defendant did not have a significant history of other criminal conduct.

"(5) DISTURBANCE.—The defendant committed the offense under severe mental or emotional disturbance.

"(6) VICTIM'S CONSENT.—The victim consented to the criminal conduct that resulted in the victim's death.

The jury, or if there is no jury, the court, shall consider whether any other aspect of the defendant's background, character or record or any other circumstance of the offense that the defendant may proffer as a mitigating factor exists.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(1), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) PREVIOUS ESPIONAGE OR TREASON CONVICTION.—The defendant has previously been convicted of another offense involving espionage or treason for which a sentence of life imprisonment or death was authorized by statute.

"(2) RISK OF SUBSTANTIAL DANGER TO NATIONAL SECURITY.—In the commission of the offense the defendant knowingly created a grave risk to the national security.

"(3) RISK OF DEATH TO ANOTHER.—In the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591 (2) or (6), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) CONDUCT OCCURRED DURING COMMISSION OF SPECIFIED CRIMES.—The conduct resulting in death occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 36 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property by explosives), section 844(i) (destruction of property affecting interstate commerce by explosives), section 1116 (killing or attempted killing of diplomats), section 1118 (prisoners serving life term), section 1201 (kidnapping), section 1203 (hostage taking), section 1751 (violence against the President or Presidential staff), section 1992 (wrecking trains), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2339A (use of weapons of mass destruction), or section 2381 (treason) of this title, section 1826 of title 28 (persons in custody as recalcitrant witnesses or hospitalized following insanity acquittal), or section 902 (i) or (n) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472 (i) or (n) (aircraft piracy)).

"(2) INVOLVEMENT OF FIREARM OR PREVIOUS CONVICTION OF VIOLENT FELONY INVOLVING FIREARM.—The defendant—

"(A) during and in relation to the commission of the offense or in escaping or attempting to escape apprehension used or possessed a firearm (as defined in section 921); or

"(B) has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than 1 year, involving the use of attempted or threatened use of a firearm (as defined in section 921), against another person.

"(3) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(4) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of 2 or more Federal or State offenses, each punishable by a term of imprisonment of more than 1 year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(5) GRAVE RISK OF DEATH TO ADDITIONAL PERSONS.—The defendant, in the commission of the offense or in escaping or attempting to escape apprehension, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) HEINOUS, CRUEL, OR DEPRAVED MANNER OF COMMISSION.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

"(7) PROCUREMENT OF OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(8) COMMISSION OF THE OFFENSE FOR PECUNIARY GAIN.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(9) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation.

"(10) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

"(11) TYPE OF VICTIM.—The defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice President-elect, the Vice President-designate, or, if there was no Vice President, the officer next in order of succession to the office of the President of the United States, or any person acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A), if that official was in the United States on official business; or

"(D) a Federal public servant who was outside of the United States or who was a Federal judge, a Federal law enforcement officer, an employee (including a volunteer or contract employee) of a Federal prison, or an official of the Federal Bureau of Prisons—

"(i) while such public servant was engaged in the performance of his official duties;

"(ii) because of the performance of such public servant's official duties; or

"(iii) because of such public servant's status as a public servant.

For purposes of this paragraph, the terms 'President-elect' and 'Vice President-elect'

mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with sections 1 and 2 of title 3; a 'Federal law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense; 'Federal prison' means a Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government; and 'Federal judge' means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate judge.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(d) AGGRAVATING FACTORS FOR DRUG OFFENSE DEATH PENALTY.—In determining whether a sentence of death is justified for an offense described in section 3591 (3), (4), or (5), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(2) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(3) PREVIOUS SERIOUS DRUG FELONY CONVICTION.—The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

"(4) USE OF FIREARM.—In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm (as defined in section 921) to threaten, intimidate, assault, or injure a person.

"(5) DISTRIBUTION TO PERSONS UNDER 21.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act (21 U.S.C. 859) which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(6) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act (21 U.S.C. 860) which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(7) USING MINORS IN TRAFFICKING.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act (21 U.S.C. 861) which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(8) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"§ 3593. Special hearing to determine whether a sentence of death is justified

"(a) NOTICE BY THE GOVERNMENT.—Whenever the Government intends to seek the death penalty for an offense described in section 3591, the attorney for the Government, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, shall sign and file with the court, and serve on the defendant, a notice that the Government in the event of conviction will seek the sentence of death. The notice shall set forth the aggravating factor or factors enumerated in section 3592, and any other aggravating factor not specifically enumerated in section 3592, that the Government, if the defendant is convicted, will seek to prove as the basis for the death penalty. The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family. The court may permit the attorney for the Government to amend the notice upon a showing of good cause.

"(b) HEARING BEFORE A COURT OR JURY.—When the attorney for the Government has filed a notice as required under subsection (a) and the defendant is found guilty of an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under the section is necessary; or

"(3) before the court alone, upon motion of the defendant and with the approval of the attorney for the Government.

A jury impaneled pursuant to paragraph (2) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—At the hearing, information may be presented as to—

"(1) any matter relating to any mitigating factor listed in section 3592 and any other mitigating factor; and

"(2) any matter relating to any aggravating factor listed in section 3592 for which notice has been provided under subsection (a) and (if information is presented relating to such a listed factor) any other aggravating factor for which notice has been so provided.

The information presented may include the trial transcript and exhibits. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant. The information presented by the Government in support of factors concerning the effect of the offense on the victim and the victim's family may include oral testimony, a victim impact statement that identifies the victim of the offense and the nature and extent of harm and loss suffered by the victim and the victim's family, and other relevant information. Information is admissible regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the Government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for the Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of an aggravating factor is on the Government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the evidence.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591(1), an aggravating factor required to be considered under section 3592(b) is found to exist;

"(2) an offense described in section 3591 (2) or (6), an aggravating factor required to be considered under section 3592(c) is found to exist; or

"(3) an offense described in section 3591 (3), (4), or (5), an aggravating factor required to be considered under section 3592(d) is found to exist,

the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist under subsection (d) outweigh any mitigating factor or factors. The jury, or if there is no jury, the court shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating factor or if it finds one or more aggravating factors which outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

"(f) SPECIAL PRECAUTION TO ENSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not be influenced by prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or any victim may be.

"§ 3594. Imposition of a sentence of death

"Upon the recommendation under section 3593(e) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without the possibility of release.

"§ 3595. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal of the sentence must be filed within the time specified for the filing of a notice of appeal of the judgment of conviction. An appeal of the sentence under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—

"(1) AFFIRMANCE.—If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor;

"(B) the evidence and information support the special findings of the existence of an aggravating factor or factors; and

"(C) the proceedings did not involve any other prejudicial error requiring reversal of the sentence that was properly preserved for and raised on appeal,

it shall affirm the sentence.

"(2) REMAND.—In a case in which the sentence is not affirmed under paragraph (1), the court of appeals shall remand the case for reconsideration under section 3593 or for imposition of another authorized sentence as appropriate, except that the court shall not reverse a sentence of death on the ground that an aggravating factor was invalid or was not supported by the evidence and information if at least one aggravating factor required to be considered under section 3592 remains which was found to exist and the court, on the basis of the evidence submitted at trial and the information submitted at the sentencing hearing, finds no mitigating factor or finds that the remaining aggravating factor or factors which were found to exist outweigh any mitigating factors.

"(3) STATEMENT OF REASONS.—The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"§ 3596. Implementation of a sentence of death

"(a) IN GENERAL.—A person who has been sentenced to death pursuant to this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States Marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the manner prescribed by such law.

"(b) SPECIAL BARS TO EXECUTION.—A sentence of death shall not be carried out upon a person who lacks the mental capacity to understand the death penalty and why it was imposed on that person, or upon a woman while she is pregnant.

"(c) EMPLOYEES MAY DECLINE TO PARTICIPATE.—No employee of any State department of corrections, the Federal Bureau of Prisons, or the United States Marshals Service, and no employee providing services to that department, bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participate in any execution' includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

"§ 3597. Use of State facilities

"A United States Marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"§ 3598. Appointment of counsel

"(a) REPRESENTATION OF INDIGENT DEFENDANTS.—This section shall govern the appointment of counsel for any defendant against whom a sentence of death is sought, or on whom a sentence of death has been imposed, for an offense against the United States, where the defendant is or becomes financially unable to obtain adequate representation. Such a defendant shall be entitled to appointment of counsel from the commencement of trial proceedings until one of the conditions specified in section 3599(b) has occurred. This section shall not affect the appointment of counsel and the provision of ancillary legal services under section 408(q)(4), (5), (6), (7), (8), (9), and (10) of the Controlled Substances Act (21 U.S.C. 848 (q)(4), (5), (6), (7), (8), (9), and (10)).

"(b) REPRESENTATION BEFORE FINALITY OF JUDGMENT.—A defendant within the scope of this section shall have counsel appointed for trial representation as provided in section 3005. At least 1 counsel so appointed shall continue to represent the defendant until the conclusion of direct review of the judgment, unless replaced by the court with other qualified counsel.

"(c) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment imposing a sentence of death has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the Government shall promptly notify the district court that imposed the sentence. Within 10 days after receipt of such notice, the district court shall proceed to make a determination whether the defendant is eligible under this section for appointment of counsel for subsequent proceedings. On the basis of the determination, the court shall issue an order—

"(1) appointing 1 or more counsel to represent the defendant upon a finding that the defendant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel;

"(2) finding, after a hearing if necessary, that the defendant rejected appointment of counsel and made the decision with an understanding of its legal consequences; or

"(3) denying the appointment of counsel upon a finding that the defendant is financially able to obtain adequate representation.

Counsel appointed pursuant to this subsection shall be different from the counsel who represented the defendant at trial and on direct review unless the defendant and counsel request a continuation or renewal of the earlier representation.

"(d) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant who is entitled to appointment of counsel under this section, at least 1 counsel appointed for trial representation must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the trial of felony cases in the federal district courts. If new counsel is appointed after judgment, at least 1 counsel so appointed must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet the standards prescribed in the 2 preceding sentences, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration

of the seriousness of the penalty and the nature of the litigation.

"(e) APPLICABILITY OF CRIMINAL JUSTICE ACT.—Except as otherwise provided in this section, section 3006A shall apply to appointments under this section.

"(f) CLAIMS OF INEFFECTIVENESS OF COUNSEL.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28 in a capital case shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"§ 3599. Collateral attack on judgment imposing sentence of death

"(a) TIME FOR MAKING SECTION 2255 MOTION.—In a case in which a sentence of death has been imposed, and the judgment has become final as described in section 3598(c), a motion in the case under section 2255 of title 28 shall be filed within 90 days of the issuance of the order relating to appointment of counsel under section 3598(c). The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding 60 days. A motion described in this section shall have priority over all noncapital matters in the district court, and in the court of appeals on review of the district court's decision.

"(b) STAY OF EXECUTION.—The execution of a sentence of death shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28. The stay shall run continuously following imposition of the sentence, and shall expire if—

"(1) the defendant fails to file a motion under section 2255 of title 28 within the time specified in subsection (a), or fails to make a timely application for court of appeals review following the denial of such a motion by a district court;

"(2) upon completion of district court and court of appeals review under section 2255 of title 28, the motion under that section is denied and—

"(A) the time for filing a petition for certiorari has expired and no petition has been filed;

"(B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or

"(C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of the decision to do so, the defendant waives the right to file a motion under section 2255 of title 28.

"(c) FINALITY OF DECISION ON REVIEW.—If one of the conditions specified in subsection (b) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

"(2) the failure to raise the claim was—

"(A) the result of governmental action in violation of the Constitution or laws of the United States;

"(B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or

"(C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.

"§ 3600. Application in Indian country

"Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the Federal jurisdiction for which is predicated solely on Indian country as defined in section 1151 and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has made an election that this chapter have effect over land and persons subject to its criminal jurisdiction.".

(b) TECHNICAL AMENDMENT.—The part analysis for part II of title 18, United States Code, is amended by adding after the item relating to chapter 227 the following new item:

"228. Death penalty procedures ..... 3591.".

SEC. 603. CONFORMING AMENDMENT RELATING TO DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES.

Section 34 of title 18, United States Code, is amended by striking the comma after "life" and all that follows through "order".

SEC. 604. CONFORMING AMENDMENT RELATING TO ESPIONAGE.

Section 794(a) of title 18, United States Code, is amended by striking the period at the end and inserting ", except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds beyond a reasonable doubt at a hearing under section 3593 that the offense directly concerned—

"(1) nuclear weaponry, military spacecraft and satellites, early warning systems, or other means of defense or retaliation against large-scale attack;

"(2) war plans;

"(3) communications intelligence or cryptographic information;

"(4) sources or methods of intelligence or counterintelligence operations; or

"(5) any other major weapons system or major element of defense strategy.".

SEC. 605. CONFORMING AMENDMENT RELATING TO TRANSPORTING EXPLOSIVES.

Section 844(d) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

SEC. 606. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF FEDERAL PROPERTY BY EXPLOSIVES.

Section 844(f) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

SEC. 607. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF INTERSTATE PROPERTY BY EXPLOSIVES.

Section 844(i) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

SEC. 608. CONFORMING AMENDMENT RELATING TO MURDER.

Section 1111(b) of title 18, United States Code, is amended to read as follows:

"(b) Within the special maritime and territorial jurisdiction of the United States—

"(1) whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life; and

"(2) whoever is guilty of murder in the second degree shall be imprisoned for any term of years or for life.".

SEC. 609. CONFORMING AMENDMENT RELATING TO KILLING OFFICIAL GUESTS OR INTERNATIONALLY PROTECTED PERSONS.

Section 1116(a) of title 18, United States Code, is amended by striking the comma after "title" and all that follows through "years".

SEC. 610. MURDER BY FEDERAL PRISONER.

(a) OFFENSE.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1118. Murder by a Federal prisoner

"(a) OFFENSE.—Whoever, while confined in a Federal prison under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of release.

"(b) DEFINITIONS.—For purposes of this section—

"(1) 'Federal prison' means any Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government; and

"(2) 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least 15 years and a maximum of life, or an unexecuted sentence of death.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1118. Murder by a Federal prisoner.".

SEC. 611. CONFORMING AMENDMENT RELATING TO KIDNAPPING.

Section 1201(a) of title 18, United States Code, is amended by striking the period at the end and inserting "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 612. CONFORMING AMENDMENT RELATING TO HOSTAGE TAKING.

Section 1203(a) of title 18, United States Code, is amended by striking the period at the end and inserting "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 613. CONFORMING AMENDMENT RELATING TO MAILABILITY OF INJURIOUS ARTICLES.

The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "life" and all that follows through "order".

SEC. 614. CONFORMING AMENDMENT RELATING TO PRESIDENTIAL ASSASSINATION.

Section 1751(c) of title 18, United States Code, is amended to read as follows:

"(c) Whoever attempts to murder or kidnap any individual designated in subsection (a) shall be punished—

"(1) by imprisonment for any term of years or for life; or

"(2) if the conduct constitutes an attempt to murder the President of the United States and results in bodily injury to the President or otherwise comes dangerously close to causing the death of the President, by death or imprisonment for any term of years or for life.".

SEC. 615. CONFORMING AMENDMENT RELATING TO MURDER FOR HIRE.

Section 1958(a) of title 18, United States Code, is amended by striking "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting "and if death results, shall be punished by death or life imprisonment, or shall be fined in accordance with this title, or both".

SEC. 616. CONFORMING AMENDMENT RELATING TO VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Section 1959(a)(1) of title 18, United States Code, is amended to read as follows:

"(1) for murder, by death or life imprisonment, or a fine in accordance with this title, or both, and for kidnapping, by imprisonment for any term of years or for life, or a fine in accordance with this title, or both;".

SEC. 617. CONFORMING AMENDMENT RELATING TO WRECKING TRAINS.

The penultimate paragraph of section 1992 of title 18, United States Code, is amended by striking the comma after "life" and all that follows through "order".

SEC. 618. CONFORMING AMENDMENT RELATING TO BANK ROBBERY.

Section 2113(e) of title 18, United States Code, is amended by striking "or punished by death if the verdict of the jury shall so direct" and inserting "or if death results shall be punished by death or life imprisonment".

SEC. 619. CONFORMING AMENDMENT RELATING TO TERRORIST ACTS.

Section 2332(a)(1) of title 18, United States Code, as redesignated by section 601(b)(2), is amended to read as follows:

"(1) if the killing is murder as defined in section 1111(a), be fined under this title, punished by death or imprisonment for any term of years or for life, or both;".

SEC. 620. CONFORMING AMENDMENT RELATING TO AIRCRAFT HIJACKING.

Section 903 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1473) is amended by striking subsection (c).

SEC. 621. CONFORMING AMENDMENT TO CONTROLLED SUBSTANCES ACT.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended by striking subsections (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q) (1), (2), and (3), and (r).

SEC. 622. CONFORMING AMENDMENT RELATING TO GENOCIDE.

Section 1091(b)(1) of title 18, United States Code, is amended by striking "a fine of not more than $1,000,000 and imprisonment for life" and inserting "death or imprisonment for life and a fine of not more than $1,000,000".

SEC. 623. PROTECTION OF COURT OFFICERS AND JURORS.

Section 1503 of title 18, United States Code, is amended—

(1) by inserting "(a)" before "Whoever";

(2) in subsection (a), as designated by paragraph (1)—

(A) by striking "commissioner" each place it appears and inserting "magistrate judge"; and

(B) by striking "fined not more than $5,000 or imprisoned not more than five years, or both" and inserting "punished as provided in subsection (b)"; and

(3) by adding at the end the following new subsection:

"(b) The punishment for an offense under this section is—

"(1) in the case of a killing, the punishment provided in sections 1111 and 1112;

"(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years; and

"(3) in any other case, imprisonment for not more than 10 years.".

SEC. 624. PROHIBITION OF RETALIATORY KILLINGS OF WITNESSES, VICTIMS, AND INFORMANTS.

Section 1513 of title 18, United States Code, is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(2) by inserting before subsection (b), as redesignated by paragraph (1), the following new subsection:

"(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for—

"(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

"(B) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings given by a person to a law enforcement officer,

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under this subsection is—

"(A) in the case of a killing, the punishment provided in sections 1111 and 1112; and

"(B) in the case of an attempt, imprisonment for not more than 20 years.".

SEC. 625. DEATH PENALTY FOR MURDER OF FEDERAL LAW ENFORCEMENT OFFICERS.

Section 1114 of title 18, United States Code, is amended by striking "be punished as provided under sections 1111 and 1112 of this title, except that" and inserting ", in the case of murder (as defined in section 1111), be punished by death or imprisonment for life, and, in the case of manslaughter (as defined in section 1112), be punished as provided in section 1112, and".

SEC. 626. DEATH PENALTY FOR MURDER OF STATE OR LOCAL LAW ENFORCEMENT OFFICERS ASSISTING FEDERAL LAW ENFORCEMENT OFFICERS.

Section 1114 of title 18, United States Code, is amended by inserting ", or any State or local law enforcement officer while assisting, or on account of his or her assistance of, any Federal officer or employee covered by this section in the performance of duties," after "other statutory authority".

SEC. 627. IMPLEMENTATION OF THE 1988 PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION.

(a) OFFENSE.—Chapter 2 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 36. Violence at international airports

"(a) Whoever unlawfully and intentionally, using any device, substance or weapon—

"(1) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

"(2) destroys or seriously damages the facilities of an airport serving international civil aviation or a civil aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at the airport, or attempts to do such an act, shall be fined under this title, imprisoned not more than 20 years, or both, and if the death of any person results from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) There is jurisdiction over the activity prohibited in subsection (a) if—

"(1) the prohibited activity takes place in the United States; or

"(2) the prohibited activity takes place outside the United States and the offender is later found in the United States.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 2 of title 18, United States Code, is amended by adding at the end the following new item:

"36. Violence at international airports.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the later of—

(1) the date of enactment of this Act; or

(2) the date on which the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971, has come into force and the United States has become a party to the Protocol.

SEC. 628. AMENDMENT TO FEDERAL AVIATION ACT.

Section 902(n) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(n)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

SEC. 629. OFFENSES OF VIOLENCE AGAINST MARITIME NAVIGATION OR FIXED PLATFORMS.

(a) OFFENSE.—Chapter 111 of title 18, United States Code, is amended by adding at the end the following new sections:

"§ 2280. Violence against maritime navigation

"(a) OFFENSE.—Whoever unlawfully and intentionally—

"(1) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation;

"(2) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;

"(3) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship;

"(4) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship;

"(5) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if such act is likely to endanger the safe navigation of a ship;

"(6) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safe navigation of a ship;

"(7) injures or kills any person in connection with the commission or the attempted commission of an offense described in paragraph (1), (2), (3), (4), (5), or (6); or

"(8) attempts to commit any act prohibited under paragraph (1), (2), (3), (4), (5), (6), or (7),

shall be fined under this title, imprisoned not more than 20 years, or both, and if the death of any person results from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) THREATENED OFFENSE.—Whoever threatens to commit any act prohibited under subsection (a) (2), (3), or (5), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safe navigation of the ship in question, shall be fined under this title, imprisoned not more than 5 years, or both.

"(c) JURISDICTION.—There is jurisdiction over the activity prohibited in subsections (a) and (b)—

"(1) in the case of a covered ship, if—

"(A) such activity is committed—

"(i) against or on board a ship flying the flag of the United States at the time the prohibited activity is committed;

"(ii) in the United States; or

"(iii) by a national of the United States or by a stateless person whose habitual residence is in the United States;

"(B) during the commission of such activity, a national of the United States is seized, threatened, injured, or killed; or

"(C) the offender is later found in the United States after such activity is committed;

"(2) in the case of a ship navigating or scheduled to navigate solely within the territorial sea or internal waters of a country other than the United States, if the offender is later found in the United States after such activity is committed; and

"(3) in the case of any vessel, if such activity is committed in an attempt to compel the United States to do or abstain from doing any act.

"(d) DELIVERY OF PROBABLE OFFENDER.—The master of a covered ship flying the flag of the United States who has reasonable grounds to believe that he or she has on board the ship any person who has committed an offense under Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation may deliver such person to the authorities of a State Party to that Convention. Before delivering such person to the authorities of another country, the master shall notify in an appropriate manner the Attorney General of the United States of the alleged offense and await instructions from the Attorney General as to what action the master should take. When delivering the person to a country which is a State Party to the Convention, the master shall, whenever practicable, and if possible before entering the territorial sea of such country, notify the authorities of such country of his or her intention to deliver such person and the reason therefor. If the master delivers such person, the master shall furnish the authorities of such country with the evidence in the master's possession that pertains to the alleged offense.

"(e) DEFINITIONS.—In this section—

" 'covered ship' means a ship that is navigating or is scheduled to navigate into, through, or from waters beyond the outer limit of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country.

" 'national of the United States' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

" 'ship' means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles or any other floating craft, but does not include a warship, a ship owned or operated by a government when being used as a naval auxiliary or for customs or police purposes, or a ship that has been withdrawn from navigation or laid up.

" 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.

" 'United States', when used in a geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas Islands, and all territories and possessions of the United States.

"§ 2281. Violence against maritime fixed platforms

"(a) OFFENSE.—Whoever unlawfully and intentionally—

"(1) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation;

"(2) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety;

"(3) destroys a fixed platform or causes damage to it which is likely to endanger its safety;

"(4) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance that is likely to destroy the fixed platform or likely to endanger its safety;

"(5) injures or kills any person in connection with the commission or attempted commission of an offense described in paragraph (1), (2), (3), or (4); or

"(6) attempts to do anything prohibited under paragraphs (1), (2), (3), (4), or (5);

shall be fined under this title, imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) THREATENED OFFENSE.—Whoever threatens to do anything prohibited under subsection (a) (2) or (3), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safety of the fixed platform, shall be fined under this title or imprisoned not more than 5 years, or both.

"(c) JURISDICTION.—There is jurisdiction over the activity prohibited in subsections (a) and (b) if—

"(1) such activity is committed against or on board a fixed platform—

"(A) that is located on the continental shelf of the United States;

"(B) that is located on the continental shelf of another country, by a national of the United States or by a stateless person whose habitual residence is in the United States; or

"(C) in an attempt to compel the United States to do or abstain from doing any act;

"(2) during the commission of such activity against or on board a fixed platform located on a continental shelf, a national of the United States is seized, threatened, injured or killed; or

"(3) such activity is committed against or on board a fixed platform located outside the United States and beyond the continental shelf of the United States and the offender is later found in the United States.

"(d) DEFINITIONS.—In this section—

" 'continental shelf' means the seabed and subsoil of the submarine areas that extend beyond a country's territorial sea to the limits provided by customary international law as reflected in Article 76 of the 1982 Convention on the Law of the Sea.

" 'fixed platform' means an artificial island, installation or structure permanently attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes.

" 'national of the United States' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

" 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.

" 'United States', when used in a geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas Islands, and all territories and possessions of the United States.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 111 of title 18, United States Code, is amended by adding at the end the following new items:

"2280. Violence against maritime navigation.
"2281. Violence against maritime fixed platforms.".

(c) EFFECTIVE DATES.—The amendments made by this section shall take effect on the later of—

(1) the date of enactment of this Act; or

(2)(A) in the case of section 2280 of title 18, United States Code, the date on which the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation has come into force and the United States has become a party to that Convention; and

(B) in the case of section 2281 of title 18, United States Code, the date on which the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf has come into force and the United States has become a party to that Protocol.

SEC. 630. 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

"In this chapter—

" '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.

" '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.

" 'United States' includes all areas under the jurisdiction of the United States including any of the places described in sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(38)).

"§ 2340A. Torture

"(a) OFFENSE.—Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) JURISDICTION.—There is jurisdiction over the activity prohibited 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) TECHNICAL AMENDMENT.—The part analysis for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 113A the following new item:

"113B. Torture ..... 2340.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the later of—

(1) the date of enactment of this Act; or

(2) the date on which the United States has become a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

SEC. 631. WEAPONS OF MASS DESTRUCTION.

(a) FINDINGS.—The Congress finds that the use and threatened use of weapons of mass destruction (as defined in the amendment made by subsection (b)) gravely harm the national security and foreign relations interests of the United States, seriously affect interstate and foreign commerce, and disturb the domestic tranquility of the United States.

(b) OFFENSE.—Chapter 113A of title 18, United States Code, is amended by adding at the end the following new section:

"§ 2339. Use of weapons of mass destruction

"(a) OFFENSE.—A person who uses, or attempts or conspires to use, a weapon of mass destruction—

"(1) against a national of the United States while such national is outside of the United States;

"(2) against any person within the United States; or

"(3) against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States,

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

"(b) DEFINITIONS.—In this section—

" 'national of the United States' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

" 'weapon of mass destruction' means—

"(A) a destructive device (as defined in section 921);

"(B) poison gas;

"(C) a weapon involving a disease organism; and

"(D) a weapon that is designed to release radiation or radioactivity at a level dangerous to human life.".

(c) TECHNICAL AMENDMENT.—The chapter analysis for chapter 113A of title 18, United States Code, is amended by adding at the end the following new item:

"2339. Use of weapons of mass destruction.".

SEC. 632. HOMICIDES AND ATTEMPTED HOMICIDES INVOLVING FIREARMS IN FEDERAL FACILITIES.

Section 930 of title 18, United States Code, is amended—

(1) by redesignating subsections (c), (d), (e), (f), and (g) as subsections (d), (e), (f), (g), and (h), respectively;

(2) in subsection (a), by striking "(c)" and inserting "(d)"; and

(3) by inserting after subsection (b) the following new subsection:

"(c) Whoever kills or attempts to kill any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, shall—

"(1) in the case of a killing constituting murder (as defined in section 1111(a)), be punished by death or imprisoned for any term of years or for life; and

"(2) in the case of any other killing or an attempted killing, be subject to the penalties provided for engaging in such conduct within the special maritime and territorial jurisdiction of the United States under sections 1112 and 1113.".

SEC. 633. DEATH PENALTY FOR CIVIL RIGHTS MURDERS.

(a) CONSPIRACY AGAINST RIGHTS.—Section 241 of title 18, United States Code, is amended by striking "shall be subject to imprisonment for any term of years or for life" and inserting "shall be punished by death or imprisonment for any term of years or for life".

(b) DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.—Section 242 of title 18, United States Code, is amended by striking "shall be subject to imprisonment for any term of years or for life" and inserting "shall be punished by death or imprisonment for any term of years or for life".

(c) FEDERALLY PROTECTED ACTIVITIES.—Section 245(b) of title 18, United States Code, is amended by striking "shall be subject to imprisonment for any term of years or for life" and inserting "shall be punished by death or imprisonment for any term of years or for life".

(d) DAMAGE TO RELIGIOUS PROPERTY; OBSTRUCTION OF THE FREE EXERCISE OF RELIGIOUS RIGHTS.—Section 247(c)(1) of title 18, United States Code, is amended by inserting "the death penalty or" before "imprisonment".

SEC. 634. DEATH PENALTY FOR MURDER OF FEDERAL WITNESSES.

Section 1512(a)(2)(A) of title 18, United States Code, is amended to read as follows:

"(A) in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112;".

SEC. 635. DRIVE-BY SHOOTINGS.

(a) OFFENSE.—Chapter 44 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 931. Drive-by shootings

"(a) OFFENSE.—Whoever knowingly discharges a firearm at a person—

"(1) in the course of or in furtherance of drug trafficking activity; or

"(2) from a motor vehicle,

shall be punished by imprisonment for not more than 25 years, and if death results shall be punished by death or by imprisonment for any term of years or for life.

"(b) DEFINITION.—As used in this section, the term 'drug trafficking activity' means a drug trafficking crime (as defined in section 929(a)(2)), or a pattern or series of acts involving one or more drug trafficking crimes.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 44 of title 18, United States Code, is amended by adding at the end the following new item:

"931. Drive-by shootings.".

SEC. 636. DEATH PENALTY FOR GUN MURDERS DURING FEDERAL CRIMES OF VIOLENCE AND DRUG TRAFFICKING CRIMES.

Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(i) Whoever, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

"(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

"(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.".

SEC. 637. DEATH PENALTY FOR RAPE AND CHILD MOLESTATION MURDERS.

(a) OFFENSE.—Chapter 109A of title 18, United States Code, is amended—

(1) by redesignating section 2245 as section 2246; and

(2) by inserting after section 2244 the following new section:

"§ 2245. Sexual abuse resulting in death

"Whoever, in the course of an offense under this chapter, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 109A of title 18, United States Code, is amended by striking the item relating to section 2245 and inserting the following:

"2245. Sexual abuse resulting in death.

"2246. Definitions for chapter.".

SEC. 638. PROTECTION OF JURORS AND WITNESSES IN CAPITAL CASES.

Section 3432 of title 18, United States Code, is amended by striking the period and inserting: ", except that the list of the veniremen and witnesses need not be furnished if the court finds by a preponderance of the evidence that providing the list may jeopardize the life or safety of any person.".

SEC. 639. INAPPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE.

The provisions of chapter 228 of title 18, United States Code, as added by this Act, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801 et seq.).

SEC. 640. DEATH PENALTY FOR CAUSING DEATH IN THE SEXUAL EXPLOITATION OF CHILDREN.

Section 2251(d) of title 18, United States Code, is amended by adding at the end the following new sentence: "Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.".

SEC. 641. MURDER BY ESCAPED PRISONERS.

(a) OFFENSE.—Chapter 51 of title 18, United States Code, as amended by section 110, is amended by adding at the end the following new section:

"§ 1119. Murder by escaped prisoners

"(a) OFFENSE.—A person who, having escaped from a Federal prison where the person was confined under a sentence for a term of life imprisonment, kills another person, shall be punished as provided in sections 1111 and 1112.

"(b) DEFINITION.—As used in this section, the terms 'Federal prison' and 'term of life imprisonment' have the meanings stated in section 1118.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1119. Murder by escaped prisoners.".

SEC. 642. DEATH PENALTY FOR MURDERS IN THE DISTRICT OF COLUMBIA.

(a) OFFENSE.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1118. Capital punishment for murders in the District of Columbia

"(a) OFFENSE.— It is an offense to cause the death of a person intentionally, knowingly, or through recklessness manifesting extreme indifference to human life, or to

cause the death of a person through the intentional infliction of serious bodily injury.

"(b) FEDERAL JURISDICTION.—There is a federal jurisdiction over an offense described in this section if the conduct resulting in death occurs in the District of Columbia.

"(c) PENALTY.—An offense described in this section is a Class A felony. A sentence of death may be imposed for an offense described in this section as provided in subsections (d), (e), (f), (g), (h), (i), (j), (k), and (l).

"(d) MITIGATING FACTORS.—In determining whether to recommend a sentence of death, the jury shall consider whether any aspect of the defendant's character, background, or record or any circumstance of the offense that the defendant may proffer as a mitigating factor exists, including the following factors:

"(1) MENTAL CAPACITY.—The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired.

"(2) DURESS.—The defendant was under unusual and substantial duress.

"(3) PARTICIPATION IN OFFENSE MINOR.—The defendant is punishable as a principal in an offense committed by another person, but the defendant's participation was relatively minor.

"(e) AGGRAVATING FACTORS.—In determining whether to recommend a sentence of death, the jury shall consider any aggravating factor for which notice has been provided under subsection (f), including the following factors—

"(1) KILLING IN FURTHERANCE OF DRUG TRAFFICKING.—The defendant engaged in the conduct resulting in death in the course of or in furtherance of drug trafficking activity.

"(2) KILLING IN THE COURSE OF OTHER SERIOUS VIOLENT CRIMES.—The defendant engaged in the conduct resulting in death in the course of committing or attempting to commit an offense involving robbery, burglary, sexual abuse, kidnaping, or arson.

"(3) MULTIPLE KILLINGS OR ENDANGERMENT OF OTHERS.—The defendant committed more than one offense under this section, or in committing the offense knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(4) INVOLVEMENT OF FIREARM.—During and in relation to the commission of the offense, the defendant used or possessed a firearm as defined in section 921.

"(5) PREVIOUS CONVICTION OF VIOLENT FELONY.—The defendant has previously been convicted of an offense punishable by a term of imprisonment of more than 1 year that involved the use or attempted or threatened use of force against a person or that involved sexual abuse.

"(6) KILLING WHILE INCARCERATED OR UNDER SUPERVISION.—The defendant at the time of the offense was confined in or had escaped from a jail, prison, or other correctional or detention facility, was on pre-trial release, or was on probation, parole, supervised release, or other post-conviction conditional release.

"(7) HEINOUS, CRUEL, OR DEPRAVED MANNER OF COMMISSION.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

"(8) PROCUREMENT OF THE OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(9) COMMISSION OF THE OFFENSE FOR PECUNIARY GAIN.—The defendant committed the offense as consideration for receiving, or in the expectation of receiving or obtaining, anything of pecuniary value.

"(10) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation.

"(11) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

"(12) KILLING OF PUBLIC SERVANT.—The defendant committed the offense against a public servant—

"(i) while such public servant was engaged in the performance of his or her official duties;

"(ii) because of the performance of such public servant's official duties; or

"(iii) because of such public servant's status as a public servant.

"(13) KILLING TO INTERFERE WITH OR RETALIATE AGAINST WITNESS.—The defendant committed the offense in order to prevent or inhibit any person from testifying or providing information concerning an offense, or to retaliate against any person for testifying or providing such information.

"(f) NOTICE OF INTENT TO SEEK DEATH PENALTY.—If the government intends to seek the death penalty for an offense under this section, the attorney for the government shall file with the court and serve on the defendant a notice of such intent. The notice shall be provided a reasonable time before the trial or acceptance of a guilty plea, or at such later time as the court may permit for good cause. The notice shall set forth the aggravating factor or factors set forth in subsection (e) and any other aggravating factor or factors that the government will seek to prove as the basis for the death penalty. The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family. The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(g) JUDGE AND JURY AT CAPITAL SENTENCING HEARING.—A hearing to determine whether the death penalty will be imposed for an offense under this section shall be conducted by the judge who presided at trial or accepted a guilty plea, or by another judge if that judge is not available. The hearing shall be conducted before the jury that determined the defendant's guilt if that jury is available. A new jury shall be impaneled for the purpose of the hearing if the defendant pleaded guilty, the trial of guilt was conducted without a jury, the jury that determined the defendant's guilt was discharged for good cause, or reconsideration of the sentence is necessary after the initial imposition of a sentence of death. A jury impaneled under this subsection shall have twelve members unless the parties stipulate to a lesser number at any time before the conclusion of the hearing with the approval of the judge. Upon motion of the defendant, with the approval of the attorney for the government, the hearing shall be carried out before the judge without a jury. If there is no jury, references to "the jury" in this section, where applicable, shall be understood as referring to the judge.

"(h) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—No presentence report shall be prepared if a capital sentencing hearing is held under this section. Any information relevant to the existence of mitigating factors, or to the existence of aggravating factors for which notice has been provided under subsection (f), may be presented by either the government or the defendant, regardless of its admissibility under the rules governing the admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The information presented may include trial transcripts and exhibits. The attorney for the government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for the government shall open the argument, the defendant shall be permitted to reply, and the government shall then be permitted to reply in rebuttal.

"(i) FINDINGS OF AGGRAVATING AND MITIGATING FACTORS.—The jury shall return special findings identifying any aggravating factor or factors for which notice has been provided under subsection (f) and which the jury unanimously determines have been established by the government beyond a reasonable doubt. A mitigating factor is established if the defendant has proven its existence by a preponderance of the evidence, and any member of the jury who finds the existence of such a factor may regard it as established for purposes of this section regardless of the number of jurors who concur that the factor has been established.

"(j) FINDING CONCERNING A SENTENCE OF DEATH.—If the jury specially finds under subsection (i) that one or more aggravating factors set forth in subsection (e) exist, and the jury further finds unanimously that there are no mitigating factors or that the aggravating factor or factors specially found under subsection (i) outweigh any mitigating factors, then the jury shall recommend a sentence of death. In any other case, the jury shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

"(k) SPECIAL PRECAUTION TO ENSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, before the return of a finding under subsection (j), shall instruct the jury that, in considering whether to recommend a sentence of death, it shall not consider the race, color, religion, national origin, or sex of the defendant or any victim, and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for such a crime regardless of the race, color, religion, national origin, or sex of the defendant or any victim. The jury, upon the return of a finding under subsection (j), shall also return to the court a certificate, signed by each juror, that the race, color, religion, national origin, or sex of the defendant or any victim did not affect the juror's individual decision and that the individual juror would have recommended the same sentence for such a crime regardless of the race, color, religion, national origin, or sex of the defendant or any victim.

"(l) IMPOSITION OF A SENTENCE OF DEATH.—Upon a recommendation under subsection (j) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law.

"(m) REVIEW OF A SENTENCE OF DEATH.—

"(1) The defendant may appeal a sentence of death under this section by filing a notice

of appeal of the sentence within the time provided for filing a notice of appeal of the judgment of conviction. An appeal of a sentence under this subsection may be consolidated within an appeal of the judgment of conviction and shall have priority over all noncapital matters in the court of appeals.

"(2) The court of appeals shall review the entire record in the case including the evidence submitted at trial and information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under subsection (i). The court of appeals shall uphold the sentence if it determines that the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor, that the evidence and information support the special findings under subsection (i), and that the proceedings were otherwise free of prejudicial error that was properly preserved for review.

"(3) In any other case, the court of appeals shall remand the case for reconsideration of the sentence or imposition of another authorized sentence as appropriate, except that the court shall not reverse a sentence of death on the ground that an aggravating factor was invalid or was not supported by the evidence and information if at least one aggravating factor described in subsection (e) remains which was found to exist and the court, on the basis of the evidence submitted at trial and the information submitted at the sentencing hearing, finds that the remaining aggravating factor or factors which were found to exist outweigh any mitigating factors. The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"(n) IMPLEMENTATION OF SENTENCE OF DEATH.—A person sentenced to death under this section shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States Marshal. The Marshal shall supervise implementation of the sentence in the manner prescribed by the law of a State designated by the court. The Marshal may use State or local facilities, may use the services of an appropriate State or local official or of a person such an official employs, and shall pay the costs thereof in an amount approved by the Attorney General.

"(o) SPECIAL BAR TO EXECUTION.—A sentence of death shall not be carried out upon a woman while she is pregnant.

"(p) CONSCIENTIOUS OBJECTION TO PARTICIPATION IN EXECUTION.—No employee of any State department of corrections, the United States Marshals Service, or the Federal Bureau of Prisons, and no person providing services to that department, service, or bureau under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participate in any execution' includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

"(q) APPOINTMENT OF COUNSEL FOR INDIGENT CAPITAL DEFENDANTS.—A defendant against whom a sentence of death is sought, or on whom a sentence of death has been imposed, under this section, shall be entitled to appointment of counsel from the commencement of trial proceedings until one of the conditions specified in subsection (v) has occurred, if the defendant is or becomes financially unable to obtain adequate representation. Counsel shall be appointed for trial representation as provided in section 3005, and at least 1 counsel so appointed shall continue to represent the defendant until the conclusion of direct review of the judgment, unless replaced by the court with other qualified counsel. Except as otherwise provided in this section, the provisions of section 3006A shall apply to appointments under this section.

"(r) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment imposing a sentence of death under this section has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the government shall promptly notify the court that imposed the sentence. The court, within 10 days of receipt of such notice, shall proceed to make determination whether the defendant is eligible for appointment of counsel for subsequent proceedings. The court shall issue an order appointing one or more counsel to represent the defendant upon a finding that the defendant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel. The court shall issue an order denying appointment of counsel upon a finding that the defendant is financially able to obtain adequate representation or that the defendant rejected appointment of counsel with an understanding of the consequences of that decision. Counsel appointed pursuant to this subsection shall be different from the counsel who represented the defendant at trial and on direct review unless the defendant and counsel request a continuation or renewal of the earlier representation.

"(s) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant who is entitled to appointment of counsel under subsections (q) and (r), at least 1 counsel appointed for trial representation must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the trial of felony cases in the Federal district courts. If new counsel is appointed after judgment, at least 1 counsel so appointed must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration of the seriousness of the penalty and the nature of the litigation.

"(t) CLAIMS OF INEFFECTIVENESS OF COUNSEL IN COLLATERAL PROCEEDINGS.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28 in a case under this section shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"(u) TIME FOR COLLATERAL ATTACK ON DEATH SENTENCE.—A motion under section 2255 of title 28 attacking a sentence of death under this section, or the conviction on which it is predicated, must be filed within 90 days of the issuance of the order under subsection (r) appointing or denying the appointment of counsel for such proceedings. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding 60 days. Such a motion shall have priority over all noncapital matters in the district court, and in the court of appeals on review of the district court's decision.

"(v) STAY OF EXECUTION.—The execution of a sentence of death under this section shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28. The stay shall run continuously following imposition of the sentence and shall expire if—

"(1) the defendant fails to file a motion under section 2255 of title 28 within the time specified in subsection (u), or fails to make a timely application for court of appeals review following the denial of such a motion by a district court;

"(2) upon completion of district court and court of appeals review under section 2255 of title 28 the Supreme Court disposes of a petition for certiorari in a manner that leaves the capital sentence undisturbed, or the defendant fails to file a timely petition for certiorari; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of such a decision, the defendant waives the right to file a motion under section 2255 of title 28.

"(w) FINALITY OF THE DECISION ON REVIEW.—If one of the conditions specified in subsection (v) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

"(2) the failure to raise the claim is the result of governmental action in violation of the Constitution or laws of the United States, the result of the Supreme Court's recognition of a new Federal right that is retroactively applicable, or the result of the fact that the factual predicate of the claim could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.

"(x) DEFINITIONS.—In this section—

"'arson' means damaging or destroying a building or structure through the use of fire or explosives.

"'burglary' means entering or remaining in a building or structure in violation of the law of the District of Columbia, another State, or the United States, with the intent to commit an offense in the building or structure.

"'drug trafficking activity' means a drug trafficking crime (as defined in section 929(a)(2)) or a pattern or series of acts involving 1 or more drug trafficking crimes.

"'kidnapping' means seizing, confining, or abducting a person, or transporting a person without his or her consent.

"'offense', as used in paragraphs (2), (5), and (13) of subsection (e) and in this subsection, means an offense under the law of the District of Columbia, another State, or the United States.

"'pre-trial release', 'probation', 'parole', 'supervised release', and 'other post-conviction conditional release', as used in subsection (e)(6), mean any such release, imposed in relation to a charge or conviction for an offense under the law of the District of Columbia, another State, or the United States.

"'public servant' means an employee, agent, officer, or official of the District of Columbia, another State, or the United States, or an employee, agent, officer, or official of a foreign government who is within the scope of section 1116.

"'robbery' means obtaining the property of another by force or threat of force.

"'sexual abuse' means any conduct proscribed by chapter 109A, whether or not the conduct occurs in the special maritime and territorial jurisdiction of the United States.

"'State' has the meaning stated in section 513, including the District of Columbia.

"(y) JOINDER OF CHARGES.—When an offense is charged under this section, the government may join any charge under the District of Columbia Code that arises from the same incident.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1118. Capital punishment for murders in the District of Columbia.".

Subtitle B—Equal Justice Act

SEC. 651. SHORT TITLE.

This subtitle may be cited as the "Equal Justice Act".

SEC. 652. PROHIBITION OF RACIALLY DISCRIMINATORY POLICIES CONCERNING CAPITAL PUNISHMENT OR OTHER PENALTIES.

(a) GENERAL RULE.—The penalty of death and all other penalties shall be administered by the United States and by every State without regard to the race or color of the defendant or victim. Neither the United States nor any State shall prescribe any racial quota or statistical test for the imposition or execution of the death penalty or any other penalty.

(b) DEFINITIONS.—For purposes of this subtitle—

(1) the action of the United States or of a State includes the action of any legislative, judicial, executive, administrative, or other agency or instrumentality of the United States or a State, or of any political subdivision of the United States or a State;

(2) the term "State" has the meaning stated in section 513 of title 18, United States Code; and

(3) the term "racial quota or statistical test" includes any law, rule, presumption, goal, standard for establishing a prima facie case, or mandatory or permissive inference that—

(A) requires or authorizes the imposition or execution of the death penalty or another penalty so as to achieve a specified racial proportion relating to offenders, convicts, defendants, arrestees, or victims; or

(B) requires or authorizes the invalidation of, or bars the execution of, sentences of death or other penalties based on the failure of a jurisdiction to achieve a specified racial proportion relating to offenders, convicts, defendants, arrestees, or victims in the imposition or execution of such sentences or penalties.

SEC. 653. GENERAL SAFEGUARDS AGAINST RACIAL PREJUDICE OR BIAS IN THE TRIBUNAL.

In a criminal trial in a court of the United States, or of any State—

(1) on motion of the defense attorney or prosecutor, the risk of racial prejudice or bias shall be examined on voir dire if there is a substantial likelihood in the circumstances of the case that such prejudice or bias will affect the jury either against or in favor of the defendant;

(2) on motion of the defense attorney or prosecutor, a change of venue shall be granted if an impartial jury cannot be obtained in the original venue because of racial prejudice or bias; and

(3) neither the prosecutor nor the defense attorney shall make any appeal to racial prejudice or bias in statements before the jury.

SEC. 654. FEDERAL CAPITAL CASES.

(a) JURY INSTRUCTIONS AND CERTIFICATION.—In a prosecution for an offense against the United States in which a sentence of death is sought, and in which the capital sentencing determination is to be made by a jury, the judge shall instruct the jury that it is not to be influenced by prejudice or bias relating to the race or color of the defendant or victim in considering whether a sentence of death is justified, and that the jury is not to recommend the imposition of a sentence of death unless it has concluded that it would recommend the same sentence for such a crime regardless of the race or color of the defendant or victim. Upon the return of a recommendation of a sentence of death, the jury shall also return a certificate, signed by each juror, that the juror's individual decision was not affected by prejudice or bias relating to the race or color of the defendant or victim, and that the individual juror would have made the same recommendation regardless of the race or color of the defendant or victim.

(b) RACIALLY MOTIVATED KILLINGS.—In a prosecution for an offense against the United States for which a sentence of death is authorized, the fact that the killing of the victim was motivated by racial prejudice or bias shall be deemed an aggravating factor whose existence permits consideration of the death penalty, in addition to any other aggravating factors that may be specified by law as permitting consideration of the death penalty.

SEC. 655. EXTENSION OF PROTECTION OF CIVIL RIGHTS STATUTES.

(a) SECTION 241.—Section 241 of title 18, United States Code, is amended by striking "inhabitant of" and inserting "person in".

(b) SECTION 242.—Section 242 of title 18, United States Code, is amended by striking "inhabitant of" and inserting "person in", and by striking "such inhabitant" and inserting "such person".

Subtitle C—Enhanced Penalties for Criminal Use of Firearms and Explosives

SEC. 661. SMUGGLING FIREARMS IN AID OF DRUG TRAFFICKING.

Section 924 of title 18, United States Code, as amended by section 136, is amended by adding at the end the following new subsection:

"(j) Whoever, with the intent to engage in or to promote conduct that—

"(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

"(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

"(3) constitutes a crime of violence (as defined in subsection (c)(3) of this section),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.".

SEC. 662. PROHIBITION AGAINST THEFT OF FIREARMS OR EXPLOSIVES.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(j) Whoever steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned not more than 10 years, fined in accordance with this title, or both.".

(b) EXPLOSIVES.—Section 844 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(j) Whoever steals any explosive materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned not more than 10 years, fined in accordance with this title, or both.".

SEC. 663. INCREASED PENALTY FOR KNOWINGLY FALSE, MATERIAL STATEMENT IN CONNECTION WITH THE ACQUISITION OF A FIREARM FROM A LICENSED DEALER.

Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1)(B) by striking "(a)(6),"; and

(2) in paragraph (2) by inserting "(a)(6)," after "subsection".

SEC. 664. SUMMARY DESTRUCTION OF EXPLOSIVES SUBJECT TO FORFEITURE.

Section 844(c) of title 18, United States Code, is amended—

(1) by inserting "(1)" before "Any"; and

(2) by adding at the end the following new paragraphs:

"(2) Notwithstanding paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture where it is impracticable or unsafe to remove the materials to a place of storage, or where it is unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least one credible witness. The seizing officer shall make a report of the seizure and take samples as the Secretary may by regulation prescribe.

"(3) Within 60 days after any destruction made pursuant to paragraph (2), the owner of, including any person having an interest in, the property so destroyed may make application to the Secretary for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Secretary that—

"(A) the property has not been used or involved in a violation of law; or

"(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Secretary shall make an allowance to the claimant not exceeding the value of the property destroyed.".

SEC. 665. ELIMINATION OF OUTMODED LANGUAGE RELATING TO PAROLE.

Section 924 of title 18, United States Code, is amended—

(1) in subsection (c)(1) by striking "No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein."; and

(2) in subsection (e)(1) by striking ", and such person shall not be eligible for parole with respect to the sentence imposed under this subsection".

SEC. 666. RECEIPT OF FIREARMS BY NONRESIDENT.

Section 922(a) of title 18, United States Code, is amended—

(1) in paragraph (7)(C) by striking "and";

(2) in paragraph (8)(C) by striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.".

SEC. 667. PROHIBITION OF THEFT OF FIREARMS OR EXPLOSIVES FROM LICENSEE.

(a) FIREARMS.—Section 924 of title 18, United States Code, as amended by section 402(a), is amended by adding at the end the following new subsection:

"(k) Whoever steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined in accordance with this title, imprisoned not more than 10 years, or both.".

(b) EXPLOSIVES.—Section 844 of title 18, United States Code, as amended by section 402(b), is amended by adding at the end the following new subsection:

"(k) Whoever steals any explosive material from a licensed importer, licensed manufacturer, licensed dealer, or permittee shall be fined in accordance with this title, imprisoned not more than 10 years, or both.".

SEC. 668. INCREASED PENALTY FOR INTERSTATE GUN TRAFFICKING.

Section 924 of title 18, United States Code, as amended by section 407(a), is amended by adding at the end the following new subsection:

"(l) Whoever, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.".

SEC. 669. PROHIBITION OF TRANSACTIONS INVOLVING STOLEN FIREARMS WHICH HAVE MOVED IN INTERSTATE OR FOREIGN COMMERCE.

Section 922(j) of title 18, United States Code, is amended to read as follows:

"(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.".

SEC. 670. POSSESSION OF EXPLOSIVES BY FELONS AND OTHERS.

Section 842(i) of title 18, United States Code, is amended by inserting "or possess" after "to receive".

SEC. 671. DISPOSITION OF FORFEITED FIREARMS.

Subsection 5872(b) of the Internal Revenue Code of 1986 is amended to read as follows:

"(b) DISPOSAL.—In the case of the forfeiture of any firearm, where there is no remission or mitigation of forfeiture thereof—

"(1) the Secretary may retain the firearm for official use of the Department of the Treasury or, if not so retained, offer to transfer the weapon without charge to any other executive department or independent establishment of the Government for official use by it and, if the offer is accepted, so transfer the firearm;

"(2) if the firearm is not disposed of pursuant to paragraph (1), is a firearm other than a machinegun or firearm forfeited for a violation of this chapter, is a firearm that in the opinion of the Secretary is not so defective that its disposition pursuant to this paragraph would create an unreasonable risk of a malfunction likely to result in death or bodily injury, and is a firearm which (in the judgment of the Secretary, taking into consideration evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less) derives a substantial part of its monetary value from the fact that it is novel or rare or because of its association with some historical figure, period, or event, the Secretary may sell the firearm, after public notice, at public sale to a dealer licensed under chapter 44 of title 18, United States Code;

"(3) if the firearm has not been disposed of pursuant to paragraph (1) or (2), the Secretary shall transfer the firearm to the Administrator of General Services, who shall destroy or provide for the destruction of such firearm; and

"(4) no decision or action of the Secretary pursuant to this subsection shall be subject to judicial review.".

SEC. 672. DEFINITION OF BURGLARY UNDER THE ARMED CAREER CRIMINAL STATUTE.

Section 924(e)(2) of title 18, 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) the term 'burglary' means a crime that—

"(i) consists of entering or remaining surreptitiously within a building that is the property of another person with intent to engage in conduct constituting a Federal or State offense; and

"(ii) is punishable by a term of imprisonment exceeding 1 year.".

Subtitle D—Exclusionary Rule

SEC. 681. ADMISSIBILITY OF CERTAIN EVIDENCE.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 3509. Admissibility of evidence obtained by search or seizure

"(a) EVIDENCE OBTAINED BY OBJECTIVELY REASONABLE SEARCH OR SEIZURE.—Evidence that is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment. The fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of such circumstances.

"(b) EVIDENCE NOT EXCLUDABLE BY STATUTE OR RULE.—Evidence shall not be excluded in a proceeding in a court of the United States on the ground that it was obtained in violation of a statute, an administrative rule or regulation, or a rule of procedure unless exclusion is expressly authorized by statute or by a rule prescribed by the Supreme Court pursuant to statutory authority.

"(c) RULE OF CONSTRUCTION.—This section shall not be construed to require or authorize the exclusion of evidence in any proceeding.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 223 of title 28, United States Code, is amended by adding at the end the following new item:

"3509. Admissibility of evidence obtained by search or seizure.".

Subtitle E—Pre-Trial Interrogation

SEC. 691. PRE-TRIAL INTERROGATION.

It is the sense of the Congress that the Attorney General shall instruct all United States Attorneys, and implement policies consistent therewith, that confessions obtained in conformity with section 3501 of title 18, United States Code will be offered into evidence.

TITLE VII—ELIMINATION OF DELAYS IN CARRYING OUT SENTENCES

Subtitle A—General Habeas Corpus Reform

SEC. 701. SHORT TITLE.

This title may be cited as the "Habeas Corpus Reform Act of 1993".

SEC. 702. PERIOD OF LIMITATION.

Section 2244 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(d) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

"(1) the time at which State remedies are exhausted;

"(2) the time at which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, where the applicant was prevented from filing by such State action;

"(3) the time at which the Federal right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.".

SEC. 703. APPEAL.

Section 2253 of title 28, United States Code, is amended to read as follows:

"§ 2253. Appeal

"In a habeas corpus proceeding or a proceeding under section 2255 before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

"There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

"An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, or from the final order in a proceeding under section 2255, unless a circuit justice or judge issues a certificate of probable cause.".

SEC. 704. AMENDMENT OF FEDERAL RULES OF APPELLATE PROCEDURE.

Rule 22 of the Federal Rules of Appellate Procedure is amended to read as follows:

"Rule 22. Habeas corpus and section 2255 proceedings

"*(a) Application for an Original Writ of Habeas Corpus.*—An application for a writ of habeas corpus shall be made to the appropriate

district court. If application is made to a circuit judge, the application will ordinarily be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge is not favored; the proper remedy is by appeal to the court of appeals from the order of the district court denying the writ.

"(b) *Necessity of Certificate of Probable Cause for Appeal.*—In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, and in a motion proceeding pursuant to section 2255 of title 28, United States Code, an appeal by the applicant or movant may not proceed unless a circuit judge issues a certificate of probable cause. If a request for a certificate of probable cause is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or the Government or its representative, a certificate of probable cause is not required.".

SEC. 705. SECTION 2254 AMENDMENTS.

Section 2254 of title 28, United States Code, is amended—

(1) by amending subsection (b) to read as follows:

"(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the applicant. An application may be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.";

(2) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

(3) by inserting after subsection (c) the following new subsection:

"(d) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that has been fully and fairly adjudicated in State proceedings.";

(4) by amending subsection (e), as redesignated by paragraph (2), to read as follows:

"(e) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a full and fair determination of a factual issue made in the case by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting this presumption by clear and convincing evidence."; and

(5) by adding at the end the following new subsection:

"(h) In all proceedings brought under this section, and any subsequent proceedings on review, appointment of counsel for a petitioner who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18, United States Code.".

SEC. 706. SECTION 2255 AMENDMENTS.

Section 2255 of title 28, United States Code, is amended—

(1) by striking the second paragraph and the penultimate paragraph; and

(2) by adding at the end the following new paragraphs:

"A two-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

"(1) the time at which the judgment of conviction becomes final;

"(2) the time at which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, where the movant was prevented from making a motion by such governmental action;

"(3) the time at which the right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.

"In all proceedings brought under this section, and any subsequent proceedings on review, appointment of counsel for a movant who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18, United States Code.".

Subtitle B—Death Penalty Litigation Procedures

SEC. 711. SHORT TITLE.

This subtitle may be cited as the "Death Penalty Litigation Procedures Act of 1993".

SEC. 712. DEATH PENALTY LITIGATION PROCEDURES.

(a) ADDITION OF CHAPTER TO TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended by inserting after chapter 153 the following new chapter:

"CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

"Sec.
"2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.
"2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.
"2258. Filing of habeas corpus petition; time requirements; tolling rules.
"2259. Evidentiary hearings; scope of Federal review; district court adjudication.
"2260. Certificate of probable cause inapplicable.
"2261. Application to state unitary review procedures.
"2262. Limitation periods for determining petitions.
"2263. Rule of construction.

"§ 2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

"(a) APPLICATION OF CHAPTER.—This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

"(b) ESTABLISHMENT OF APPOINTMENT MECHANISM.—This chapter is applicable if a State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(c) OFFER OF COUNSEL.—Any mechanism for the appointment, compensation and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record—

"(1) appointing 1 or more counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

"(2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

"(3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

"(d) PREVIOUS REPRESENTATION.—No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(e) NO GROUND FOR RELIEF.—The ineffectiveness or incompetence of counsel during State or Federal collateral postconviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal postconviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

"§ 2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

"(a) STAY.—Upon the entry in the appropriate State court of record of an order under section 2256(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application must recite that the State has invoked the postconviction review procedures of this chapter and that the scheduled execution is subject to stay.

"(b) EXPIRATION OF STAY.—A stay of execution granted pursuant to subsection (a) shall expire if—

"(1) a State prisoner fails to file a habeas corpus petition under section 2254 within the time required in section 2258, or fails to make a timely application for court of appeals review following the denial of such a petition by a district court;

"(2) upon completion of district court and court of appeals review under section 2254 the petition for relief is denied and—

"(A) the time for filing a petition for certiorari has expired and no petition has been filed;

"(B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or

"(C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a court of competent jurisdiction, in the presence of counsel and after having been advised of the consequences of his decision, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254.

"(c) LIMITATION ON FURTHER STAY.—If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution or grant relief in a capital case unless—

"(1) the basis for the stay and request for relief is a claim not previously presented in the State or Federal courts;

"(2) the failure to raise the claim is—

"(A) the result of State action in violation of the Constitution or laws of the United States;

"(B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or

"(C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State or Federal postconviction review; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.

"§ 2258. Filing of habeas corpus petition; time requirements; tolling rules

"Any petition for habeas corpus relief under section 2254 must be filed in the appropriate district court within 180 days from the filing in the appropriate State court of record of an order under section 2256(c). The time requirements established by this section shall be tolled—

"(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

"(2) during any period in which a State prisoner under capital sentence has a properly filed request for postconviction review pending before a State court of competent jurisdiction; if all State filing rules are met in a timely manner, this period shall run continuously from the date that the State prisoner initially files for postconviction review until final disposition of the case by the highest court of the State, but the time requirements established by this section are not tolled during the pendency of a petition for certiorari before the Supreme Court except as provided in paragraph (1); and

"(3) during an additional period not to exceed 60 days, if—

"(A) a motion for an extension of time is filed in the Federal district court that would have proper jurisdiction over the case upon the filing of a habeas corpus petition under section 2254; and

"(B) a showing of good cause is made for the failure to file the habeas corpus petition within the time period established by this section.

"§ 2259. Evidentiary hearings; scope of Federal review; district court adjudication

"(a) REVIEW OF RECORD; HEARING.—Whenever a State prisoner under a capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall—

"(1) determine the sufficiency of the record for habeas corpus review based on the claims actually presented and litigated in the State courts except when the prisoner can show that the failure to raise or develop a claim in the State courts is—

"(A) the result of State action in violation of the Constitution or laws of the United States;

"(B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or

"(C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State postconviction review; and

"(2) conduct any requested evidentiary hearing necessary to complete the record for habeas corpus review.

"(b) ADJUDICATION.—Upon the development of a complete evidentiary record, the district court shall rule on the claims that are properly before it, but the court shall not grant relief from a judgment of conviction or sentence on the basis of any claim that was fully and fairly adjudicated in State proceedings.

"§ 2260. Certificate of probable cause inapplicable

"The requirement of a certificate of probable cause in order to appeal from the district court to the court of appeals does not apply to habeas corpus cases subject to this chapter except when a second or successive petition is filed.

"§ 2261. Application to State unitary review procedure

"(a) IN GENERAL.—For purposes of this section, the term 'unitary review procedure' means a State procedure that authorizes a person under sentence of death to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack. This chapter shall apply, as provided in this section, in relation to a State unitary review procedure if the State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in the unitary review proceedings, including expenses relating to the litigation of collateral claims in the proceedings. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(b) OFFER OF COUNSEL.—A unitary review procedure, to qualify under this section, must include an offer of counsel following trial for the purpose of representation on unitary review, and entry of an order, as provided in section 2256(c), concerning appointment of counsel or waiver or denial of appointment of counsel for that purpose. No counsel appointed to represent the prisoner in the unitary review proceedings shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(c) APPLICATION OF OTHER SECTIONS.—Sections 2257, 2258, 2259, 2260, and 2262 shall apply in relation to cases involving a sentence of death from any State having a unitary review procedure that qualifies under this section. References to State 'post-conviction review' and 'direct review' in those sections shall be understood as referring to unitary review under the State procedure. The references in sections 2257(a) and 2258 to 'an order under section 2256(c)' shall be understood as referring to the post-trial order under subsection (b) concerning representation in the unitary review proceedings, but if a transcript of the trial proceedings is unavailable at the time of the filing of such an order in the appropriate State court, the start of the 180-day limitation period under section 2258 shall be deferred until a transcript is made available to the prisoner or the prisoner's counsel.

"§ 2262. Limitation periods for determining petitions

"(a) IN GENERAL.—The adjudication of any petition under section 2254 that is subject to this chapter, and the adjudication of any motion under section 2255 by a person under sentence of death, shall be given priority by the district court and by the court of appeals over all noncapital matters. The adjudication of such a petition or motion shall be subject to the following time limitations:

"(1) A Federal district court shall determine such a petition or motion within 110 days of filing.

"(2)(A) The court of appeals shall hear and determine any appeal relating to such a petition or motion within 90 days after the notice of appeal is filed.

"(B) The court of appeals shall decide any application for rehearing en banc within 20 days of the filing of the application unless a responsive pleading is required, in which case the court of appeals shall decide the application within 20 days of the filing of the responsive pleading. If en banc consideration is granted, the en banc court shall determine the appeal within 90 days of the decision to grant such consideration.

"(3) The Supreme Court shall act on any application for a writ of certiorari relating to such a petition or motion within 90 days after the application is filed.

"(b) APPLICATION OF SECTION.—The time limitations under subsection (a) shall apply to an initial petition or motion, and to any second or successive petition or motion. The same limitations shall also apply to the redetermination of a petition or motion or related appeal following a remand by the court of appeals or the Supreme Court for further proceedings, and in such a case the limitation period shall run from the date of the remand.

"(c) RULE OF CONSTRUCTION.—The time limitations under this section shall not be construed to entitle a petitioner or movant to a stay of execution, to which the petitioner or movant would otherwise not be entitled, for the purpose of litigating any petition, motion, or appeal.

"(d) NO GROUND FOR RELIEF.—The failure of a court to meet or comply with the time limitations under this section shall not be a ground for granting relief from a judgment of conviction or sentence. The State or Government may enforce the time limitations under this section by applying to the court of appeals or the Supreme Court for a writ of mandamus.

"(e) REPORT.—The Administrative Office of the United States Courts shall report annually to Congress on the compliance by the courts with the time limits established in this section.

"§ 2263. Rule of construction

"This chapter shall be construed to promote the expeditious conduct and conclusion of State and Federal court review in capital cases.".

(b) TECHNICAL AMENDMENT.—The part analysis for part IV of title 28, United States Code, is amended by adding after the item relating to chapter 153 the following new item:

"154. Special habeas corpus procedures in capital cases ..... 2256.".

Subtitle C—Equalization of Capital Habeas Corpus Litigation Funding

SEC. 721. FUNDING FOR DEATH PENALTY PROSECUTIONS.

Part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after section 511 the following new section:

"FUNDING FOR DEATH PENALTY PROSECUTIONS

"SEC. 511A. Notwithstanding any other provision of this part, the Director shall provide grants to the States, from the funding allocated pursuant to section 511, for the purpose of supporting litigation pertaining to Federal habeas corpus petitions in capital cases. The total funding available for such grants within any fiscal year shall be equal to the funding provided to capital resource centers, pursuant to Federal appropriation, in the same fiscal year.".

TITLE VIII—PREVENTION OF TERRORISM

Subtitle A—Penalties and Offenses

SEC. 801. PROVIDING MATERIAL SUPPORT TO TERRORISM.

(a) OFFENSE.—Chapter 113A of title 18, United States Code, as amended by section 631(b), is amended by adding the following new section:

"§ 2339A. Providing material support to terrorists

"A person who, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used to facilitate a violation of section 32, 36, 351, 844(f) or (i), 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2331, or 2339 of this title, or section 902(i) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1472(i)), or to facilitate the concealment or an escape from the commission of any of the foregoing, shall be fined under this title, imprisoned not more than 10 years, or both. For purposes of this section, material support or resources shall include, but not be limited to, currency or other financial securities, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 113A of title 18, United States Code, as amended by section 631(c), is amended by adding the following new item:

"2339A. Providing material support to terrorists.".

SEC. 802. ENHANCED PENALTIES FOR CERTAIN OFFENSES.

(a) INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.—Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) is amended—

(1) in subsection (a) by striking "$10,000" and inserting "$50,000"; and

(2) in subsection (b) by striking "$50,000" and inserting "$1,000,000".

(b) PASSPORTS AND VISAS.—(1) Section 1541 of title 18, United States Code, is amended—

(A) by striking "$500" and inserting "$250,000"; and

(B) by striking "one year" and inserting "5 years".

(2) Sections 1542, 1543, 1544 and 1546 of title 18, United States Code, are each amended—

(A) by striking "$2,000" and inserting "$250,000"; and

(B) by striking "five years" and inserting "10 years".

(3) Section 1545 of title 18, United States Code, is amended—

(A) by striking "$2,000" and inserting $250,000"; and

(B) by striking "three years" and inserting "10 years".

SEC. 803. SENTENCING GUIDELINES INCREASE FOR TERRORIST CRIMES.

The United States Sentencing Commission is directed to amend its sentencing guidelines to provide an increase of not less than three levels in the base offense level for any felony, whether committed within or outside the United States, that involves or is intended to promote international terrorism, unless such involvement or intent is itself an element of the crime.

SEC. 804. EXTENSION OF THE STATUTE OF LIMITATIONS FOR CERTAIN TERRORISM OFFENSES.

(a) OFFENSE.—Chapter 213 of title 18, United States Code, is amended by inserting after section 2385 the following new section:

"§ 3286. Extension of statute of limitations for certain terrorism offenses

"Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for any offense involving a violation of section 32 (aircraft destruction), section 36 (airport violence), section 112 (assaults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2331 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2340A (torture) of this title or section 902(i), (j), (k), (l), or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1572(i), (j), (k), (l), or (n)), unless the indictment is found or the information is instituted within 10 years after such offense shall have been committed.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 213 of title 18, United States Code, is amended by inserting after the item for section 3285 the following new item:

"3286. Extension of statute of limitations for certain terrorism offenses.".

SEC. 805. FORFEITURE OF ASSETS USED TO SUPPORT TERRORISTS.

Section 982(a) of title 18, United States Code, is amended by adding at the end the following new paragraph:

"(5) Any property, real or personal—

"(A) used or intended for use in committing or to facilitate the concealment or an escape from the commission of; or

"(B) constituting or derived from the gross profits or other proceeds obtained from,

a violation of section 32, 36, 351, 844 (f) or (i), 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2332, or 2339A of this title or section 902(i) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(i)).".

SEC. 806. ALIEN WITNESS COOPERATION.

(a) AMENDMENT OF CHAPTER 224 OF TITLE 18.—Chapter 224 of title 18, United States Code, is amended—

(1) by redesignating section 3528 as section 3529; and

(2) by inserting after section 3527 the following new section:

"§ 3528. Aliens; waiver of admission requirements

"(a) IN GENERAL.—Upon authorizing protection to any alien under this chapter, the United States shall provide the alien with appropriate immigration visas and allow the alien to remain in the United States so long as that alien abides by all laws of the United States and guidelines, rules and regulations for protection. The Attorney General may determine that the granting of permanent resident status to such alien is in the public interest and necessary for the safety and protection of such alien without regard to the alien's admissibility under immigration or any other laws and regulations or the failure to comply with such laws and regulations pertaining to admissibility.

"(b) ALIEN WITH FELONY CONVICTIONS.—Notwithstanding any other provision of this chapter, an alien who would not be excluded because of felony convictions shall be considered for permanent residence on a conditional basis for a period of 2 years. Upon a showing that the alien is still being provided protection, or that protection remains available to the alien in accordance with this chapter, or that the alien is still cooperating with the Government and has maintained good moral character, the Attorney General shall remove the conditional basis of the status effective as of the second anniversary of the alien's obtaining the status of admission for permanent residence. Permanent resident status shall not be granted to an alien who would be excluded because of felony convictions unless the Attorney General determines, pursuant to regulations which shall be prescribed by the Attorney General, that granting permanent residence status to the alien is necessary in the interests of justice and comports with safety of the community.

"(c) LIMIT ON NUMBER OF ALIENS.—The number of aliens and members of their immediate families entering the United States under the authority of this section shall in no case exceed 200 persons in any fiscal year. The decision to grant or deny permanent resident status under this section is at the discretion of the Attorney General and shall not be subject to judicial review.

"(d) DEFINITIONS.—As used in this section, the terms 'alien' and 'United States' have the meanings stated in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101).".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 224 of title 18, United States Code, is amended by striking the item relating to section 3528 and inserting the following:

"3528. Aliens; waiver of admission requirements.

"3529. Definition.".

SEC. 807. TERRITORIAL SEA EXTENDING TO 12 MILES INCLUDED IN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.

The Congress 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. 808. ASSIMILATED CRIMES IN EXTENDED TERRITORIAL SEA.

Section 13 of title 18, United States Code is amended—

(1) in subsection (a), by inserting after "title" the following: "or on, above, or below any portion of the territorial sea of the United States not within the territory of any State, territory, possession, or district"; and

(2) by inserting at the end the following new subsection:

"(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, territory, possession, or

district, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed for purposes of subsection (a) to lie within the area of the State, territory, possession, or district within which it would lie if the boundaries of the State, territory, possession, or district were extended seaward to the outer limit of the territorial sea of the United States.".

SEC. 809. JURISDICTION OVER CRIMES AGAINST UNITED STATES NATIONALS ON CERTAIN FOREIGN SHIPS.

Section 7 of title 18, United States Code, is amended by inserting at the end the following new paragraph:

"(8) 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. 810. PENALTIES FOR INTERNATIONAL TERRORIST ACTS.

Section 2332 of title 18, United States Code, as redesignated by section 601(a)(2), is amended—

(1) in subsection (a)—

(A) in paragraph (2) by striking "ten" and inserting "20"; and

(B) in paragraph (3) by striking "three" and inserting "10"; and

(2) in subsection (c) by striking "five" and inserting "10".

SEC. 811. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of fiscal years 1994 and 1995, in addition to any other amounts specified in appropriations Acts, for counterterrorist operations and programs—

(1) for the Federal Bureau of Investigation, $30,000,000;

(2) for the Department of State, $10,000,000; and

(3) for the Immigration and Naturalization Service, $20,000,000.

SEC. 812. INTERNATIONAL PARENTAL KIDNAPPING.

(a) IN GENERAL.—Chapter 55 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1204. International parental kidnapping

"(a) OFFENSE.—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, imprisoned not more than 3 years, or both.

"(b) DEFINITIONS.—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) RULE OF CONSTRUCTION.—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) TECHNICAL AMENDMENT.—The chapter analysis for chapter 55 of title 18, United States Code, is amended by adding at the end the following new item:

"1204. International parental kidnapping.".

SEC. 813. FOREIGN MURDER OF UNITED STATES NATIONALS.

(a) IN GENERAL.—Chapter 51 of title 18, United States Code, as amended by section 141(a), is amended by adding at the end the following new section:

"§ 1120. Foreign murder of United States nationals

"(a) OFFENSE.—Whoever kills or attempts to kill a national of the United States while such national is outside the United States but within the jurisdiction of another country shall be punished as provided under sections 1111, 1112, and 1113.

"(b) APPROVAL OF PROSECUTION.—No prosecution may be instituted against any person under this section except upon the written approval of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, which function of approving prosecutions may not be delegated. No prosecution shall be approved if prosecution has been previously undertaken by a foreign country for the same act or omission.

"(c) CRITERIA FOR APPROVAL.—No prosecution shall be approved under this section unless the Attorney General, in consultation with the Secretary of State, determines that the act or omission took place in a country in which the person is no longer present, and the country lacks the ability to lawfully secure the person's return. A determination by the Attorney General under this subsection is not subject to judicial review.

"(d) ASSISTANCE FROM OTHER AGENCIES.—In the course of the enforcement of this section and notwithstanding any other law, the Attorney General may request assistance from any Federal, State, local, or foreign agency, including the Army, Navy, and Air Force.

"(e) DEFINITION.—As used in this section, the term 'national of the United States' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

(b) TECHNICAL AMENDMENTS.—(1) Section 1117 of title 18, United States Code, is amended by striking "or 1116" and inserting "1116, or 1120".

(2) The chapter analysis for chapter 51 of title 18, United States Code, as amended by section 141(b), is amended by adding at the end the following new item:

"1120. Foreign murder of United States nationals.".

SEC. 814. EXTRADITION.

(a) SCOPE.—Section 3181 of title 18, United States Code, is amended—

(1) by inserting "(a) IN GENERAL.—" before "The provisions of this chapter"; and

(2) by adding at the end the following new subsections:

"(b) SURRENDER WITHOUT REGARD TO EXISTENCE OF EXTRADITION TREATY.—This chapter shall be construed to permit, in the exercise of comity, the surrender of persons who have committed crimes of violence against nationals of the United States in foreign countries without regard to the existence of any treaty of extradition with such foreign government if the Attorney General certifies in writing that—

"(1) evidence has been presented by the foreign government that indicates that, if the offenses had been committed in the United States, they would constitute crimes of violence (as defined under section 16); and

"(2) the offenses charged are not of a political nature.

"(c) DEFINITION.—In this section, 'national of the United States' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

(b) FUGITIVES.—Section 3184 of title 18, United States Code, is amended—

(1) in the first sentence by inserting after "United States and any foreign government," the following: "or in cases arising under section 3181(b),";

(2) in the first sentence by inserting after "treaty or convention," the following: "or provided for under section 3181(b),"; and

(3) in the third sentence by inserting after "treaty or convention," the following: "or under section 3181(b),".

SEC. 815. 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.—

"(1) NAME, ADDRESS, AND LENGTH OF SERVICE ONLY.—The Director of the Federal Bureau of Investigation, or the Director's designee in a position not lower than Deputy Assistant Director, may request the name, address, and length of service of a person or entity if the Director (or 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 the provider, in communication with—

"(i) an individual who is engaging or has engaged in international terrorism (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)) or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

"(ii) a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)) or an agent of a foreign power (as defined in that section) under circumstances giving reason to believe that the communication concerned international terrorism (as defined in that section) or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.

"(2) NAME, ADDRESS, LENGTH OF SERVICE, AND TOLL BILLING RECORDS.—The Director of the Federal Bureau of Investigation, or the Director's designee in a position not lower than Deputy Assistant Director, may request the name, address, length of service, and toll billing records of a person or entity if the Director (or 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 (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)) or an agent of a foreign power (as defined in that section).".

(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,".

Subtitle B—Removal of Alien Terrorists

SEC. 821. REMOVAL OF ALIEN TERRORISTS.

The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting the following new section:

"REMOVAL OF ALIEN TERRORISTS

"SEC. 242C. (a) DEFINITIONS.—As used in this section—

"(1) the term 'alien terrorist' means any alien described in section 241(a)(4)(B);

"(2) the term 'classified information' has the same meaning as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App. IV);

"(3) the term 'national security' has the same meaning as defined in section 1(b) of the Classified Information Procedures Act (18 U.S.C. App. IV);

"(4) the term 'special court' means the court described in subsection (c) of this section; and

"(5) the term 'special removal hearing' means the hearing described in subsection (e) of this section.

"(b) APPLICATION FOR USE OF PROCEDURES.—The provisions of this section shall apply whenever the Attorney General certifies under seal to the special court that—

"(1) the Attorney General or Deputy Attorney General has approved of the proceeding under this section;

"(2) an alien terrorist is physically present in the United States; and

"(3) removal of such alien terrorist by deportation proceedings described in sections 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would disclose classified information.

"(c) SPECIAL COURT.—(1) The Chief Justice of the United States shall publicly designate up to 7 judges from up to 7 United States judicial districts to hear and decide cases arising under this section, in a manner consistent with the designation of judges described in section 103(a) of the Foreign Intelligence Surveillance Act (50 U.S.C. 1803(a)).

"(2) The Chief Justice may, in the Chief Justice's discretion, designate the same judges under this section as are designated pursuant to 50 U.S.C. 1803(a).

"(d) INVOCATION OF SPECIAL COURT PROCEDURE.—(1) When the Attorney General makes the application described in subsection (b), a single judge of the special court shall consider the application in camera and ex parte.

"(2) The judge shall invoke the procedures of subsection (e), if the judge determines that there is probable cause to believe that—

"(A) the alien who is the subject of the application has been correctly identified;

"(B) a deportation proceeding described in sections 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would disclose classified information; and

"(C) the threat posed by the alien's physical presence is immediate and involves the risk of death or serious bodily harm.

"(e) SPECIAL REMOVAL HEARING.—(1) Except as provided in paragraph (4), the special removal hearing authorized by a showing of probable cause described in subsection (d)(2) shall be open to the public.

"(2) The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent such alien. Counsel may be appointed as described in section 3006A of title 18, United States Code.

"(3) The alien shall have a right to introduce evidence on his own behalf, and except as provided in paragraph (4), shall have a right to cross-examine any witness or request that the judge issue a subpoena for the presence of a named witness.

"(4) The judge shall authorize the introduction in camera and ex parte of any item of evidence for which the judge determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information.

"(5) With respect to any evidence described in paragraph (4), the judge shall cause to be delivered to the alien either—

"(A)(i) the substitution for such evidence of a statement admitting relevant facts that the specific evidence would tend to prove, or (ii) the substitution for such evidence of a summary of the specific evidence; or

"(B) if disclosure of even the substituted evidence described in subparagraph (A) would create a substantial risk of death or serious bodily harm to any person, a statement informing the alien that no such summary is possible.

"(6) If the judge determines—

"(A) that the substituted evidence described in paragraph (4)(B) will provide the alien with substantially the same ability to make his defense as would disclosure of the specific evidence, or

"(B) that disclosure of even the substituted evidence described in paragraph (5)(A) would create a substantial risk of death or serious bodily harm to any person,

then the determination of deportation (described in subsection (f)) may be made pursuant to this section.

"(f) DETERMINATION OF DEPORTATION.—(1) If the determination in subsection (e)(6)(A) has been made, the judge shall, considering the evidence on the record as a whole, require that the alien be deported if the Attorney General proves, by clear and convincing evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

"(2) If the determination in subsection (e)(6)(B) has been made, the judge shall, considering the evidence received (in camera and otherwise), require that the alien be deported if the Attorney General proves, by clear, convincing, and unequivocal evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

"(g) APPEALS.—(1) The alien may appeal a determination under subsection (f) to the court of appeals for the Federal Circuit, by filing a notice of appeal with such court within 20 days of the determination under such subsection.

"(2)(A) The Attorney General may appeal a determination under subsection (d), (e), or (f) to the court of appeals for the Federal Circuit, by filing a notice of appeal with such court within 20 days of the determination under any one of such subsections.

"(B) When requested by the Attorney General, the entire record of the proceeding under this section shall be transmitted to the court of appeals under seal. If the Attorney General is appealing a determination under subsection (d) or (e), the court of appeals shall consider such appeal in camera and ex parte.".

Subtitle C—Enhanced Entry Controls

SEC. 831. ADMISSIONS FRAUD.

(a) EXCLUSION FOR FRAUDULENT DOCUMENTS AND FAILURE TO PRESENT DOCUMENTS.—Section 212(a)(6)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)) is amended—

(1) by striking "(C) MISREPRESENTATION" and inserting in lieu thereof the following:

"(C) FRAUD, MISREPRESENTATION, AND FAILURE TO PRESENT DOCUMENTS";

(2) by adding at the end the following new clause:

"(iii) FRAUDULENT DOCUMENTS AND FAILURE TO PRESENT DOCUMENTS.—

"(I) Any alien who, in seeking entry to the United States or boarding a common carrier for the purpose of coming to the United States, presents any document which, in the determination of the immigration officer, is forged, counterfeit, altered, falsely made, stolen, or inapplicable to the alien presenting the document, or otherwise contains a misrepresentation of a material fact, is excludable.

"(II) Any alien who, in boarding a common carrier for the purpose of coming to the United States, presents a document that relates or purports to relate to the alien's eligibility to enter the United States, and fails to present such document to an immigration officer upon arrival at a port of entry into the United States, is excludable.".

(b) AVAILABILITY OF ASYLUM AND OTHER DISCRETIONARY RELIEF.—

(1) Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended by adding at the end the following new subsection:

"(e) FRAUD.—

"(1) APPLICATION OF FRAUD EXCLUSION.—Notwithstanding subsection (a) and except as provided in paragraph (2), any alien who is excludable under section 212(a)(6)(C)(iii) or section 212(a)(7)(A)(i) may not apply for or be granted asylum.

"(2) EXCEPTION.—(A) The limitation under paragraph (1) shall not apply if the action upon which the exclusion is based was pursuant to direct departure from a country in which—

"(i) the alien has a credible fear of persecution; or

"(ii) there is a significant danger that the alien would be returned to a country in which the alien would have a credible fear of persecution.

"(B) For the purposes of subparagraph (A), an alien may be considered to have a credible fear of persecution if—

"(i) it is more probable than not that the statements made by the alien in support of his or her claim are true; and

"(ii) there is a significant possibility, in light of such statements and of such other facts as are known to the officer about country conditions, that the alien could establish eligibility as a refugee within the meaning of section 101(a)(42)(A).".

(2) Section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended in the third sentence by inserting before the period "or to any alien who is excludable pursuant to section 212(a)(6)(C)(iii)".

SEC. 832. INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.

Section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) is amended to read as follows:

"(b) INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.—

"(1) An immigration officer shall inspect each alien who is seeking entry to the United States.

"(2)(A) If the examining immigration officer determines that an alien seeking entry—

"(i)(I) is excludable under section 212(a)(6)(C)(iii), or

"(II) is excludable under section 212(a)(7)(A)(i),

"(ii) does not have any reasonable basis for legal entry into the United States, and

"(iii) does not indicate an intention to apply for asylum under section 208,

the alien shall be specially excluded from entry into the United States without a hearing.

"(B) The examining immigration officer shall refer to an immigration officer, specially trained to conduct interviews and make determinations bearing on eligibility for asylum, any alien who is (i) excludable under section 212(a)(6)(C)(iii) or section 212(a)(7)(A) (i) and (ii) who has indicated an intention to apply for asylum. Such an alien shall not be considered to have entered the United States for purposes of this Act.

"(C) An alien under subparagraph (B) who is determined by an immigration officer, specially trained to conduct interviews and make determinations bearing on eligibility for asylum, to be excludable and ineligible for the exception under section 208(e)(2), shall be specially excluded and deported from the United States without further hearing.

"(3)(A) Except as provided in subparagraph (B), if the examining immigration officer determines that an alien seeking entry is not clearly and beyond a doubt entitled to enter, the alien shall be detained for a hearing before an immigration judge.

"(B) The provisions of subparagraph (A) shall not apply—

"(i) to an alien crewman,

"(ii) to an alien described in paragraph (2)(A) or (2)(C), or

"(iii) if the conditions described in section 273(d) exist.

"(4) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to enter is so challenged, before an immigration judge for a hearing on exclusion of the alien.

"(5) The Attorney General shall establish procedures that ensure that aliens are not specially excluded under paragraph (2)(A) without an inquiry into their reasons for seeking entry into the United States.

"(6)(A) Subject to subparagraph (B), an alien has not entered the United States for purposes of this Act unless and until such alien has been inspected and admitted by an immigration officer pursuant to this subsection.

"(B) An alien who (i) is physically present in the United States, (ii) has been physically present in the United States for a continuous period of one year, and (iii) has not been inspected and admitted by an immigration officer may be said to have entered the United States without inspection. Such an alien is subject to deportation pursuant to section 241(a)(1)(B).".

SEC. 833. JUDICIAL REVIEW.

Section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) (as amended by section 732) is amended by adding after subsection (c) the following new subsections:

"(d) HABEAS CORPUS REVIEW.—Notwithstanding any other provision of law, no court shall have jurisdiction to review, except by petition for habeas corpus, any determination made with respect to an alien found excludable pursuant to section 212(a)(6)(C)(iii) or section 212(a)(7)(A)(i). In any such case, review by habeas corpus shall be limited to examination of whether the petitioner (1) is an alien, and (2) was ordered excluded from the United States pursuant to section 235(b)(2).

"(e) OTHER LIMITS ON JUDICIAL REVIEW AND ACTION.—Notwithstanding any other provision of law, no court shall have jurisdiction (1) to review the procedures established by the Attorney General for the determination of exclusion pursuant to section 212(a)(6)(C)(iii) or section 212(a)(7)(A)(i), or (2) to enter declaratory or injunctive relief with respect to the implementation of subsection (b)(2). Regardless of the nature of the suit or claim, no court shall have jurisdiction except by habeas corpus petition as provided in subsection (d) to consider the validity of any adjudication or determination of special exclusion or to provide declaratory or injunctive relief with respect to the special exclusion of any alien.

"(f) COLLATERAL ENFORCEMENT PROCEEDINGS.—In any action brought for the assessment of penalties for improper entry or reentry of an alien under section 275 or 276, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, special exclusion, or deportation entered under sections 235, 236, and 242.".

SEC. 834. CONFORMING AMENDMENTS.

Section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)) is amended—

(1) in the second sentence of paragraph (1) by striking "Deportation" and inserting "Subject to section 235(b)(2), deportation"; and

(2) in the first sentence of paragraph (2) by striking "If" and inserting "Subject to section 235(b)(2), if".

SEC. 835. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this subtitle shall take effect on the date of the enactment of this Act and shall apply to aliens who arrive in or seek admission to the United States on or after that date.

TITLE IX—VICTIMS' RIGHTS AND CHILD ABUSE

Subtitle A—Victims' Rights

SEC. 901. RESTITUTION 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".

(b) SUSPENSION OF FEDERAL BENEFITS.—Section 3663 of title 18, United States Code, is amended—

(1) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(2) by inserting after subsection (f) the following new subsection:

"(g)(1) If the defendant is delinquent in making restitution in accordance with any schedule of payments or any requirement of immediate payment imposed under this section, the court may, after a hearing, suspend the defendant's eligibility for all Federal benefits until such time as the defendant demonstrates to the court good-faith efforts to return to such schedule.

"(2) In this subsection—

"(A) 'Federal benefits'—

"(i) means any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

"(ii) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility.

"(B) 'veterans benefit' means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.".

SEC. 902. RIGHT OF THE VICTIM TO AN IMPARTIAL JURY.

Rule 24(b) of the Federal Rules of Criminal Procedure is amended by striking "the Government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges" and inserting "each side is entitled to 6 peremptory challenges".

SEC. 903. MANDATORY RESTITUTION AND OTHER PROVISIONS.

(a) ORDER OF RESTITUTION.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "may order" and inserting "shall order"; and

(B) by adding at the end the following new paragraph:

"(4) In addition to ordering restitution of the victim of the offense of which a defendant is convicted, a court may order restitution of any person who, as shown by a preponderance of evidence, was harmed physically, emotionally, or pecuniarily, by unlawful conduct of the defendant during—

"(A) the criminal episode during which the offense occurred; or

"(B) the course of a scheme, conspiracy, or pattern of unlawful activity related to the offense.";

(2) in subsection (b)(1)(A) by striking "impractical" and inserting "impracticable";

(3) in subsection (b)(2) by inserting "emotional or" after "resulting in";

(4) in subsection (c) by striking "If the Court decides to order restitution under this section, the" and inserting "The";

(5) by striking subsections (d), (e), (f), (h), and (i), as redesignated by section 871(b)(1);

(6) by redesignating subsection (g), as added by section 871(b)(2), as subsection (d); and

(7) by adding at the end the following new subsections:

"(e)(1) The court shall order restitution to a victim in the full amount of the victim's losses as determined by the court and without consideration of—

"(A) the economic circumstances of the offender; or

"(B) the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source.

"(2) Upon determination of the amount of restitution owed to each victim, the court shall specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

"(A) the financial resources and other assets of the offender;

"(B) projected earnings and other income of the offender; and

"(C) any financial obligations of the offender, including obligations to dependents.

"(3) A restoration order may direct the offender to make a single, lump-sum payment, partial payment at specified intervals, or such in-kind payments as may be agreeable to the victim and the offender.

"(4) An in-kind payment described in paragraph (3) may be in the form of—

"(A) return of property;

"(B) replacement of property; or

"(C) services rendered to the victim or to a person or organization other than the victim.

"(f) When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of restitution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.

"(g) When the court finds that more than 1 victim has sustained a loss requiring restitution by an offender, the court shall order full restitution of each victim but may provide for different payment schedules to reflect the economic circumstances of each victim.

"(h)(1) If the victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

"(2) The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the victim under the restitution order fully compensate the victim for the loss, at which time a person that has provided compensation to the victim shall be entitled to receive any payments remaining to be paid under the restitution order.

"(3) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(i) A restitution order shall provide that—

"(1) all fines, penalties, costs, restitution payments and other forms of transfers of money or property made pursuant to the sentence of the court shall be made by the offender to an entity designated by the Director of the Administrative Office of the United States Courts for accounting and payment by the entity in accordance with this subsection;

"(2) the entity designated by the Director of the Administrative Office of the United States Courts shall—

"(A) log all transfers in a manner that tracks the offender's obligations and the current status in meeting those obligations, unless, after efforts have been made to enforce the restitution order and it appears that compliance cannot be obtained, the court determines that continued recordkeeping under this subparagraph would not be useful;

"(B) notify the court and the interested parties when an offender is 90 days in arrears in meeting those obligations; and

"(C) disburse money received from an offender so that each of the following obligations is paid in full in the following sequence:

"(i) a penalty assessment under section 3013;

"(ii) restitution of all victims; and

"(iii) all other fines, penalties, costs, and other payments required under the sentence; and

"(3) the offender shall advise the entity designated by the Director of the Administrative Office of the United States Courts of any change in the offender's address during the term of the restitution order.

"(j) A restitution order shall constitute a lien against all property of the offender and may be recorded in any Federal or State office for the recording of liens against real or personal property.

"(k) Compliance with the schedule of payment and other terms of a restitution order shall be a condition of any probation, parole, or other form of release of an offender. If a defendant fails to comply with a restitution order, the court may revoke probation or a term of supervised release, modify the term or conditions of probation or a term of supervised release, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, or take any other action necessary to obtain compliance with the restitution order. In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the restitution order.

"(l) An order of restitution may be enforced—

"(1) by the United States—

"(A) in the manner provided for the collection and payment of fines in subchapter B of chapter 229; or

"(B) in the same manner as a judgment in a civil action; and

"(2) by a victim named in the order to receive restitution, in the same manner as a judgment in a civil action.

"(m) A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.".

(b) PROCEDURE FOR ISSUING ORDER OF RESTITUTION.—Section 3664 of title 18, United States Code, is amended—

(1) by striking subsection (a);

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (a), (b), (c), and (d);

(3) by amending subsection (a), as redesignated by paragraph (2), to read as follows:

"(a) The court may order the probation service of the court to obtain information pertaining to the amount of loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs."; and

(4) by adding at the end the following new subsection:

"(e) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.".

Subtitle B—National Child Protection Act

SEC. 911. SHORT TITLE.

This subtitle may be cited as the "National Child Protection Act of 1993".

SEC. 912. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) more than 2,500,000 reports of suspected child abuse and neglect are made each year, and increases have occurred in recent years in the abuse of children by persons who have previously committed crimes of child abuse or other serious crimes;

(2) although the great majority of child care providers are caring and dedicated professionals, child abusers and others who harm or prey on children frequently seek employment in or volunteer for positions that give them access to children;

(3) nearly 6,000,000 children received day care in 1990, and this total is growing rapidly to an estimated 8,000,000 children by 1995;

(4) exposure to child abusers and others who harm or prey on children is harmful to the physical and emotional well-being of children;

(5) there is no reliable, centralized national source through which child care organizations may obtain the benefit of a nationwide criminal background check on persons who provide or seek to provide child care;

(6) some States maintain automated criminal background files and provide criminal history information to child care organizations on persons who provide or seek to provide child care; and

(7) because State and national criminal justice databases are inadequate to permit effective national background checks, persons convicted of crimes of child abuse or other serious crimes may gain employment at a child care organization.

(b) PURPOSES.—The purposes of this subtitle 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. 913. DEFINITIONS.

In this subtitle—

"authorized agency" means a division or office of a State designated by a State to report, receive, or disseminate information under this subtitle.

"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.

"child" means a person who is a child for purposes of the criminal child abuse law of a State.

"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.

"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.

"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, social security number, age, race, sex, date of birth, height, weight, hair and eye color, legal residence address, a brief description of the child abuse crime or offenses for which the person is under indictment or has been convicted, and any other information that the Attorney General determines may be useful in identifying persons under indictment for, or convicted of, a child abuse crime.

"child care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children.

"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.

"exploitation" means child pornography and child prostitution.

"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.

"national criminal background check system" means the system of information and identification relating to convicted and accused child abuse offenders that is maintained by the Attorney General under this subtitle.

"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.

"physical injury" includes lacerations, fractured bones, burns, internal injuries, severe bruising, and serious bodily harm.

"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.

"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.

"sex crime" means an act of sexual abuse that is a criminal act.

"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.

"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. 914. REPORTING BY THE STATES.

(a) IN GENERAL.—An authorized agency of a State shall report child abuse crime information to the national criminal background check system.

(b) PROVISION OF STATE CHILD ABUSE CRIME RECORDS TO 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 to the national criminal background check system;

(B) establish guidelines for the reporting 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 subtitle; 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 child abuse crime case dispositions in computerized criminal history files for all child abuse crime cases in which there has been an entry of activity within the last 5 years; and

(B) continue to maintain such a system.

(c) EXCHANGE OF INFORMATION.—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 information and 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 subtitle.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may reveal the identity of any particular victim of a crime.

(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 883, 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. 915. 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 other criminal justice recordkeeping systems 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), including procedures for carrying out the purposes of this subtitle.

(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) informs the qualified entity that the background check pursuant to this section—

(i) may not reflect all indictments or convictions for a background check crime;

(ii) is not certain to include arrest information; and

(iii) should 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)—

(i) at a minimum, states whether the background check information set forth in the identification document required under subparagraph (A) is complete and accurate; and

(ii) be limited to the information reasonably required to accomplish the purposes of this subtitle;

(F) that no qualified entity may take action adverse to a provider, except 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;

(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 providers;

(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; and

(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 of a background check.

(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 subtitle, 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 subtitle and incorporates a nationwide review of State and Federal records of background check offenses through the national criminal background check system.

(d) RECORDS EXCHANGE.—The Attorney General may exchange Federal Bureau of Investigation identification records with authorized agencies for purposes of background checks under subsection (a) and may by regulation authorize further dissemination of such records by authorized agencies for such purposes.

(e) REGULATIONS.—(1) The Attorney General shall by regulation prescribe such other measures as may be required to carry out the purposes of this subtitle, 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. 916. FUNDING FOR IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.

(a) USE OF FORMULA GRANTS FOR IMPROVEMENTS IN STATE RECORDS AND SYSTEMS.—Section 509(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(1) in paragraph (2) by striking "and" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; and"; and

(3) 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 884 of the National Child Protection Act of 1993 with the Attorney General for the purpose of implementing the National Child Protection Act of 1993.".

(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 subtitle;

(B) for the improvement of existing computerized criminal history files for the purposes of this subtitle;

(C) to improve accessibility to the national criminal background check system for the purposes of this subtitle; and

(D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history records in, the national criminal background check system for the purposes of this subtitle.

(2) There are authorized to be appropriated for grants under paragraph (1) $20,000,000 for fiscal year 1994 and $10,000,000 for each of fiscal years 1995 and 1996.

(c) WITHHOLDING STATE FUNDS.—Effective 1 year after the date of enactment of this Act, the Attorney General may reduce by up to 10 percent the allocation to a State for a fiscal year 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 914.

Subtitle C—Jacob Wetterling Crimes Against Children Registration Act

SEC. 921. SHORT TITLE.

This subtitle may be cited as the "Jacob Wetterling Crimes Against Children Registration Act".

SEC. 922. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—

(1) STATE GUIDELINES.—The Attorney General shall establish guidelines for State programs requiring any person who is convicted of a criminal offense against a victim who is a minor to register a current address with a designated State law enforcement agency for 10 years after release from prison, being placed on parole, or being placed on supervised release.

(2) DEFINITION.—For purposes of this subsection, "criminal offense against a victim who is a minor" includes—

(A) kidnapping of a minor, except by a noncustodial parent;

(B) false imprisonment of a minor, except by a noncustodial parent;

(C) criminal sexual conduct toward a minor;

(D) solicitation of minors to engage in sexual conduct;

(E) use of minors in a sexual performance; or

(F) solicitation of minors to practice prostitution.

(b) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—An approved State registration program established by this section shall contain the following requirements:

(1) NOTIFICATION.—If a person who is required to register under this section is released from prison, paroled, or placed on supervised release, a State prison officer shall—

(A) inform the person of the duty to register;

(B) inform the person that if the person changes residence address, the person shall give the new address to a designated State law enforcement agency in writing within 10 days;

(C) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

(D) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

(2) TRANSFER OF INFORMATION TO STATE AND THE FBI.—The officer shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit the conviction data and fingerprints to the Identification Division of the Federal Bureau of Investigation.

(3) ANNUAL VERIFICATION.—On each anniversary of a person's initial registration date during the period in which the person is required to register under this section, the designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person. The person shall mail the verification form to the officer within 10 days after receipt of the form. The verification form shall be signed by the person, and state that the person still resides at the address last reported to the designated State law enforcement agency. If the person fails to mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form, the person shall be in violation of this section unless the person proves that the person has not changed his or her residence address.

(4) NOTIFICATION OF LOCAL LAW ENFORCEMENT AGENCIES OF CHANGES IN ADDRESS.—Any change of address by a person required to register under this section reported to the designated State law enforcement agency shall immediately be reported to the appropriate law enforcement agency having jurisdiction where the person is residing.

(c) REGISTRATION FOR 10 YEARS.—A person required to register under this section shall continue to comply with this section until 10 years have elapsed since the person was released from imprisonment, or placed on parole or supervised release.

(d) PENALTY.—A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in such State. It is the sense of Congress that such penalties should include at least 6 months' imprisonment.

(e) PRIVATE DATA.—The information provided under this section is private data on individuals and may be used for law enforcement purposes and confidential background checks conducted with fingerprints for child care services providers.

SEC. 923. STATE COMPLIANCE.

(a) COMPLIANCE DATE.—Each State shall have 3 years from the date of the enactment of this Act in which to implement this subtitle.

(b) INELIGIBILITY FOR FUNDS.—The allocation of funds under section 506 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756) received by a State not complying with this subtitle 3 years after the date of enactment of this Act shall be reduced by 25 percent and the unallocated funds shall be reallocated to the States in compliance with this section.

TITLE X—VIOLENT CRIMES AND LAW ENFORCEMENT SUPPORT

Subtitle A—Violent Crimes

SEC. 1001. 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.

SEC. 1002. INCREASE IN MAXIMUM PENALTY FOR ASSAULT.

(a) CERTAIN OFFICERS AND EMPLOYEES.—Section 111 of title 18, United States Code, is amended—

(1) in subsection (a) by inserting ", where the acts in violation of this section constitute only simple assault, be fined under this title, imprisoned not more than 1 year, or both, and in all other cases," after "shall"; and

(2) in subsection (b) by inserting "or inflicts bodily injury" after "weapon".

(b) FOREIGN OFFICIALS, OFFICIAL GUESTS, AND INTERNATIONALLY PROTECTED PERSONS.—Section 112(a) of title 18, United States Code, is amended—

(1) by striking "not more than $5,000" and inserting "under this title";

(2) by inserting ", or inflicts bodily injury," after "weapon"; and

(3) by striking "not more than $10,000" and inserting "under this title".

(c) MARITIME AND TERRITORIAL JURISDICTION.—Section 113 of title 18, United States Code, is amended—

(1) in subsection (c)—

(A) by striking "of not more than $1,000" and inserting "under this title"; and

(B) by striking "five" and inserting "10"; and

(2) in subsection (e)—

(A) by striking "of not more than $300" and inserting "under this title"; and

(B) by striking "three" and inserting "6".

(d) CONGRESS, CABINET, OR SUPREME COURT.—Section 351(e) of title 18, United States Code, is amended—

(1) by striking "not more than $5,000," and inserting "under this title,";

(2) by inserting "the assault involved the use of a dangerous weapon, or" after "if";

(3) by striking "not more than $10,000" and inserting "under this title"; and

(4) by striking "for".

(e) PRESIDENT AND PRESIDENT'S STAFF.—Section 1751(e) of title 18, United States Code, is amended—

(1) by striking "not more than $10,000," each place it appears and inserting "under this title,";

(2) by striking "not more than $5,000," and inserting "under this title,"; and

(3) by inserting "the assault involved the use of a dangerous weapon, or" after "if".

SEC. 1003. INCREASED MAXIMUM PENALTY FOR MANSLAUGHTER.

Section 1112 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) by inserting "fined under this title or" after "shall be" in the second undesignated paragraph; and

(B) by inserting ", or both" after "years";

(2) by striking "not more than $1,000" and inserting "under this title"; and

(3) by striking "three" and inserting "6".

SEC. 1004. INCREASED PENALTY FOR TRAVEL ACT VIOLATIONS.

Section 1952(a) of title 18, United States Code, is amended by striking "and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both" and inserting "and thereafter performs or attempts to perform—

"(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or

"(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.".

SEC. 1005. INCREASED PENALTY FOR CONSPIRACY TO COMMIT MURDER FOR HIRE.

Section 1958(a) of title 18, United States Code, is amended by inserting "or who conspires to do so" before "shall be fined" the first place it appears.

SEC. 1006. FEDERAL PENALTIES FOR CARJACKING.

Section 2119 of title 18, United States Code, is amended to read as follows:

"(a) DEFINITION.—In this section, 'covered motor vehicle' means a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce.

"(b) OFFENSES.—A person who, while in possession of a firearm (as defined in section 921) or other weapon or dangerous device—

"(1) intentionally strikes or otherwise makes physical contact with a covered motor vehicle with a motor vehicle operated by the person, with any other thing, or with any part of the person's body, in one of the circumstances described in subsection (c); or

"(2) takes a covered motor vehicle from the person or presence of another by force and violence or by intimidation, or attempts to do so,

shall be punished under subsection (d).

"(c) CIRCUMSTANCES IN WHICH OFFENSE OCCURS.—The circumstances referred to in subsection (b)(1) are that—

"(1) the person makes the contact with the intent to injure an occupant of the motor vehicle or to take or cause damage to the motor vehicle; or

"(2) in the course of events immediately following the contact, an occupant of the motor vehicle is injured or the motor vehicle is taken or damaged.

"(d) PENALTIES.—A person who violates subsection (b) shall—

"(1) be fined under this title or imprisoned not more than 15 years, or both;

"(2) if serious bodily injury (as defined in section 1365) results, be fined under this title or imprisoned not more than 25 years, or both; and

"(3) if death results, be fined under this title or imprisoned for any number of years up to life, or both, or sentenced to death.".

SEC. 1007. INCREASED MANDATORY MINIMUM SENTENCES FOR CRIMINALS USING FIREARMS.

Section 924(c)(1) of title 18, United States Code, is amended to read as follows:

"(c)(1)(A) Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States—

"(i) knowingly uses, carries, or otherwise possesses a firearm, shall, in addition to the punishment provided for the underlying crime, be sentenced to imprisonment for 10 years;

"(ii) discharges a firearm with intent to injure another person, shall, in addition to the punishment provided for the underlying crime, be sentenced to imprisonment for 20 years; or

"(iii) knowingly uses, carries, or otherwise possesses a firearm that is a machinegun or destructive device, or that is equipped with a firearm silencer or firearm muffler, shall, in addition to the punishment provided for the underlying crime, be sentenced to imprisonment for 30 years.

"(B)(i) In the case of a second conviction under this subsection, a person shall, in addition to the punishment provided for the underlying crime, be sentenced to imprisonment for 20 years for a violation of subparagraph (A)(i), to imprisonment for 30 years for

a violation of subparagraph (A)(ii), and life imprisonment for a violation of subparagraph (A)(iii).

"(ii) In the case of a third or subsequent conviction under this subsection, or a conviction for a violation of subparagraph (A)(ii) that results in the death of another person, a person shall be sentenced to death or life imprisonment.

"(C) Notwithstanding any other law, a term of imprisonment under this subsection shall not run concurrently with any other term of imprisonment imposed for the underlying crime.

"(D) For the purposes of paragraph (A), a person shall be considered to be in possession of a firearm if the person has a firearm readily available at the scene of the crime during the commission of the crime.".

SEC. 1008. LIFE IMPRISONMENT WITHOUT RELEASE FOR CRIMINALS CONVICTED A THIRD TIME.

Section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended by striking "If any person commits a violation of this subparagraph or of section 418, 419, or 420 after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence." and inserting "If any person commits a violation of this subparagraph or of section 418, 419, or 420 or a crime of violence after two or more prior convictions for a felony drug offense or crime of violence or for any combination thereof have become final, such person shall be sentenced to not less than a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. For purposes of this subparagraph, the term 'crime of violence' means an offense that is a felony punishable by a maximum term of imprisonment of 10 years or more and has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.".

Subtitle B—National Commission to Support Law Enforcement

SEC. 1021. SHORT TITLE.

This subtitle may be cited as the "National Commission to Support Law Enforcement Act.".

SEC. 1022. FINDINGS.

The Congress finds that—

(1) law enforcement officers risk their lives daily to protect citizens, for modest rewards and too little recognition;

(2) a significant shift has occurred in the problems that law enforcement officers face without a corresponding change in the support from the Federal Government;

(3) law enforcement officers are on the front line in the war against drugs and crime;

(4) the rate of violent crime continues to increase along with the increase in drug use;

(5) a large percentage of individuals arrested test positive for drug usage;

(6) the Presidential Commission on Law Enforcement and the Administration of Justice of 1965 focused attention on many issues affecting law enforcement, and a review 25 years later would help to evaluate current problems, including drug-related crime, violence, racial conflict, and decreased funding; and

(7) a comprehensive study of law enforcement issues, including the role of the Federal Government in supporting law enforcement officers, working conditions, and responsibility for crime control would assist in redefining the relationships among the Federal Government, the public, and law enforcement officials.

SEC. 1023. ESTABLISHMENT OF COMMISSION.

There is established a national commission to be known as the "National Commission to Support Law Enforcement" (referred to in this subtitle as the "Commission").

SEC. 1024. DUTIES.

(a) IN GENERAL.—The Commission shall study and recommend changes regarding law enforcement agencies and law enforcement issues on the Federal, State, and local levels, including the following:

(1) FUNDING.—The sufficiency of funding, including a review of grant programs at the Federal level.

(2) EMPLOYMENT.—The conditions of law enforcement employment.

(3) INFORMATION.—The effectiveness of information-sharing systems, intelligence, infrastructure, and procedures among law enforcement agencies of Federal, State, and local governments.

(4) RESEARCH AND TRAINING.—The status of law enforcement research and education and training.

(5) EQUIPMENT AND RESOURCES.—The adequacy of equipment, physical resources, and human resources.

(6) COOPERATION.—The cooperation among Federal, State, and local law enforcement agencies.

(7) RESPONSIBILITY.—The responsibility of governments and law enforcement agencies in solving the crime problem.

(8) IMPACT.—The impact of the criminal justice system, including court schedules and prison overcrowding, on law enforcement.

(b) CONSULTATION.—The Commission shall conduct surveys and consult with focus groups of law enforcement officers, local officials, and community leaders across the Nation to obtain information and seek advice on important law enforcement issues.

SEC. 1025. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 24 members as follows:

(1) Eight individuals from among national law enforcement officers, of whom—

(A) two shall be appointed by the Speaker of the House of Representatives;

(B) two shall be appointed by the Majority Leader of the Senate;

(C) two shall be appointed by the Minority Leader of the House; and

(D) two shall be appointed by the Minority Leader of the Senate.

(2) Eight individuals from national law enforcement organizations representing law enforcement management, of whom—

(A) two shall be appointed by the Speaker of the House of Representatives;

(B) two shall be appointed by the Majority Leader of the Senate;

(C) two shall be appointed by the Minority Leader of the House; and

(D) two shall be appointed by the Minority Leader of the Senate.

(3) Two individuals with academic expertise regarding law enforcement issues, of whom—

(A) one shall be appointed by the Speaker of the House of Representatives and the Majority Leader of the Senate; and

(B) one shall be appointed by the Minority Leader of the Senate and the Minority Leader of the House of Representatives.

(4) Two Members of the House of Representatives, appointed by the Speaker and the Minority Leader of the House of Representatives.

(5) Two Members of the Senate, appointed by the Majority Leader and the Minority Leader of the Senate.

(6) One individual from the Department of Justice, appointed by the President.

(7) The Comptroller General of the United States, who shall serve as the chairperson of the Commission.

(b) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission shall receive no additional pay, allowance, or benefit by reason of service on the Commission.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(c) APPOINTMENT DATES.—Members of the Commission shall be appointed no later than 90 days after the enactment of this title.

SEC. 1026. EXPERTS AND CONSULTANTS.

(a) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(b) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of that agency to the Commission to assist the Commission in carrying out its duties under this subtitle.

(c) ADMINISTRATIVE SUPPORT.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, administrative support services as the Commission may request.

SEC. 1027. POWERS OF COMMISSION.

(a) HEARINGS.—The Commission may, for purposes of this subtitle, hold hearings, sit and act at the time and places, take testimony, and receive evidence, as the Commission considers appropriate.

(b) DELEGATION OF AUTHORITY.—Any member or agent of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take by this section.

(c) INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this subtitle. Upon request of the chairperson of the Commission, the head of an agency shall furnish the information to the Commission to the extent permitted by law.

(d) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

SEC. 1028. REPORT.

Not later than the expiration of the 18-month period beginning on the date of the appointment of the members of the Commission, a report containing the findings of the Commission and specific proposals for legislation and administrative actions that the Commission has determined to be appropriate shall be submitted to Congress.

SEC. 1029. TERMINATION.

The Commission shall cease to exist upon the expiration of the 60-day period beginning on the date on which the Commission submits its report under section 1028.

SEC. 1030. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this subtitle $1,000,000 for fiscal year 1994.

SEC. 1031. REPEALS.

Title XXXIV of the Crime Control Act of 1990 (42 U.S.C. 3721 note) and section 211(B) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991 (42 U.S.C. 3721 note; 104 Stat. 2122) are repealed.

TITLE XI—CIVIL RIGHTS OFFENSES

SEC. 1101. INCREASED MAXIMUM PENALTIES FOR CIVIL RIGHTS VIOLATIONS.

(a) CONSPIRACY AGAINST RIGHTS.—Section 241 of title 18, United States Code, is amended—

(1) by striking "not more than $10,000" and inserting "under this title";

(2) by inserting "from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill" after "results"; and

(3) by inserting "and may be fined under this title, or both" before the period.

(b) DEPRIVATION OF RIGHTS.—Section 242 of title 18, United States Code, is amended—

(1) by striking "not more more than $1,000" and inserting "under this title";

(2) by inserting "from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire," after "bodily injury results";

(3) by inserting "from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill," after "death results"; and

(4) by inserting "and may be fined under this title, or both" before the period.

(c) FEDERALLY PROTECTED ACTIVITIES.—The first sentence of section 245(b) of title 18, United States Code, is amended in the matter following paragraph (5)—

(1) by striking "not more than $1,000" and inserting "under this title";

(2) by inserting "from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire" after "bodily injury results;

(3) by striking "not more than $10,000" and inserting "under this title";

(4) by inserting "from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill," after "death results"; and

(5) by inserting "and may be fined under this title, or both" before the period.

(d) DAMAGE TO RELIGIOUS PROPERTY.—Section 247 of title 18, United States Code, is amended—

(1) in subsection (c)(1) by inserting "from acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill" after "death results";

(2) in subsection (c)(2)—

(A) by striking "serious"; and

(B) by inserting "from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire" after "bodily injury results"; and

(3) by amending subsection (e) to read as follows:

"(e) As used in this section, the term 'religious property' means any church, synagogue, mosque, religious cemetery, or other religious property.".

(e) FAIR HOUSING ACT.—Section 901 of the Fair Housing Act (42 U.S.C. 3631) is amended—

(1) by striking "not more than $1,000," and inserting "under title 18, United States Code,";

(2) by inserting "from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire" after "bodily injury results";

(3) by striking "not more than $10,000," and inserting "under title 18, United States Code,";

(4) by inserting "from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill" after "death results";

(5) by striking "subject to imprisonment" and inserting "fined under title 18, United States Code, or imprisoned"; and

(6) by inserting ", or both" after "life".

TITLE XII—PUBLIC CORRUPTION

SEC. 1201. SHORT TITLE.

This title may be cited as the "Anti-Corruption Act of 1993".

SEC. 1202. PUBLIC CORRUPTION.

(a) OFFENSES.—Chapter 11 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 226. Public corruption

"(a) STATE AND LOCAL GOVERNMENT.—

"(1) HONEST SERVICES.—Whoever, in a circumstance described in paragraph (3), deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of the honest services of an official or employee of the State or political subdivision shall be fined under this title, imprisoned not more than 10 years, or both.

"(2) FAIR AND IMPARTIAL ELECTIONS.—Whoever, in a circumstance described in paragraph (3), deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of a fair and impartially conducted election process in any primary, run-off, special, or general election—

"(A) through the procurement, casting, or tabulation of ballots that are materially false, fictitious, or fraudulent or that are invalid, under the laws of the State in which the election is held;

"(B) through paying or offering to pay any person for voting;

"(C) through the procurement or submission of voter registrations that contain false material information, or omit material information; or

"(D) through the filing of any report required to be filed under State law regarding an election campaign that contains false material information or omits material information,

shall be fined under this title, imprisoned not more than 10 years, or both.

"(3) CIRCUMSTANCES IN WHICH OFFENSE OCCURS.—The circumstances referred to in paragraphs (1) and (2) are that—

"(A) for the purpose of executing or concealing a scheme or artifice described in paragraph (1) or (2) or attempting to do so, a person—

"(i) places in any post office or authorized depository for mail matter, any matter or thing to be sent or delivered by the Postal Service, or takes or receives therefrom any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing;

"(ii) transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce any writings, signs, signals, pictures, or sounds;

"(iii) transports or causes to be transported any person or thing, or induces any person to travel in or to be transported in, interstate or foreign commerce; or

"(iv) uses or causes the use of any facility of interstate or foreign commerce;

"(B) the scheme or artifice affects or constitutes an attempt to affect in any manner or degree, or would if executed or concealed affect, interstate or foreign commerce; or

"(C) in the case of an offense described in paragraph (2), an objective of the scheme or artifice is to secure the election of an official who, if elected, would have any authority over the administration of funds derived from an Act of Congress totaling $10,000 or more during the 12-month period immediately preceding or following the election or date of the offense.

"(b) FEDERAL GOVERNMENT.—Whoever deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of the United States of the honest services of a public official or a person who has been selected to be a public official shall be fined under this title, imprisoned not more than 10 years, or both.

"(c) OFFENSE BY AN OFFICIAL AGAINST AN EMPLOYEE OR OFFICIAL.—

"(1) CRIMINAL OFFENSE.—Whoever, being an official, public official, or person who has been selected to be a public official, directly or indirectly discharges, demotes, suspends, threatens, harasses, or in any manner discriminates against an employee or official of the United States or of a State or political subdivision of a State, or endeavors to do so, in order to carry out or to conceal a scheme or artifice described in subsection (a) or (b), shall be fined under this title, imprisoned not more than 5 years, or both.

"(2) CIVIL ACTION.—(A) Any employee or official of the United States or of a State or political subdivision of a State who is discharged, demoted, suspended, threatened, harassed, or in any manner discriminated against because of lawful acts done by the employee or official as a result of a violation of this section or because of actions by the employee on behalf of himself or herself or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such a prosecution) may bring a civil action and obtain all relief necessary to make the employee or official whole, including—

"(i) reinstatement with the same seniority status that the employee or official would have had but for the violation;

"(ii) 3 times the amount of backpay;

"(iii) interest on the backpay; and

"(iv) compensation for any special damages sustained as a result of the violation, including reasonable litigation costs and reasonable attorney's fees.

"(B) An employee or official shall not be afforded relief under subparagraph (A) if the employee or official participated in the violation of this section with respect to which relief is sought.

"(C)(i) A civil action or proceeding authorized by this paragraph shall be stayed by a court upon certification of an attorney for the Government that prosecution of the action or proceeding may adversely affect the interests of the Government in a pending criminal investigation or proceeding.

"(ii) The attorney for the Government shall promptly notify the court when a stay may be lifted without such adverse effects.

"(d) DEFINITIONS.—In this section—

"'official' includes—

"(A) any person employed by, exercising any authority derived from, or holding any position in the government of a State or any subdivision of the executive, legislative, judicial, or other branch of government thereof, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established and subject to control by a government or governments for the execution of a governmental or intergovernmental program;

"(B) any person acting or pretending to act under color of official authority; and

"(C) any person who has been nominated, appointed, or selected to be an official or who has been officially informed that he or she will be so nominated, appointed, or selected.

"'person acting or pretending to act under color of official authority' includes a person who represents that he or she controls, is an agent of, or otherwise acts on behalf of an official, public official, and person who has been selected to be a public official.

"'public official' and 'person who has been selected to be a public official' have the meanings stated in section 201 and also include any person acting or pretending to act under color of official authority.

"'State' means a State of the United States, the District of Columbia, Puerto Rico, and any other commonwealth, territory, or possession of the United States.

"'uses any facility of interstate or foreign commerce' includes the intrastate use of any facility that may also be used in interstate or foreign commerce.".

(b) TECHNICAL AMENDMENTS.—(1) The chapter analysis for chapter 11 of title 18, United States Code, is amended by adding at the end the following new item:

"226. Public corruption.".

(2) Section 1961(1) of title 18, United States Code, is amended by inserting "section 226 (relating to public corruption)," after "section 224 (relating to sports bribery),".

(3) Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 226 (relating to public corruption)," after "section 224 (bribery in sporting contests),".

SEC. 1203. INTERSTATE COMMERCE.

(a) IN GENERAL.—Section 1343 of title 18, United States Code, is amended—

(1) by striking "transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds" and inserting "uses or causes to be used any facility of interstate or foreign commerce"; and

(2) by inserting "or attempting to do so" after "for the purpose of executing such scheme or artifice".

(b) TECHNICAL AMENDMENTS.—(1) The heading of section 1343 of title 18, United States Code, is amended to read as follows:

"§ 1343. Fraud by use of facility of interstate commerce".

(2) The chapter analysis for chapter 63 of title 18, United States Code, is amended by amending the item relating to section 1343 to read as follows:

"1343. Fraud by use of facility of interstate commerce.".

SEC. 1204. NARCOTICS-RELATED PUBLIC CORRUPTION.

(a) OFFENSES.—Chapter 11 of title 18, United States Code, is amended by inserting after section 219 the following new section:

"§ 220. Narcotics and public corruption

"(a) OFFENSE BY PUBLIC OFFICIAL.—A public official who, in a circumstance described in subsection (c), directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person in return for—

"(1) being influenced in the performance or nonperformance of any official act; or

"(2) being influenced to commit or to aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State,

shall be guilty of a class B felony.

"(b) OFFENSE BY PERSON OTHER THAN A PUBLIC OFFICIAL.—A person who, in a circumstance described in subsection (c), directly or indirectly, corruptly gives, offers, or promises anything of value to any public official, or offers or promises any public official to give anything of value to any other person, with intent—

"(1) to influence any official act;

"(2) to influence the public official to commit or aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State; or

"(3) to influence the public official to do or to omit to do any act in violation of the official's lawful duty,

shall be guilty of a class B felony.

"(c) CIRCUMSTANCES IN WHICH OFFENSE OCCURS.—The circumstances referred to in subsections (a) and (b) are that the offense involves, is part of, or is intended to further or to conceal the illegal possession, importation, manufacture, transportation, or distribution of any controlled substance or controlled substance analogue.

"(d) DEFINITIONS.—In this section—

"'controlled substance' and 'controlled substance analogue' have the meanings stated in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"'official act' means any decision, action, or conduct regarding any question, matter, proceeding, cause, suit, investigation, or prosecution which may at any time be pending, or which may be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

"'public official' means—

"(A) an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof in any official function, under or by authority of any such department, agency, or branch of Government;

"(B) a juror;

"(C) an officer or employee or person acting for or on behalf of the government of any State, territory, or possession of the United States (including the District of Columbia), or any political subdivision thereof, in any official function, under or by the authority of any such State, territory, possession, or political subdivision; and

"(D) any person who has been nominated or appointed to a position described in subparagraph (A), (B), or (C), or has been officially informed that he or she will be so nominated or appointed.".

(b) TECHNICAL AMENDMENTS.—(1) Section 1961(1) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "Section 201 (relating to bribery),".

(2) Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "section 201 (bribery of public officials and witnesses),".

(3) The chapter analysis for chapter 11 of title 18, United States Code, is amended by inserting after the item for section 219 the following new item:

"220. Narcotics and public corruption.".

TITLE XIII—FUNDING

SEC. 1301. REDUCTION IN OVERHEAD COSTS INCURRED IN FEDERALLY SPONSORED RESEARCH.

(a) CBO SCORING.—The Congressional Budget Office estimates that the reduction in overhead payments for federally funded university research required by this section will produce savings of $1,540,000,000 over 5 years ($150,000,000 for fiscal year 1994, $310,000,000 for fiscal year 1995, $350,000,000 for fiscal year 1996, $360,000,000 for fiscal year 1997, and $370,000,000 for fiscal year 1998).

(b) LIMITATION.—Notwithstanding any other law, on and after the date of the enactment of this Act, each head of a Federal agency making a grant to, or entering into a contract with, an institution of higher education for research and development, shall reduce the overhead payment rate under the grant or contract to 90 percent of the current level and return the amount saved to the general fund of the Treasury.

(c) DEFINITIONS.—In this section—

"institution of higher education" has the meaning stated in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

"Federal agency" means a department, agency, or instrumentality of the Federal Government (including an executive agency (as defined in section 105 of title 5, United States Code)).

SEC. 1302. OVERHEAD EXPENSE REDUCTION.

(a) CBO SCORING.—The Congressional Budget Office estimates that the reduction in administrative costs required by this section will produce savings of $6,000,000,000 over 5 years ($1,200,000,000 in each of fiscal years 1994, 1995, 1996, 1997, and 1998).

(b) REDUCTION.—The overhead expenses identified and reduced by the President in Executive Order 12837 are hereby reduced by an additional 5 percent. The reduction required by this section shall be taken from the total of such expenses before the reduction by the President.

SEC. 1303. FUNDING OF PROGRAMS AUTHORIZED BY THIS ACT.

The amount of available budget authority resulting from the enactment of sections 1301 and 1302 shall be reallocated as follows:

(1) $800,000,000 ($100,000,000 for fiscal year 1994, $125,000,000 for fiscal year 1995, $175,000,000 for fiscal year 1996, and $200,000,000 for each of fiscal years 1997 and 1998) for the hiring of former members of the Armed Forces as police officers as authorized by section 102(d).

(2) $650,000,000 ($100,000,000 for fiscal years 1994 and 1995 and $150,000,000 for each of fiscal years 1996, 1997, and 1998) for cops on the street grants as authorized by the amendment made by section 112(c).

(3) $250,000,000 for the Police Corps ($50,000,000 for fiscal year 1994 and $100,000,000 for each of fiscal years 1995 and 1996) as authorized by section 130.

(4) $300,000,000 ($60,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for community policing grants as authorized by the amendment made by section 141(c).

(5) $100,000,000 for fiscal year 1994 for improved police training and technical automation as authorized by section 153.

(6) $2,000,000,000 for the construction of 10 new Federal prisons ($200,000,000 for fiscal year 1994, $400,000,000 for each of fiscal years 1995 and 1996, and $500,000,000 for each of fiscal years 1997 and 1998) as authorized by section 165.

(7) $1,000,000,000 for Federal grants for State prison construction and operation ($200,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998, with $100,000,000 of that available for construction and $100,000,000 available for operation) as authorized by section 177.

(8) $500,000,000 ($100,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for the hiring of former members of the Armed Forces as teachers as authorized by section 202(e).

(9) $500,000,000 ($100,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for the Federal safe school districts as authorized by section 203(d).

(10) $300,000,000 ($60,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for the hiring of 1,000 additional Border Patrol agents as authorized by section 321.

(11) $385,000,000 ($77,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for the hiring of 1,000 additional Immigration and Naturalization Service criminal investigators as authorized by section 322.

(12) $13,000,000 ($5,000,000 for fiscal year 1994 and $2,000,000 for each of fiscal years 1995, 1996, 1997, and 1998) for the operation of the criminal alien tracking center as authorized by section 323.

(13) $100,000,000 to hire Assistant United States Attorneys to prosecute gang activity ($20,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) as authorized by section 431.

(14) $1,000,000 for fiscal year 1994 for gang investigation coordination and information collection as authorized by section 432(d).

(15) $250,000,000 ($50,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for rural law enforcement as authorized by the amendment made by section 501.

(16) $5,000,000 ($1,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for rural drug enforcement training as authorized by section 504(b).

(17) $110,000,000 ($25,000,000 for each of fiscal years 1994 and 1995 and $20,000,000 for each of fiscal years 1996, 1997, and 1998) for rural drug prevention and treatment as authorized by section 511(h).

(18) $100,000,000 ($20,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for the hiring of additional Drug Enforcement Administration agents as authorized by section 551.

(19) $120,000,000 ($60,000,000 for each of fiscal years 1994 and 1995) for the prevention of terrorism as authorized by section 811.

(20) $40,000,000 ($20,000,000 for fiscal year 1994 and $10,000,000 for each of fiscal years 1995 and 1996) to fund improvement of child abuse crime information as authorized by section 916(b)(2).

(21) $1,000,000 for fiscal year 1994 to fund the National Commission to Support Law Enforcement as authorized by section 1030.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title and Table of Contents. The bill is entitled the "Neighborhood Security Act of 1993."

TITLE I—SAFE STREETS

Subtitle A. Police

Chapter 1. Defense Conversion.

Section 101. Definition. This section defines "former member of the Armed Services" to mean a member of the Armed Services of the United States who is involuntarily separated from the Armed Services within the meaning of section 1141 of title 10, United States Code.

Section 102. America's Safe Streets Program. This section authorizes the Attorney General, in consultation with the Secretary of Defense, to enter into an agreement with a State or local law enforcement agency to pay, for a period of six years, the salaries of former members of the Armed Services who are hired within five years as police officers assigned to neighborhood patrol duties.

When seeking to enter into an agreement with a State or local law enforcement agency, the Attorney General is authorized to give priority to those agencies located in communities adversely affected by the recent closing of a military base.

For the first three years, the maximum Federal share of an annual salary of a police officer hired under the agreement is the annual salary earned by the officer during his or her last year as a member of the Armed Services. The maximum Federal share of an annual salary for the 4th through 6th years that a police officer may be paid under the agreement is 50 percent of the annual salary earned by the officer during his or her last year as a member of the Armed Services.

Police officers hired pursuant to this section must add to the total number of officers employed by the State or local law enforcement agency.

Chapter 2. Cops on the Street.

Chapter 2 establishes a grant program to be administered through the Bureau of Justice Assistance to supplement local expenditures to increase police presence in the community. Not less than 50 and not more than 100 grants are to be made under this program. Factors to be considered in making these grants include the crime rate per capita and the rate of increase in crime, as well as certification that convicted offenders serve 85% of the sentence imposed or that significant progress is being made toward achieving that goal.

Chapter 3. Police Corps Program.

Chapter 3 establishes the Police Corps program, which is designed to provide educational assistance to law enforcement personnel who want to further their education, and to students who have a sincere interest in law enforcement.

The Police Corps program provides up to $30,000 in college scholarship grants to selected participants who agree to work for 4 years after graduation on a State or local police force. Receipt of the scholarship grant is dependent upon the student maintaining satisfactory progress at his or her educational institution. Participants in the Police Corps program must also meet the requirements of the State or local police force to which they will be assigned.

Chapter 3 allows the dependent child of a Federal, State, or local police officer who is not a participant in the Police Corps (but serves in a State that participates in the program) and is killed in the line of duty, to obtain scholarship assistance.

Chapter 4. Community Policing Grants.

Chapter 4 authorizes the Director of the Bureau of Justice Assistance to make grants to units of local government and to community groups to establish or expand cooperative efforts between the police and the community. These cooperative efforts include, but are not limited to, 1) providing new technologies to reduce the amount of time officers spend processing cases instead of patrolling the community; 2) purchasing equipment to improve communications between officers and the community and to improve the collection, analysis, and use of information about crime-related community problems; 3) creating decentralized police substations throughout the community to encourage interaction and cooperation between the public and law enforcement personnel on a local level; and 4) developing community-based crime prevention programs, such as safety programs for senior citizens, community anticrime groups, and other anticrime awareness groups.

To be eligible to receive a grant, applications must be submitted to the Director of the Bureau of Justice Assistance. The Director must allocate not less than 75 percent of the funds available to units of local government and not more than 20 percent to community groups. The Director must not use more than 5 percent of the funds available for administration, technical assistance, and evaluation.

Chapter 5. Improved Training and Technical Automation.

Chapter 5 directs the Attorney General to provide grants to state and local law enforcement agencies for the purpose of improving efficiency through computerized automation and technological improvements. Grants under this chapter may include, but shall not be limited to, programs to increase use of mobile digital terminals, improve communications systems, accomplish paper-flow reduction, and establish and improve ballistics identification programs.

Subtitle B. Prisons

Chapter 1. Regional Prisons for Violent Criminals and Violent Criminal Aliens.

Chapter 1 directs the Attorney General to construct a minimum of ten regional prisons, situated throughout the United States, each containing space for at least 2,500 inmates. At least 50% of the total capacity of the regional prisons must be dedicated to "qualifying prisoners" from "qualifying States."

The Attorney General shall not certify a State as a "qualifying State" unless such State is adequately providing 1) truth in sentencing (providing that defendants will serve at least 85% of the sentence ordered); 2) pretrial detention; 3) mandatory minimum sentences for firearm offenders, violent criminals, sex offenders, and child abuse offenders; and 4) suitable recognition for the rights of victims, including consideration of the victim's perspective at all stages of criminal proceedings.

The term "qualifying prisoner" means 1) an alien who is in this country illegally and who has been convicted of a crime of violence as defined in section 924(c)(3) of title 18, United States Code, or a serious drug offense as defined in section 924(e)(2)(A) of title 18, United States Code; and 2) a violent criminal.

The term "violent criminal" 1) means a person convicted under Federal law of an offense described in, under the circumstances described in, the provisions of section 924(c) or (e) of title 18 or section 994(h) of title 28, United States Code, or a person convicted under State law for the same or similar offense, and 2) insofar as any of the circumstances described in subsection (a) is the

prior conviction of an offense, includes a person who had been adjudicated as a juvenile delinquent by reason of the commission of an act that, if committed by an adult, would constitute such an offense.

Chapter 2. Federal Grants for State Prison Construction and Operation.

Chapter 2 authorizes the Attorney General to enter into agreements with any qualifying State to provide construction grants or operating grants for "new prisons."

The Attorney General may make construction grants for up to 50 percent of the construction costs, as approved by the Director of the Federal Bureau of Prisons, for new prisons. The Attorney General may make operating grants for up to 50 percent of the operating costs, as approved by the Director of the Federal Bureau of Prisons, for new prisons.

The term "new prisons" means those prisons and city or county detention facilities, including additions to existing prisons or city or county detention facilities, certified by the State, and approved by the Attorney General, as providing additional prison capacity beyond that which the State previously had available, or had already planned to construct. "New prisons" must be principally dedicated, as determined by the Attorney General, to housing repeat violent offenders and sex offenders.

Chapter 3. Judicial Remedies for Prison Crowding.

Chapter 3 adds a new Section 3626 to Title 18 of the United States Code. This new section provides that a Federal court shall not hold prison or jail overcrowding to be unconstitutional under the Eighth Amendment to the United States Constitution except to the extent that an individual plaintiff inmate proves that the crowding causes the infliction of cruel and unusual punishment.

Chapter 3 also provides that a Federal court shall not place a ceiling on the inmate population of any Federal, State, or local detention facility as an equitable remedial measure for conditions that violate the Eighth Amendment unless crowding inflicted is cruel and unusual punishment on particular identified prisoners.

Chapter 4. Sentences to Account for Costs to the Government of Imprisonment, Release, and Probation.

Chapter 4 amends both the substantive Federal sentencing guidelines and the duties of the Sentencing Commission to include in criminal fines the expected costs to the government of any imprisonment, supervised release, or probation component of the sentence.

Section 5E1.2(i) of the current Sentencing Guidelines provides for the imposition of "an additional fine amount that is at least sufficient to pay the costs to the government of any imprisonment, probation, or supervised release ordered." In United States v. Spiropoulos, 976 F.2d 155 (3rd Cir. 1992), the court held that a criminal fine imposed pursuant to section 5E1.2(i) was invalid insofar as it ordered the defendant to pay costs of imprisonment. In the court's view, recoupment of the costs of imprisonment is not authorized by the Sentencing Reform Act of 1984, and therefore the Sentencing Commission lacked the authority to promulgate section 5E1.2(i). However, the court noted that the goal of allowing the government to recoup these costs is constitutionally permissible. 976 F.2d at 168.

Under this section, authority is provided under the Sentencing Reform Act for courts to consider the costs of imprisonment in sentencing. To further underscore the legality of such a guideline provision, a parallel amendment is provided in the Sentencing Commission's enabling legislation that specifically authorizes the Commission to include the costs of sentence administration as part of the fine guideline.

This section does not alter the fact that criminal fines are paid under the Crime Victims Fund, payment to which is required by 42 U.S.C. 10601(a) and (b). Thus, in reality, the monies are not directly used to recoup government costs of sentence administration. That the funds will be used for other purposes does not preclude basing a fine component on sentence administration costs.

TITLE II—SAFE SCHOOLS

Section 201. Definition. This section defines "former member of the Armed Services" to mean a member of the Armed Services of the United States who is involuntarily separated from the Armed Services within the meaning of section 1141 of title 10 of the United States Code.

Section 202. America's Safe Schools Program. This section authorizes the Secretary of Education, in consultation with the Secretary of Defense, to enter into an agreement with a local educational agency to pay, for a period of six years, the salaries of former members of the Armed Services who are hired within five years as teachers assigned to public elementary and secondary schools.

When seeking to enter into an agreement with a local educational agency, the Secretary of Education is authorized to give priority to those agencies located in communities adversely affected by the recent closing of a military base.

For the first three years, the maximum Federal share of an annual salary of a teacher hired under the agreement is the annual salary earned by the teacher during his or her last year as a member of the Armed Services. The maximum Federal share of an annual salary for the 4th through 6th years that a teacher may be paid under the agreement is 50 percent of the annual salary earned by the teacher during his or her last year as a member of the Armed Services.

Teachers hired pursuant to this section must add to the total number of teachers employed by the local educational agency.

Section 203. Federal Safe School Districts. This section allows a local school district to elect to qualify as a "Federal safe school district." The election may occur by decision of a local educational agency or by referendum of the voters in a school district served by a local educational agency.

This section authorizes the Attorney General to make a grant to a local educational agency serving a Federal safe school district or to a local law enforcement agency with jurisdiction over the Federal safe school district, to pay for enhanced school security measures. The measures that may be funded by a grant include a) equipping schools with metal detectors, fences, closed-circuit cameras, and other physical security measures; b) providing increased police patrols in and around schools, including police hired pursuant to section 102; c) mailings to parents at the beginning of the school year outlining the enhanced mandatory penalties for drug trafficking and weapons offenses within a Federal safe school district; d) signs for school districts indicating they have elected to be a Federal safe school district; and e) gun hotlines.

The United States Attorney who has jurisdiction over each Federal safe school district shall prosecute as an adult any juvenile 16 years of age or older who uses or carries a firearm in or within 1000 feet of a public or private elementary or secondary school.

Within each Federal safe school district, it shall be unlawful for any person who is less than 18 years of age, or any person 18 years of age or older who does not have lawful authority to do so, to carry a firearm into a public or private elementary or secondary school, or to possess a firearm within such school. Whoever knowingly violates this provision by using a firearm shall be imprisoned for not more than 10 years.

This section also directs the United States Sentencing Commission to review, and if necessary, amend its sentencing guidelines to assign an offense level of at least 26 to a first offense under section 924(i)(2) of title 18, United States Code.

TITLE III—CRIMINAL ALIENS AND ALIEN SMUGGLING

Subtitle A. Deportation of Criminal Aliens

Section 301. Deportation Procedures For Certain Criminal Aliens Who Are Not Permanent Residents. This section provides for the prompt deportation of any alien who is not a permanent resident alien and whom the Attorney General determines is deportable and has been convicted of an aggravated felony. Section 242(h) of the INA provides that an alien sentenced to imprisonment shall not be deported until such alien's release. This new section does not alter this requirement—the alien would still serve his or her prison term. However, a final order of deportation could be issued during such alien's imprisonment and executed immediately upon the alien's release.

This section eliminates the following procedures for nonpermanent resident criminal aliens: (1) administrative hearing before an immigration judge, (2) administrative review by the Board of Immigration Appeals of the immigration judge's determination, (3) availability of current grounds of relief from deportation, and (4) Federal court review of the Attorney General's determination on any grounds other than whether the alien has in fact been convicted of an aggravated felony. The Attorney General may not execute a final order of deportation until 14 days after it has been issued in order to allow the alien an opportunity to seek Federal court review.

The deportation proceedings currently included in section 242A and now applicable to all aliens would be limited to permanent resident aliens ("green card holders"). Current section 242A language allows for the institution of deportation proceedings while the alien is incarcerated, with the intent of completing the process so that the alien can be deported upon his or her release.

Section 302. Judicial Deportation. This section allows Federal trial courts to issue an order of deportation during the sentencing phase of the criminal trial of an alien convicted of an aggravated felony. This section applies to all criminal aliens, including permanent residents.

Such an order must have been requested by the U.S. Attorney with the concurrence of the INS Commissioner. Notice of intent to seek a judicial order of deportation must be given promptly after an adjudication of guilt or a guilty plea. The government would still be responsible for showing that the defendant is an alien subject to deportation and that the crime the alien has been convicted of meets the definition of an "aggravated felony;" a statement containing factual allegations on these two matters must be filed at least 20 days prior to the sentencing date.

Judicial deportation would replace current administrative deportation procedures in

those cases where it is sought. Aliens found deportable under this process would continue to have the right to appeal their deportation to the appropriate Federal circuit court of appeals.

The Attorney General would retain his or her right to seek an administrative determination of deportability if the Federal court denies a motion for judicial deportation.

Section 303. Restricting Defenses to Deportation for Certain Criminal Aliens. This section restricts defenses against deportation for criminal aliens convicted of aggravated felonies. As a result of amendments made by this section, the only defense against deportation for aggravated felon aliens would be for permanent resident aliens who have lived in the U.S. in such status for at least seven years and who have been sentenced to less than five years' imprisonment after conviction of an aggravated felony.

Currently, a permanent resident alien is ineligible for relief under section 212(c) waiver of deportation (for permanent resident aliens who have lived in the U.S. for seven consecutive years), if the alien has served five or more years for one or more aggravated felonies. This section would amend the language to make aliens who have been sentenced to five or more years ineligible for section 212(c) relief.

This standard is more relevant to judging the seriousness of an offense since dangerous criminals are at times released prematurely due to prison overcrowding or other reasons unrelated to the seriousness of the crime. Moreover, the current standard presents a serious logistical obstacle to the speedy commencement of deportation proceedings since it may be unknown until five years have been served whether the alien would be able to seek relief under 212(c).

Section 303 also makes it clear that aggravated felons may not request or be granted withholding of deportation under section 243(h). The Immigration Act of 1990 unambiguously denied aggravated felon-aliens the right to political asylum; however, the question of an aggravated felon's ability to request a hearing on eligibility for withholding of deportation was not addressed. Although the Executive Office for Immigration Review has determined that no hearing is possible in such cases, litigation on this issue is likely.

This section does not affect the Attorney General's authority to designate a country other than that of the alien's nationality for deportation. The provision is consistent with the intent of the United Nations Protocol Relating to the Status of Refugees to permit denial of withholding of deportation in cases of persons convicted of a "particularly serious crime."

Section 304. Enhancing Penalties for Failing to Depart, or Reentering, After Final Order of Deportation. This section enhances penalties for failing to depart or for reentering after a final order of deportation has been issued.

Currently, an alien who is deportable for criminal offenses, document fraud, or as a security risk is subject to criminal penalties of up to 10 years imprisonment for failure to depart. However, there are no penalties for aliens deportable for other reasons than failure to depart. Subsection (a) retains the current 10 year penalty and provides for criminal penalties of up to 4 years' imprisonment for aliens who are issued deportation orders on other grounds and who fail to depart.

Subsection (b) increases the penalties for criminal aliens who reenter the U.S. after being formally deported. Currently, an alien convicted of a felony other than an aggravated felony who re-enters is subject to 5 years in prison and a criminal fine; this subsection extends the penalties to aliens convicted of three or more misdemeanors and increases the maximum prison sentence to 10 years. Aggravated felons who re-enter the U.S. currently are subject to criminal fines and up to 15 years in prison; this subsection increases the maximum prison sentence to 20 years. Language also is added to make it clear that any alien who stipulates to deportation during a criminal trial shall be considered to have been formally deported.

Subsection (c) would allow a court in a criminal proceeding against a deported alien who has re-entered the U.S. to reexamine the underlying deportation order only if the alien demonstrates (1) that she has exhausted available administrative remedies that may have been available against the deportation order, (2) that the deportation proceedings improperly deprived the alien of the opportunity for judicial review, and (3) that the entry of the order of deportation was "fundamentally unfair." This language, taken from United States v. Mendoza-Lopez, 481 U.S. 828 (1987), is intended to ensure that minimum due process was followed in the original deportation proceeding while preventing wholesale, time-consuming attacks on underlying deportation orders.

Section 305. Miscellaneous and Technical Changes. This section responds to two holdings of the 9th Circuit. Subsection (a) makes it clear that the Attorney General can authorize deportation proceedings to be conducted by electronic or telephonic means or, where waived or agreed to by the parties, in the absence of the alien.

Subsection (b) makes it clear that nothing in this Act or in section 242(i) (directing the Attorney General to begin deportation proceedings as quickly as possible after a conviction) shall be construed to create a legally enforceable right or benefit.

Subtitle B. Prevention and Punishment of Alien Smuggling

Section 311. Increased Penalties for Alien Smuggling. This section increases the prison terms for alien smuggling in the following ways: 1) increases the penalty for alien smuggling to 10 years (current law is 5 years), 2) enhances the penalty if the smuggler willfully subjects any alien to a substantial risk of death or serious bodily harm by adding a penalty of up to 10 years, 3) requires the death penalty for a smuggler who causes death, and 4) provides a penalty of up to 5 years if a person knowingly hires a smuggled alien.

Section 312. Smuggling Aliens for Commission of Crimes. This section creates a new crime for smuggling aliens for the purpose of committing offenses against the U.S. All offenses punishable for more than 1 year are included, such as violations of, attempted violations of, and conspiracy to violate, laws on drug trafficking, prostitution, firearms trafficking, money laundering, gang activities, kidnapping, extortion, terrorism and organized crime activities. The penalty is enhanced by a minimum of 3 and maximum of 5 years.

Section 313. Addition of Alien Smuggling to RICO. This section adds alien smuggling to the list of crimes which establish the basis for bringing a RICO (Racketeering and Influenced Criminal Organizations) charge (at least two of the enumerated crimes are necessary to show a "pattern of racketeering activity"). Since a significant portion of alien smuggling is conducted by organized crime, this addition will allow law enforcement officials and prosecutors to use RICO penalties (such as forfeiture and imprisonment) against organized crime syndicates.

Section 314. Expanded Forfeiture for Smuggling or Harboring Illegal Aliens. This section expands current INS authority to seize and subject to forfeiture property used in, or facilitating, the smuggling or harboring of illegal aliens. This is important in cases when RICO charges (and penalties) are not available.

Section 315. Expansion in Definition of "Aggravated Felony." This section expands the definition of "aggravated felony." This section expands the definition of "aggravated felony" for purposes of the Immigration and Nationality Act (INA). Currently the definition includes: murder, drug trafficking, trafficking in firearms or explosives, money laundering, terrorism and any crime of violence for which the sentence is 5 or more years. This section adds the following: firearms violations, failure to appear before a court to answer a felony charge, demanding or receiving ransom money, unlawful conduct relating to RICO, certain immigration-related offenses including alien smuggling and sale of fraudulent documents, child pornography, owning or operating a prostitution business, treason, and tax evasion exceeding $200,000.

Section 316. Amendment of Sentencing Guidelines. This section directs the United States Sentencing Commission to review, and if necessary, amend its sentencing guidelines to assign an offense level of at least 19 to a first offense under (1) Section 274(a)(1) of the Immigration and Nationality Act, as amended by Section 311(1); (2) Section 274(a)(3) and (5) of the Immigration and Nationality Act, as added by Section 311(2); and (3) Section 274(a)(2) of the Immigration and Nationality Act, as amended by Section 312.

Section 317. Increased Penalty for Visa Fraud. This section amends Sections 1542 (false statement), 1543 (forgery), 1544 (misuse of passport), 1545 (safe conduct violation), and 1546(a) (fraud and misuse of visas) of Title 18, United States Code, to increase the maximum penalties for various types of immigration fraud from five years' to ten years' imprisonment.

Section 318. Training of Airline Personnel in Detection of Fraudulent Documents. This section is designed to assist the training of airline personnel in the detection of fraudulent documents.

Subtitle C. Border Patrol

Section 321. Border Patrol Agents. This section authorizes funding for an additional 1,000 Border Patrol agents.

Section 322. INS Criminal Investigators. This section authorizes funding for an additional 1,000 INS criminal investigators.

Section 323. Criminal Alien Tracking Center. This section authorizes funding for the operation of a criminal alien tracking center as established by 8 U.S.C. 1252(a)(3)(A).

TITLE IV—GANGS, JUVENILES, DRUGS, AND PROSECUTORS

Section 401. Short Title. Title IV shall be known as the "Anti-Gang and Youth Protection Act of 1993."

Subtitle A. Criminal Youth Gangs

Section 411. Criminal Street Gang Offenses. Section 411 adds a new chapter 94 to title 18 of the United States Code, designed to assist prosecutors in combating the proliferation of violent youth gang activity.

This section makes it a separate criminal offense to 1) commit, or to attempt to commit, a "predicate gang crime" with intent to promote or further the activities of a "criminal street gang" or for the purpose of gaining entrance to or maintaining or increasing

position in such a gang; 2) to participate, or attempt to participate, in a criminal street gang, or conspire to do so; 3) to command, counsel, persuade, induce, entice, or coerce any individual to participate in a criminal street gang; or 4) to employ, use, command, counsel, persuade, induce, entice, or coerce any individual to commit, cause to commit, or facilitate the commission of, a predicate gang crime, with intent to promote the activities of a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such gang.

The term "predicate gang crime" means any act or threat, or attempted act or threat, which is chargeable under Federal or State law and punishable by imprisonment for more than 1 year, involving murder, assault, robbery, extortion, burglary, arson, property damage or destruction, obstruction of justice, tampering with or retaliating against a witness, victim or informant, or manufacturing, importing, or otherwise dealing in an illegal controlled substance.

The term "criminal street gang" means any organization, or group, of 5 or more individuals, whether formal or informal, who act in concert, or agree to act in concert, for a period in excess of 30 days, with a purpose that any of these individuals alone, or in any combination, commit or will commit, 2 or more predicate gang crimes.

Section 412. Crimes Involving the Use of Minors as RICO Predicates.

Section 413. Serious Juvenile Drug Offenses as Armed Career Criminal Act Predicates. This section treats certain serious drug crimes by juveniles as armed career criminal predicate offenses.

Section 414. Adult Prosecution of Serious Juvenile Offenders. This section creates a presumption in favor of adult prosecution of leaders of juvenile gangs or juveniles with a history of violent crime or drug activity.

Section 415. Increased Penalties for Employing Children to Distribute Drugs Near Schools and Playgrounds.

Section 416. Increased Penalties for Drug Trafficking Near Public Housing.

Section 417. Increased Penalties for Travel Act Crimes Involving Violence and Conspiracy to Commit Contract Killings.

Section 418. Amendments Concerning Records of Crimes Committed by Juveniles.

Section 419. Addition of Anti-Gang Byrne Grant Funding Objective. This section adds another objective to State and local law enforcement block grants to support programs addressing the need for effective bindover systems for adult prosecution of juveniles who commit serious violent crimes.

Subtitle B. Gang Prosecution

Section 431. Additional Prosecutors. This section authorizes funding for additional assistant United States attorneys to be assigned to the prosecution of violent youth gangs.

Section 432. Gang Investigation Coordination and Information Collection. This section directs the Attorney General to develop a national strategy aimed at coordinating Federal gang-related investigations.

Section 433. Continuation of Federal-State Funding Formula.

Section 434. Grants for Multijurisdictional Drug Task Forces.

TITLE V—DRUG CONTROL AND RURAL CRIME

This title assists in the fight against drug traffickers and violent criminals, with a special focus on crime in rural areas.

Subtitle A. Drug Trafficking in Rural Areas

Section 501. Authorizations for Rural Law Enforcement Agencies. This section amends current State and local law enforcement grants program to authorize an additional $250 million in grants for rural States.

Section 502. Rural Crime and Drug Enforcement Task Forces. This section directs the Attorney General to establish Rural Crime and Drug Enforcement Task Forces in every Federal judicial district that includes significant rural areas. Headed by the local U.S. Attorneys, the Task Forces would include personnel from DEA, FBI, Customs, U.S. Park Police, U.S. Marshals, and State and local law enforcement. These Task Forces would be required to coordinate activities to ensure that resources are used as effectively as possible.

Section 503. Cross-Designation of Federal Officers. This section permits the Attorney General to cross-designate up to 100 law enforcement officers from the U.S. Park Police, U.S. Forest Service, Bureau of Land Management, and other law enforcement agencies to enforce Federal drug and criminal law in rural areas.

Section 504. Rural Drug Enforcement Training. This section establishes a specialized training program at the Federal Law Enforcement Training Center in Glynco, Georgia to teach police officers and sheriffs from rural agencies the most effective methods of conducting investigations.

Subtitle B. Rural Drug Prevention and Treatment

Section 511. Rural Substance Abuse Treatment and Education Grants. This section proposes a HHS drug prevention and treatment program for rural areas. Grants will go to hospitals, community health centers, and State agencies responsible for treatment. This section requires that, to the extent practicable, one grant should go to each state.

Subtitle C. Rural Areas Enhancement

Section 521. Asset Forfeiture. This section requires that the assets forfeited by Rural Task Forces be used to enhance the operations of the Task Force and participating State and local law enforcement agencies.

Section 522. Prosecution of Clandestine Laboratory Operators. This section requires Federal prosecutors bringing charges against "ice" manufacturers to seek environmentally-related indictments as well as civil suits where environmental damage has occurred or hazardous waste has been dumped.

Subtitle D. Chemical Control

Section 531. Short Title.

Section 532. Definition Amendments. This section eliminates the terms 'Precursor Chemical' and 'Essential Chemical' and replaces them with 'List I Chemical' and 'List II Chemical.' This section also expands the definition of 'Regulated Person' and 'Regulated Transaction' to include brokers and traders.

Section 533. Registration Requirements.

Section 534. Reporting of Listed Chemical Manufacturing. This section requires all manufacturers to submit annual reports on the total quantity of listed chemicals produced during the year. This reporting requirement does not apply to the manufacture of drug products containing List I Chemicals covered by the legal drug exemption.

Section 535. Reports by Brokers and Traders; criminal penalties. This section provides that brokers and traders will have the same recordkeeping and reporting requirements for international transactions as exporters and will be subject to the same criminal penalties.

Section 536. Exemption Authority; additional penalties. This section allows the DEA to apply a targeted approach to export controls. This section also establishes criminal penalties for attempting to evade reporting requirements and for smuggling listed drugs.

Section 537. Amendments to List I. This section deletes three chemicals that were added by the Crime Control Act of 1990. Two of the three deleted chemicals are not controlled under Federal law and the third is already listed as a controlled substance. This section also adds to List I two chemicals that are used to illicitly manufacture the immediate precursor to methamphetamine.

Section 538. Elimination of Regular Supplier Status and Creation of Regular Importer Status. This section places the focus of control on the U.S. firm that imports a listed chemical. The present focus is on the foreign firm that supplied the chemical.

Section 539. Administrative Inspections and Authority. This section gives the DEA the same inspection authority for listed chemicals as it presently has for controlled substances.

Section 540. Threshold Amounts. This section clarifies the Attorney General's authority to eliminate thresholds for specific chemicals.

Section 541. Management of Listed Chemicals. This section creates an additional felony if an individual violates the Solid Waste Disposal Act in the handling of chemicals used to illegally manufacture a controlled substance.

Section 542. Forfeiture Expansion. This section subjects listed chemicals to the same forfeiture provisions that apply to controlled substances.

Section 543. Attorney General Access to the National Practitioner Data Bank. This section grants the DEA full access to all information in the National Practitioners Data Bank, such as adverse State licensing actions and other reportable data.

Section 544. Regulations and Effective Date.

Subtitle E. Personnel

Section 551. More Agents for the Drug Enforcement Administration. The section authorizes funding for the hiring of additional DEA agents.

Section 552. Adequate Staffing of the Office of National Drug Policy. This section ensures that the Office of National Drug Policy will be adequately staffed.

TITLE VI—PUNISHMENT AND DETERRENCE

Subtitle A. Death Penalty

This subtitle provides necessary procedural provisions and conforming amendments to enable law enforcement authorities to seek the death penalty for the most heinous federal crimes (47 separate offenses) and it authorizes the death penalty for the District of Columbia. It is identical in most respects to the federal death penalty proposal which passed the House in 1990 and 1991.

In all, this subtitle provides the death penalty for the following offenses: 1) espionage; 2) treason; 3) aircraft destruction where death results; 4) motor vehicle destruction where death results; 5) retaliatory murder against an official's family; 6) murder of members of Congress or the Cabinet; 7)–9) three explosive offenses where death results; 10) murder in special territorial jurisdictions; 11) murder of Federal judges and court officers; 12) witness tampering where death results; 13) mailing of dangerous articles where death results; 14) assassination of the President, 15) wrecking trains where death results; 16) bank robbery where death results; 17) certain drug-related killings; and 18) air piracy where death results.

This subtitle also imposes the death penalty for the following new offenses: 1) violence at international airports where death results; 2) Federal child abuse resulting in death; 3) conspiracy against civil rights where death results; 4) violence against a person exercising Federal rights where death results; 5) firearms murders during Federal crimes of violence; 6) fatal firearms attacks at Federal facilities; 7) drive-by shootings where death results; 8) murder in the furtherance of genocide; 9) murder of local law enforcement officials assisting Federal law enforcement officials; 10) murder of certain foreign officials; 11) murder by prisoner serving life term; 12) murder by escaped federal prisoner; 13) kidnapping where death results; 14) hostage taking where death results; 15) murder of jurors and court officers; 16) retaliatory murder of witnesses; 17) attempted assassination of the President /1/; 18) murder for hire; 19) murder in aid of racketeering; 20) sexual exploitation resulting in death; 21) violence against maritime navigation where death results; 22) violence against maritime platforms where death results; 23) terrorist murders of Americans abroad; 24) use of weapons of mass destruction where death results; 25) torture where death results; 26) drug kingpins currently subject to mandatory life /1/; 27) drug kingpins who attempt to kill to obstruct justice /1/; 28) murder in the course of drug felonies NOTE /1/ No resulting death is required for the death penalty to be considered.

This subtitle also amends title 18 of the United States Code to authorize the death penalty for murders in the District of Columbia. It proposes a separate set of procedures applicable to capital cases brought in the District of Columbia in order to address D.C.'s particular problems as well as the unique federal-District relationship.

Subtitle B. Equal Justice Act

The Equal Justice Act establishes additional safeguards against racial bias in the administration of capital punishment and other penalties. It codifies certain Supreme Court decisions addressing racial discriminatory practices in the imposition of the death penalty. It permits a motion by the defense attorney to examine jurors on the risk of racial prejudice during voir dire (*Turner* v. *Murray* (1986)); permits a change of venue where an impartial jury cannot be obtained (*Irvin* v. *Dowd* (1967)); and prohibits all appeals to racial prejudice or bias by defense counsel or the prosecutor before the jury.

Subtitle C. Enhanced Penalties for Criminal Use of Firearms and Explosives

Section 661. Smuggling Firearms in Aid of Drug Trafficking. This section increases the penalties for smuggling firearms in furtherance of drug trafficking.

Section 662. Prohibition against Theft of Firearms or Explosives. This section imposes a ten-year maximum penalty for the theft of firearms.

Section 663. Increased Penalty for Knowingly False, Material Statement in connection with the Acquisition of a Firearm from a Licensed Dealer. This section increases the maximum penalty for making a knowingly false, material statement in connection with the purchase of a firearm.

Section 664. Summary Destruction of Explosives Subject to Forfeiture.

Section 665. Elimination of Outmoded Parole Language.

Section 666. Receipt of Firearms by Nonresident. This section makes it illegal to transfer firearms to a nonresident unless for lawful purposes.

Section 667. Prohibition of Theft of Firearms or Explosives from Licensee.

Section 668. Increased Penalty for Interstate Gun Trafficking. This section increases the maximum penalty for interstate gun trafficking.

Section 669. Prohibition of Transactions involving Stolen Firearms which have Moved in Interstate or Foreign Commerce.

Section 670. Possession of Explosives by Felons and Others. This section makes possession of explosives by felons equivalent to receipt of explosives.

Section 671. Disposition of Forfeited Firearms. This section facilitates the disposition of firearms forfeited to the Federal government. The government may use forfeited weapons or sell firearms which are historic antiques.

Section 672. Definition of Burglary under the Armed Career Criminal Statute. This section defines burglary under the armed career criminal statute.

Subtitle D. Exclusionary Rule Reform

This subtitle is identical to the exclusionary rule reform proposal which passed the House of Representatives as an amendment to H.R. 3371 in 1991.

This subtitle adds a new section 3509 to the Federal criminal code. Subsection 3509(a) would provide that evidence shall not be excluded in any Federal proceeding on the ground that the search or seizure was in violation of the Fourth Amendment, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the Fourth Amendment. A police officer's mere subjective belief in the legality of his or her own search is insufficient to support admissibility. This would extend the underlying principle of *United States* v. *Leon*, 468 U.S. 897 (1984), so as to bar the exclusion of evidence obtained in cases involving warrantless searches, as well as in cases involving searches made pursuant to a warrant.

This subtitle also provides specifically that evidence was obtained pursuant to a warrant constitutes prima facie evidence of the existence of circumstances justifying an objectively reasonable belief that a search was in conformity with the Fourth Amendment.

Subsection 3509(b) would bar the exclusion of evidence in Federal proceedings on the basis of non-constitutional violations except as expressly authorized by statute or rule promulgated by the Supreme Court. Subsection 3509(c) makes it clear that the section is not construed as reflecting legislative approval of the exclusion of evidence as a sanction for official misconduct in any circumstances.

Subtitle E. Pre-Trial Interrogation.

Subtitle E provides that it is the sense of the Congress that the Attorney General shall instruct all United States Attorneys, and implement policies consistent therewith, that confessions obtained in conformity with Section 3501 of title 18, United States Code, will be offered into evidence.

TITLE VII—ELIMINATION OF DELAYS IN CARRYING OUT SENTENCES

This title curbs the abuse of habeas corpus by state and federal prisoners and is identical to the habeas corpus amendment to the crime bill, which passed the Senate by a vote of 58 to 40 in 1991.

Subtitle A. General Habeas Corpus Reform

Subtitle A proposes general habeas corpus reform.

Subtitle B. Death Penalty Litigation Procedures

Subtitle B contains reforms aimed at addressing the unique problems of abuse and delay in capital cases. It is modeled after the "Powell Committee" proposal for death penalty litigation. (The States may opt. in. If a State opts in, it must provide counsel in State collateral review, and it limits the petitioner to a single habeas petition.) It improves upon the Powell Committee by including the "full and fair" rule of deference of State court adjudications and placing time limits upon the Federal courts.

Subtitle C. Equalization of Capital Habeas Corpus Litigation Funding.

Subtitle C ensures that, each year, State Attorneys General shall receive habeas corpus litigation support grants equal in amount given to capital resources centers.

TITLE VIII—PREVENTION OF TERRORISM

Subtitle A. Penalties and Offenses

Subtitle A establishes penalties for providing "material support" to terrorists. "Material support" includes, but is not limited to, currency or other financial securities, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets. Subtitle A also increases the penalties for terrorism offenses and extends to 10 years the statute of limitations for certain terrorism offenses.

Subtitle B. Removal of Alien Terrorists

Subtitle B establishes a mechanism for the removal of alien terrorists that protects certain classified information whose disclosure may be necessary to show that an alien is deportable. In a special removal hearing established by this subtitle, a judge shall authorize the introduction in camera and ex parte of any item of evidence for which the judge determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information.

Subtitle C. Enhanced Entry Controls

Subtitle C establishes tougher entry controls to prevent the type of abuse of our asylum system that allowed the entry of at least one of the indicted suspects in the World Trade Towers bombing. For example, it would allow an examining immigration officer to exclude, without a hearing, any alien who 1) presents fraudulent documents to the examining immigration officer, 2) does not have any reasonable basis for legal entry into the United States, and 3) does not indicate an intention to apply for political asylum.

TITLE IX—VICTIMS' RIGHTS AND CHILD ABUSE

Subtitle A. Victims' Rights

Subtitle A enhances the access of victims to the criminal justice system and provides victims with mandatory restitution.

Subtitle B. National Child Protection Act

Subtitle B directs the Attorney General to establish a national system through which child care organizations may obtain the benefits of a national criminal background check to determine if persons who are current or prospective child care providers have committed child abuse crimes or other serious crimes.

Subtitle C. Jacob Wetterling Crimes Against Children Registration Act

Subtitle C directs the Attorney General to establish guidelines for State programs requiring any person who is convicted of a criminal offense against a victim who is a minor to register a current address with a designated State law enforcement agency for 10 years after release from prison, being

placed on parole, or being placed on supervised release.

TITLE X—VIOLENT CRIMES AND LAW ENFORCEMENT SUPPORT

Subtitle A. Violent Crimes

Subtitle A establishes maximum penalties for certain crimes, including assault, manslaughter, and carjacking. Subtitle A also requires that a person convicted of a third crime of violence shall be sentenced to not less than a mandatory term of life imprisonment without release.

Subtitle B. National Commission to Support Law Enforcement

Subtitle B establishes a 24-member National Commission to Support law Enforcement. The Commission is charged with studying and recommending changes regarding law enforcement agencies and law enforcement issues on the Federal, State, and local levels, including the 1) sufficiency of funding, 2) the conditions of law enforcement employment, 3) the effectiveness of information-sharing systems, 4) the status of law enforcement research, 5) the adequacy of equipment, physical resources, and human resources, 6) the cooperation among Federal, State, and local law enforcement agencies, 7) the responsibility of governments and law enforcement agencies in solving the crime problem, and 8) the impact of the criminal justice system, including court scheduling and prison overcrowding, or law enforcement. The Commission must submit a report to Congress within 18 months.

TITLE XI—CIVIL RIGHTS OFFENSES

Title XI increases the maximum penalties for serious violent acts in violation of criminal civil rights statutes.

TITLE XII—PUBLIC CORRUPTION

Title XII strengthens the Federal laws against public corruption by increasing the penalties, providing a more adequate basis of Federal jurisdiction to prosecute corruption offenses, prohibiting retaliation against whistleblowers who expose public corruption, and through specific provisions relating to election fraud and drug-related corruption.

TITLE XIII—FUNDING

Section 1301. Reduction in Overhead Costs Incurred in Federally Sponsored Research. This section states that the Congressional Budget Office estimates that capping the overhead payment rate for Federally-funded university research at 90% of the current level will produce savings of $1.54 billion over five years.

Section 1302. Overhead Expenses Reduction. This section reduces the overhead expenses identified and reduced by the President in Executive Order 12837 by an additional 5 percent. The Congressional Budget Office estimates that the reduction in overhead expenses required by this section will produce savings of approximately $6 billion over five years.

Section 1303. Funding of Programs Authorized by this Act. This section provides that the amount of available budget authority resulting from the enactment of sections 1301 and 1302 shall be reallocated as follows:

1. $800 million for America's Safe Streets Program as authorized by section 102 ($100 million for FY94, $125 million for FY95, $175 million for FY96, $200 million for FY97, and $200 million for FY98).

2. $650 million for the Cops-on-the-Street grants as authorized by section 112 ($100 million for FY94, $100 million for FY95, $150 million for FY96, $150 million for FY97, and $150 million for FY98).

3. $250 million for the Police Corps as authorized by section 130 ($50 million for FY94, $100 million for FY95, and $100 million for FY96).

4. $300 million for Community Policing grants as authorized by section 141 ($60 million for FY94, $60 million for FY95, $60 million for FY96, $60 million for FY97, and $60 million for FY98).

5. $100 million for Police Automation and Technology as authorized by section 153 ($100 million for FY94).

6. $2 billion for the Regional Prisons as authorized by section 165 ($200 million for FY94, $400 million for FY95, $400 million for FY96, $500 million for FY97, and $500 million for FY98).

7. $1 billion for the Prison Construction and Operation grants as authorized by section 177 ($200 million for FY94, $200 million for FY95, $200 million for FY96, $200 million for FY97, and $200 million for FY98).

8. $500 million for America's Safe Schools Program as authorized by section 202 ($100 million for FY94, $100 million for FY95, $100 million for FY96, $100 million for FY97, and $100 million for FY98).

9. $500 million for the Federal Safe School Districts as authorized by section 203 ($100 million for FY64, $100 million for FY95, $100 million for FY96, $100 million for FY97, and $100 million for FY98).

10. $300 million for the hiring of 1,000 additional Border Patrol agents as authorized by section 321 ($60 million for FY94, $60 million for FY95, $60 million for FY96, $60 million for FY97, and $60 million for FY98).

11. $385 million for the hiring of 1,000 additional INS criminal investigators as authorized by section 322 ($77 million for FY94, $77 million for FY95, $77 million for FY96, $77 million for FY97, and $77 million for FY98).

12. $13 million for the operation of a criminal alien tracking center as authorized by section 323 ($5 million for FY94, $2 million for FY95, $2 million for FY96, $2 million for FY97, and $2 million for FY98).

13. $100 million for the hiring of additional Assistant U.S. Attorneys to prosecute violent youth gangs as authorized by section 431 ($20 million for FY94, $20 million for FY95, $20 million for FY96, $20 million for FY97, and $20 million for FY98).

14. $1 million for Gang Investigation Coordination as authorized by section 432 ($1 million for FY94).

15. $250 million for Rural Law Enforcement grants as authorized by section 501 ($50 million for FY94, $50 million for FY95, $50 million for FY96, $50 million for FY97, and $50 million for FY98).

16. $5 million for Drug Enforcement Training as authorized by section 504 ($1 million for FY94, $1 million for FY95, $1 million for FY96, $1 million for FY97, and $1 million for FY98).

17. $110 million for Rural Substance Abuse Treatment and Education grants as authorized by section 511 ($25 million for FY94, $25 million for FY95, $20 million for FY96, $20 million for FY97, and $20 million for FY98).

18. $100 million for the hiring of additional DEA agents as authorized by section 551 ($20 million for FY94, $20 million for FY95, $20 million for FY96, $20 million for FY97, and $20 million for FY98).

19. $120 million for Counterterrorism operations as authorized by section 811 ($60 million for FY94 and $60 million for FY95).

20. $40 million for Child Abuse Information grants as authorized by section 916 ($20 million for FY94, $10 million for FY95, and $10 million for FY96).

21. $1 million for the establishment of the National Commission to Support Law Enforcement as authorized by section 1030 ($1 million for FY94).

NEIGHBORHOOD SECURITY ACT OF 1993—FUNDING

I. SAVINGS (ESTIMATED BY THE CONGRESSIONAL BUDGET OFFICE)

a. Cutting Overhead in the Federal Government by 5% above the Cuts Proposed in Executive Order 12837:

FY94—$1.2 billion.
FY95—$1.2 billion.
FY96—$1.2 billion.
FY97—$1.2 billion.
FY98—$1.2 billion.
Subtotal—$6 billion.

b. Capping the Overhead Payment Rate for Federally-Funded University Research at 90% of Current Levels:

FY94—$150 million.
FY95—$310 million.
FY96—$350 million.
FY97—$360 million.
FY98—$370 million.

c. Total Savings:

FY94—$1.35 million.
FY95—$1.51 million.
FY96—$1.55 million.
FY97—$1.56 million.
FY98—$1.57 million.
Five-Year Total—$7.54 billion.

II ALLOCATIONS

[In millions of dollars]

Program	Fiscal year				
	1994	1995	1996	1997	1998
America's Safe Streets	100	125	175	200	200
Cops-on-the-Street	100	100	150	150	150
Police Corps	50	100	100	.....	.....
Community Policing	60	60	60	60	60
Police Automation	100	.....	.....	.....	.....
Regional Prisons	200	400	400	500	500
State Prison Grants	200	200	200	200	200
America's Safe Schools	100	100	100	100	100
Safe School Districts	100	100	100	100	100
Border Patrol Agents (1,000)	60	60	60	60	60
INS Criminal Investigators (1,000)	77	77	77	77	77
Criminal Alien Tracking Center	5	2	2	2	2
Gang Investigation Coordination	1	.....	.....	.....	.....
Law Enforcement Commission	1	.....	.....	.....	.....
Assistant U.S. Attorneys	20	20	20	20	20
Rural Law Enforcement Training	50	50	50	50	50
Rural Drug Enforcement	1	1	1	1	1
Rural Drug Prevention	25	25	20	20	20
DEA Agents	20	20	20	20	20
Terrorism Prevention	60	60	.....	.....	.....
Children Abuse Info.	20	10	10	.....	.....
Annual totals (billions)	1.35	1.51	1.545	1.56	1.56

Five-year total—$7.53 billion.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 9, 1993.

Hon. ROBERT DOLE,
Republican Leader,
U.S. Senate,
Washington, DC.

DEAR MR. LEADER: As you requested, the Congressional Budget Office has estimated the savings that could be attained by reducing administrative expenses for government agencies.

On February 10, 1993, the President issued Executive Order 12837 requiring agencies to submit budgets incorporating reductions in administrative expenses of 3 percent in 1994, 6 percent in 1995, 9 percent in 1996, and 14 percent in 1997, relative to 1993 spending adjusted for inflation. The Office of Management and Budget has categorized about $22 billion in 1993 executive branch spending as administrative costs. (These costs include certain categories of overhead expenses, but do not include the costs of any salaries or benefits for personnel.) If appropriations are reduced accordingly, the executive order will result in savings of about $3.5 billion in 1998 and $11 billion over the 1994–1998 period, compared to 1993 spending adjusted for inflation.

Cutting administrative costs by an additional 5 percentage points in each year would

produce additional savings of about $1.2 billion a year, or $6 billion over five years. This would necessitate a reduction from the inflation-adjusted 1993 level of 8 percent in 1994, 11 percent in 1995, 14 percent in 1996, and 19 percent in 1997. If appropriations were reduced accordingly, total savings would be $17 billion over five years, compared to $11 billion for the Administration's plan.

The executive order and legislation requiring reductions in administrative costs would not, by themselves, reduce federal spending. Savings would result only if appropriations were correspondingly reduced.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mickey Buhl, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 30, 1993.

Hon. ROBERT DOLE,
Republican Leader,
U.S. Senate,
Washington, DC.

DEAR MR. LEADER: As you requested, the Congressional Budget Office is pleased to provide additional information about the estimated savings that would result from a ten percent cut in the overhead rate paid to each university that receives federal research funding. This proposal was discussed as part of option DOM-44 in our publication "Reducing the Deficit: Spending and Revenue Options," which was released in February 1993.

We estimate that a ten percent cut in the overhead rate would make possible outlay savings of $150 million in fiscal year 1994, $310 million in 1995, $350 million in 1996, $360 million in 1997, and $370 million in 1998. To achieve these savings, the Congress would have to reduce the appropriations for university research by an amount corresponding to the mandated reduction in overhead costs.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Mr. MACK. Mr. President, I first want to thank Senators DOLE and HATCH for putting together this comprehensive bill addressing our Nation's crisis of violent crime. I want to highlight two provisions of the bill that I took part in drafting. First, we included an amendment to the Federal carjacking statute which broadens its scope and incorporates the death penalty. Second, we developed a new regional prison system, specifically designed to put our most violent criminals and convicted aliens behind bars, and keep them there.

The bill's section forges a Federal-State alliance to help States deal with their own violent crime problem. A State will be deemed eligible to participate in this innovative nationwide enterprise if it steps up to the plate and eliminates parole, adopts more stringent pretrial detention standards, and deals swiftly and decisively with violent repeat offenders, sex offenders and criminals using guns. The reward for those States who act in such a responsible manner will be what they need most, more prison beds at no additional cost to them.

We are here today to essentially open the door to a safer America. An America where criminals who rape, rob, or murder, will be stiffly sentenced and will serve every day of the sentence they are given. An America where we can rely upon our criminal system to dispense true justice, and a place which favors innocent victims over brutal thugs. If this legislation is passed, gone will be the days of the revolving door where vicious criminals are back out on the street within a matter of months of their third or fourth offense.

The finger pointing between the States, the Congress and the Federal judges shall stop here. With this bill, the U.S. Government will do its job to combat the problem of diminishing prison space and escalating crime rates. I say to the American people that we, as Republicans in the U.S. Senate, have heard your call for safety ad we are heeding it.

I want to again thank the leadership, and also mention Congressman BILL MCCOLLUM for his contributions to the prison section of the bill, and say that I am eager to work with my colleagues to secure passage of this hard hitting, get tough crime legislation.

By Mr. LEVIN (for himself and Mr. RIEGLE):

S. 1357. A bill to reaffirm and clarify the Federal relationships of the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians as distinct federally recognized Indian tribes, and for other purposes; to the Committee on Indian Affairs.

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS AND THE LITTLE RIVER BAND OF OTTAWA INDIANS ACT

• Mr. LEVIN. Mr. President, today, I am joined by my colleague from Michigan, Senator RIEGLE, in introducing legislation to reaffirm and clarify the Federal relationship with the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Both of these tribes are descendants of the tribes that signed the 1836 Treaty of Washington and the 1855 Treaty of Detroit. This legislation seeks to reaffirm the Federal trust responsibility to these two tribes which the most recognized Indian scholar in the United States, University of Colorado Prof. Vine Deloria, Jr., has gone on record as stating was never terminated. Identical legislation has been introduced in the House by Representatives DALE KILDEE, DAVE CAMP, and PETER HOEKSTRA.

Mr. President, historical documentation proves that these tribes have had a government-to-government relationship with the United States since Americans first entered the Great Lakes. Both are signatories to treaties with the United States and both maintained distinct political and cultural structures from that time to the present. Additionally, both tribes petitioned for recognition of their governments under the Indian Reorganization Act in 1935. The U.S. Government's failure to act on this petition, claiming budgetary constraints and bureaucratic redtape, has brought about the necessity for this legislation.

Mr. President, numerous Indian law experts have found that these two tribes are technically, federally recognized and therefore eligible for services as a result of this recognition. Yet, the Bureau of Indian Affairs has refused to provide such recognition using a series of historical and legal technicalities as its excuse. No one questions the fact that these tribes signed treaties with the United States and that they have upheld their end of the agreement. Mr. President, I urge speedy enactment of this legislation. It is long overdue. I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 1357

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 "Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians are descendants of, and political successors to, signatories of the 1836 Treaty of Washington and the 1855 Treaty of Detroit.

(2) The Grand Traverse Band of Ottawa and Chippewa Indians, the Sault Ste. Marie Tribe of Chippewa Indians, and the Bay Mills Band of Chippewa Indians, whose members are also descendants of the signatories to the 1836 Treaty of Washington and the 1855 Treaty of Detroit, have been recognized by the Federal Government as distinct Indian tribes.

(3) The Little Traverse Bay Bands of Odawa Indians consists of at least 1,000 eligible members who continue to reside close to their ancestral homeland as recognized in the Little Traverse Reservation in the 1836 Treaty of Washington and 1855 Treaty of Detroit, which area is now known as Emmet and Charlevoix Counties, Michigan.

(4) The Little River Band of Ottawa Indians consists of at least 500 eligible members who continue to reside close to their ancestral homeland as recognized in the Manistee Reservation in the 1836 Treaty of Washington and reservation in the 1855 Treaty of Detroit, which area is now known as Manistee and Mason Counties, Michigan.

(5) The Bands filed for reorganization of their existing tribal governments in 1935 under the Act of June 18, 1934 (25 U.S.C. et seq.; commonly referred to as the "Indian Reorganization Act"). Federal agents who visited the Bands, including Commissioner of Indian Affairs, John Collier, attested to the continued social and political existence of the Bands and concluded that the Bands

were eligible for reorganization. Due to a lack of Federal appropriations to implement the provisions of such Act, the Bands were denied the opportunity to reorganize.

(6) In spite of such denial, the Bands continued their political and social existence with viable tribal governments. The Bands, along with other Michigan Odawa/Ottawa groups, including the tribes described in paragraph (2), formed the Northern Michigan Ottawa Association in 1948. The Association subsequently pursued a successful land claim with the Indian Claims Commission.

(7) Between 1948 and 1975, the Bands carried out many of their governmental functions through the Northern Michigan Ottawa Association, while retaining individual Band control over local decisions.

(8) In 1975, the Northern Michigan Ottawa Association petitioned under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act"), to form a government on behalf of the Bands. Again in spite of the Bands' eligibility, the Bureau of Indian Affairs failed to act on their request.

(9) The United States Government, the government of the State of Michigan, and local governments have had continuous dealings with the recognized political leaders of the Bands from 1836 to the present.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term "Bands" means the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians;

(2) the term "member" means those individuals enrolled in the Bands pursuant to section 7; and

(3) the term "Secretary" means the Secretary of the Interior.

SEC. 4. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—Federal recognition of the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians is hereby reaffirmed. All laws and regulations of the United States of general application to Indians or nations, tribes, or bands of Indians, including the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act"), which are not inconsistent with any specific provision of this Act shall be applicable to the Bands and their members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—The Bands and their members shall be eligible for all services and benefits provided by the Federal Government to Indians because of their status as federally recognized Indians, and notwithstanding any other provision of law, such services and benefits shall be provided after the date of the enactment of this Act to the Bands and their members without regard to the existence of a reservation or the location of the residence of any member on or near any Indian reservation.

(2) SERVICE AREAS.—

(A) LITTLE TRAVERSE BAY BANDS.—For purposes of the delivery of Federal services to the enrolled members of the Little Traverse Bay Bands of Odawa Indians, the area of the State of Michigan within 70 miles of the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs "third" and "fourth" of the Treaty of 1855, 11 Stat. 621, shall be deemed to be within or near a reservation, notwithstanding the establishment of a reservation for the tribe after the date of the enactment of this Act. Services may be provided to members outside the named service area unless prohibited by law or program regulations.

(B) LITTLE RIVER BAND.—For purposes of the delivery of Federal services to enrolled members of the Little River Band of Ottawa Indians, the Counties of Manistee, Mason, Wexford and Lake, in the State of Michigan, shall be deemed to be within or near a reservation, notwithstanding the establishment of a reservation for the tribe after the date of the enactment of this Act. Services may be provided to members outside the named Counties unless prohibited by law or program regulations.

SEC. 5. REAFFIRMATION OF RIGHTS.

(a) IN GENERAL.—All rights and privileges of the Bands, and their members thereof, which may have been abrogated or diminished before the date of the enactment of this Act are hereby reaffirmed.

(b) EXISTING RIGHTS OF TRIBE.—Nothing in this Act shall be construed to diminish any right or privilege of the Bands, or of their members, that existed prior to the date of enactment of this Act. Except as otherwise specifically provided in any other provision of this Act, nothing in this Act shall be construed as altering or affecting any legal or equitable claim the Bands might have to enforce any right or privilege reserved by or granted to the Bands which were wrongfully denied to or taken from the Bands prior to the enactment of this Act.

SEC. 6. TRANSFER OF LAND FOR THE BENEFIT OF THE BANDS.

(a) LITTLE TRAVERSE BAY BANDS.—The Secretary shall acquire real property in Emmet and Charlevoix Counties for the benefit of the Little Traverse Bay Bands. The Secretary shall also accept any real property located in those Counties for the benefit of the Little Traverse Bay Bands if conveyed or otherwise transferred to the Secretary, if at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages or taxes owed.

(b) LITTLE RIVER BAND.—The Secretary shall acquire real property in Manistee and Mason Counties for the benefit of the Little River Band. The Secretary shall also accept any real property located in those Counties for the benefit of the Little River Band if conveyed or otherwise transferred to the Secretary, if at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages or taxes owed.

(c) ADDITIONAL LANDS.—The Secretary may accept any additional acreage in each of the Bands' service area specified by section 4(b) of this Act pursuant to his authority under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act").

(d) RESERVATION.—Subject to the conditions imposed by this section, the land acquired by or transferred to the Secretary under or pursuant to this section shall be taken in the name of the United States in trust for the Bands and shall be a part of the respective Bands' reservation.

SEC. 7. MEMBERSHIP.

Not later than 18 months after the date of the enactment of this Act, the Bands shall submit to the Secretary membership rolls consisting of all individuals currently enrolled for membership in such Bands. The qualifications for inclusion on the membership rolls of the Bands shall be determined by the membership clauses in such Bands' respective governing documents, in consultation with the Secretary. Upon completion of the rolls, the Secretary shall immediately publish notice of such in the Federal Register. The Bands shall ensure that such rolls are maintained and kept current.

SEC. 8. CONSTITUTION AND GOVERNING BODY.

(a) CONSTITUTION.—

(1) ADOPTION.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall conduct, by secret ballot, elections for the purposes of adopting new constitutions for the Bands. The elections shall be held according to the procedures applicable to elections under section 16 of the Act of June 18, 1934 (25 U.S.C. 476; commonly referred to as the "Indian Reorganization Act").

(2) INTERIM GOVERNING DOCUMENTS.—Until such time as new constitutions are adopted under paragraph (1), the governing documents in effect on the date of the enactment of this Act shall be the interim governing documents for the Bands.

(b) OFFICIALS.—

(1) ELECTION.—Not later than 6 months after the Bands adopt constitutions and bylaws pursuant to subsection (a), the Bands shall conduct elections by secret ballot for the purpose of electing officials for the Bands as provided in the Bands' respective governing constitutions. The elections shall be conducted according to the procedures described in the Bands' constitutions and bylaws.

(2) INTERIM GOVERNMENTS.—Until such time as the Bands elect new officials pursuant to paragraph (1), the Bands' governing bodies shall be those governing bodies in place on the date of the enactment of this Act, or any new governing bodies selected under the election procedures specified in the respective interim governing documents of the Bands.•

• Mr. RIEGLE. Mr. President, I am pleased to join Senator LEVIN, again this year, as a cosponsor of legislation extending Federal recognition to the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Both these tribes have strong cases for seeking recognition through Congress, and I believe that this Federal acknowledgement is long overdue.

The variety of recognition processes the Federal Government has created since the 1930's have not worked properly with regard to these two Great Lakes tribes. In 1935, after fulfilling all the requirements for recognition, these tribes applied for recognition under the Wheeler-Howard Act. They were unfairly denied formal recognition solely because of Federal budgetary shortfalls and bureaucratic difficulties. Since that time, they have maintained viable tribal governments, sustained a constructive relationship with our Government, and have attempted to obtain recognition. Despite their continued eligibility, the Bureau of Indian Affairs has failed to act on the tribes' request for Federal approval.

Both the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians have a long and rich history that extends well before the first Europeans entered the Great Lakes area. Current members of these tribes are direct descendants of those Indians who signed the 1836 Treaty of Washington and the 1855 Treaty of Detroit—these tribes have a strong cultural identity that has survived hundreds of years of hostility and mistreatment at the hands of European

settlers and the U.S. Government. I believe that we have a moral obligation to do what we can to mend our relationship with these tribes, and Federal recognition is the first step toward that goal.

I am hopeful that the Senate will move forward with this legislation.●

By Mr. JOHNSTON:

S. 1358. A bill to amend the Immigration and Nationality Act to improve immigration enforcement and anti-smuggling activities, to reform the asylum law, and to authorize appropriations for the Immigration and Naturalization Service; to the Committee on the Judiciary.

IMMIGRATION ENFORCEMENT AND ASYLUM REFORM ACT OF 1993

● Mr. JOHNSTON. Mr. President, I rise today to introduce a bill that would provide workable and much needed reforms in our asylum laws and related immigration provisions while at the same time, ensuring that persons who have legitimate asylum claims receive full and fair hearings. This legislation is designed to combat the growing immigration policy problems which confront the United States on a daily basis. It is quite obvious that a majority of Americans find that the problem of illegal immigration is more serious now than ever before. As President Clinton and Attorney General Reno have recently noted, our immigration policy is in disarray. The Immigration and Naturalization Service is underfunded and there are almost 300,000 cases pending. The current claim process takes about 2 years to complete and, as result, many asylum applicants never even check on their claims. This cannot be allowed to continue.

This bill is identical to H.R. 2602, which was introduced in the House by Mr. MAZZOLI, for himself, Mr. SCHUMER, and Mr. MCCOLLUM on July 1, 1993. I believe it deserves our attention in this body as well. The bill represents an collaborative effort to deal with the escalating problem of alien smuggling and abuse of the asylum system. The United States, a nation founded by immigrants, should welcome legal immigrants and turn away illegal immigrants in a judicious and cost effective manner. This legislation is the most effective at alleviating the current immigration policy crisis.

Mr. President, I commend the Clinton administration for recognizing that major reforms are needed to combat illegal immigration. However, the administration's proposed bill will not achieve the commendable reform goals that President Clinton appears to support. The asylum reform provisions in the legislation that I introduce today would be far more effective in combating asylum fraud.

This legislation is aimed at aliens who show up at U.S. airports without official, or with fraudulent, documentation and claim political asylum. Only a limited number of such arrivals typically qualify for asylum, but under current procedures all may go through lengthy asylum proceedings before the Government can deport them. Countless numbers of aliens now know that once they arrive at an American port of entry, by simply uttering the words "political asylum," and claiming that they will be killed or persecuted if they are returned home, they are virtually assured an extended stay in the United States. Most are not detained and in the interim some drop out of sight.

An important aspect of this legislation is that it would prevent many illegal immigrants from ever reaching U.S. soil. The Immigration and Naturalization Service [INS] would be required to train airline employees in the detection of fraudulent documents. Additionally, INS would be required to establish overseas preinspection stations at foreign airports which have send large numbers of asylum seekers with fraudulent documents to the United States. These stations would prevent passengers with forged documents from ever boarding planes headed for the United States.

Furthermore, this bill will provide expedited exclusion procedures for aliens who still manage to arrive at ports of entry or elsewhere in the United States with fraudulent or no documentation. Passengers who do not claim a fear of persecution will be returned immediately. Passengers who claim persecution and are determined by an INS asylum officer—subject to immediate supervisory review—not to have a credible fear of persecution will also be returned immediately. The only type of judicial review authorized for an alien found excludable under the expedited exclusion provisions is a petition for habeas corpus.

This legislation also streamlines procedures for considering asylum claims—which by the way are now heard, depending on circumstances, by either INS asylum officers or Justice Department immigration judges, or both—by giving sole authority to conduct asylum hearings to specially trained INS asylum officers.

As for immigrants with complete and official documentation, this legislation would place an affirmative obligation on those who claim asylum to come forward and make their intentions known within their first 30 days in the United States. This prevents aliens from using asylum as a defense to deportation unless the alien can demonstrate changed circumstances. Also, many aliens currently fail to appear for asylum hearings and continue to receive immigration benefits. This legislation would prevent this transgression.

Moreover Mr. President, this legislation increases the Federal criminal penalty for alien smuggling from 5 to 10 years. Additionally, Federal criminal penalties would be extended to gangs and sweatshops who contract with smugglers in order to obtain illegal labor.

To effectively implement this legislation, it is necessary to increase the size of the Border Patrol, the anti-smuggling unit of INS, and the INS asylum officer corps. Although this will cost money, the savings realized by American citizens will be more. Recently, Prof. Don Huddle of Rice University indicated that the immigrants who have entered the United States since 1970 have cost all levels of government more than $45 billion per year, above and beyond what they paid in taxes. Illegal aliens cost taxpayers billions of dollars by using public education, health benefits, and other welfare services, and their fraud limits the availability of these services to American citizens. To illustrate, major cost incurred by illegal aliens in 1992 alone included: primary and secondary education, $3,900,000,000; bilingual education, $858,000,000; aid to families with dependent children, $820,000,000; and assistance to displaced workers, $6,928,000,000.

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

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

S. 1358

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

SECTION 1. SHORT TITLE; AMENDMENTS MADE BY ACT; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Immigration Enforcement and Asylum Reform Act of 1993".

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Immigration and Nationality Act.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; amendments made by Act; table of contents.

TITLE I—SMUGGLING AND FRAUD

Sec. 101. Inspection and exclusion by immigration officers.
Sec. 102. Enhanced penalties for alien smuggling.
Sec. 103. Effective date.

TITLE II—ASYLUM

Sec. 201. Asylum.
Sec. 202. Failure to appear for provisional asylum hearing; judicial review.
Sec. 203. Conforming amendments.
Sec. 204. Effective dates.

TITLE III—INSPECTIONS

Sec. 301. Preinspection at foreign airports.
Sec. 302. Expediting airport immigration processing.
Sec. 303. Visa waiver program.

Sec. 304. Training of airline personnel in detection of fraudulent documents.
TITLE IV—AUTHORIZATION OF APPROPRIATIONS FOR THE IMMIGRATION AND NATURALIZATION SERVICE
Sec. 401. Authorization of appropriations for I.N.S. for fiscal years 1994 and 1995.

TITLE I—SMUGGLING AND FRAUD

SEC. 101. INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.

(a) IN GENERAL.—Section 235(b) (8 U.S.C. 1225(b)) is amended to read as follows:

"(b) INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.—

"(1) An immigration officer shall inspect each alien who is seeking entry to the United States.

"(2)(A) If the examining immigration officer determines that an alien seeking entry—

"(i) does not present the documentation required (if any) to obtain legal entry to the United States; and

"(ii) does not indicate either an intention to apply for provisional asylum (under section 208) or a fear of persecution,

the officer shall order the alien excluded from the United States without further hearing or review.

"(B) The examining immigration officer shall refer for immediate inspection at the port of entry by an asylum officer under subparagraph (C) any alien who (i) does not present the documentation required (if any) to obtain legal entry to the United States, and (ii) has indicated an intention to apply for provisional asylum or a fear of persecution.

"(C)(i) If an asylum officer determines that an alien has a credible fear of persecution, the alien shall be entitled to apply for provisional asylum under section 208.

"(ii)(I) Subject to subclause (II), if an asylum officer determines that an alien does not have a credible fear of persecution the officer shall order the alien excluded from the United States without further hearing or review.

"(II) The Attorney General shall promulgate regulations to provide for the immediate review by another asylum officer at the port of entry of a decision under subclause (I).

"(iii) For the purposes of this subparagraph, the term 'credible fear of persecution' means (I) that it is more probable than not that the statements made by the alien in support of his or her claim are true, and (II) that there is a significant possibility, in light of such statements and of such other facts as are known to the officer that the alien could establish eligibility for provisional asylum under section 208.

"(iv) Notwithstanding any other provision of law, no court shall have jurisdiction to review, except by petition for habeas corpus, any determination made with respect to an alien found excludable pursuant to this paragraph. In any such case, review by habeas corpus shall be limited to examination of whether the petitioner (I) is an alien, and (II) was ordered excluded from the United States pursuant to this paragraph.

"(3)(A) Except as provided in subparagraph (B), if the examining immigration officer determines that an alien seeking entry is not clearly and beyond a doubt entitled to enter, the alien shall be detained for a hearing before a special inquiry officer.

"(B) The provisions of subparagraph (A) shall not apply—

"(i) to an alien crewman,

"(ii) to an alien described in paragraph (2)(A) or 2(C)(ii)(I), or

"(iii) if the conditions described in section 273(d) exist.

"(4) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to enter is so challenged, before a special inquiry officer for a hearing on exclusion of the alien.

"(5)(A) Subject to subparagraph (B), an alien has not entered the United States for purposes of this Act unless and until such alien has been inspected and admitted by an immigration officer pursuant to this subsection.

"(B) An alien who (i) is physically present in the United States, (ii) has been physically present in the United States for a continuous period of one year, and (iii) has not been inspected and admitted by an immigration officer shall be deemed to have entered the United States without inspection.".

(b) CONFORMING AMENDMENTS.—Section 237(a) (8 U.S.C. 1227(a)) is amended—

(1) in the second sentence of paragraph (1) by striking "Deportation" and inserting "Subject to section 235(b)(2), deportation"; and

(2) in the first sentence of paragraph (2) by striking "If" and inserting "Subject to section 235(b)(2), if".

SEC. 102. ENHANCED PENALTIES FOR ALIEN SMUGGLING.

(a) ADDITIONAL CRIMINAL PENALTY.—Section 274(a)(1) (8 U.S.C. 1324(a)(1)) is amended—

(1) by striking "or" at the end of subparagraph (C),

(2) by striking the comma at the end of subparagraph (D) and inserting "; or",

(3) by inserting after subparagraph (D) the following:

"(E) contracts or agrees with another party for that party to provide, for employment by the person or another, an alien who is not authorized to be employed in the United States, knowing that such party intends to cause such alien to be brought into the United States in violation of the laws of the United States,", and

(4) by striking "five years" and inserting "ten years".

(b) TREATMENT OF SMUGGLING AS AN AGGRAVATED FELONY.—The first sentence of section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended by inserting "or any offense under section 274(a)" before "for which the term of imprisonment".

SEC. 103. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided, the amendments made by this title shall take effect on the date of the enactment of this Act and shall apply to aliens who arrive in or seek admission to the United States on or after such date.

(b) SMUGGLING.—The amendment made by section 102(b) shall apply to offenses for which convictions are entered before, on, or after the date of the enactment of this Act.

(c) INTERIM REFERENCE TO PROVISIONAL ASYLUM.—Any reference in section 235(b)(2) of the Immigration and Nationality Act (as amended by section 101(a) of this Act) to provisional asylum under section 208 of the Immigration and Nationality Act shall be deemed, before the effective date of the amendment made by section 201(a), to be a reference to asylum under section 208 of such Act.

TITLE II—ASYLUM

SEC. 201. ASYLUM.

(a) IN GENERAL.—Section 208 (8 U.S.C. 1158) is amended to read as follows:

"ASYLUM

"SEC. 208. (a) PROVISIONAL ASYLUM.—

"(1) RIGHT TO APPLY.—An alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, may apply for provisional asylum in accordance with this section.

"(2) CONDITIONS FOR GRANTING.—

"(A) MANDATORY CASES.—The Attorney General shall grant provisional asylum to an alien if the alien applies for provisional asylum in accordance with the requirements of this section and establishes that it is more likely than not that in the alien's country of nationality (or, in the case of a person having no nationality, the country in which such alien last habitually resided) such alien's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(B) DISCRETIONARY CASES.—The Attorney General may grant provisional asylum to an alien if the alien applies for provisional asylum in accordance with the requirements of this section and establishes that the alien has good reason to fear persecution in the alien's country of nationality (or, in the case of a person having no nationality, the country in which such alien last habitually resided) on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(C) EXCEPTION.—Subparagraphs (A) and (B) shall not apply to an alien if the Attorney General determines that—

"(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

"(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

"(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

"(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

"(v) a country willing to accept the alien has been identified (other than the country described in subparagraph (A)) to which the alien can be deported or returned and the alien does not establish that it is more likely than not that the alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

For purposes of clause (ii), an alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime. The Attorney General shall promulgate regulations that specify additional crimes that will be considered to be a crime described in clause (ii) or clause (iii). The Attorney General shall promulgate regulations establishing such additional limitations and conditions as the Attorney General considers appropriate under which an alien shall be ineligible to apply for provisional asylum under subparagraph (B).

"(3) PROVISIONAL ASYLUM STATUS.—In the case of any alien granted provisional asylum under paragraph (2), the Attorney General, in accordance with this section—

"(A) shall not deport or return the alien to the country described under paragraph (2)(A);

"(B) shall authorize the alien to engage in employment in the United States and provide the alien with an 'employment authorized' endorsement or other appropriate work permit; and

"(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

"(4) TERMINATION.—Provisional asylum granted under paragraph (2) may be terminated if the Attorney General, pursuant to such regulations as the Attorney General may prescribe, determines that—

"(A) the alien no longer meets the conditions described in paragraph (2) owing to a change in circumstances in the alien's country of nationality or, in the case of an alien having no nationality, in the country in which the alien last habitually resided;

"(B) the alien meets a condition described in paragraph (2)(C); or

"(C) a country willing to accept the alien has been identified (other than the country described in paragraph (2)) to which the alien can be deported or returned and the alien cannot establish that it is more likely than not that the alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(5) ACCEPTANCE BY ANOTHER COUNTRY.—In the case of an alien described in paragraph (2)(C)(v) or paragraph (4)(C), the alien's deportation or return shall be directed by the Attorney General in the sole discretion of the Attorney General, to any country which is willing to accept the alien into its territory (other than the country described in paragraph (2)).

"(b) PROVISIONAL ASYLUM PROCEDURE.—

"(1) APPLICATIONS.—

"(A) IN GENERAL.—

"(i) DEADLINE.—Subject to clause (ii), an alien's application for provisional asylum shall not be considered under this section unless—

"(I) the alien has filed, not later than 30 days after entering or coming to the United States, notice of intention to file such an application, and

"(II) such application is actually filed not later than 60 days after entering or coming to the United States.

"(ii) EXCEPTION.—An application for provisional asylum may be considered, notwithstanding that the requirements of clause (i) have not been met, only if the alien demonstrates by clear and convincing evidence changed circumstances in the alien's country of nationality (or in the case of an alien with no nationality, in the country where the alien last habitually resided) affecting eligibility for provisional asylum.

"(B) REQUIREMENTS.—An application for provisional asylum shall not be considered unless the alien submits to the taking of fingerprints and a photograph in a manner determined by the Attorney General.

"(C) FEES.—The Attorney General may provide for a reasonable fee for the consideration of an application for provisional asylum or for any employment authorization under subsection (a)(3)(B).

"(D) NOTICE OF PRIVILEGE OF COUNSEL AND CONSEQUENCES OF FRIVOLOUS APPLICATION.—

"(i) NOTICE.—At the time of filing a notice of intention to apply for provisional asylum, the alien shall be advised of the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as the alien shall choose and of the consequences, under subsection (d), of filing a frivolous application for provisional asylum.

"(ii) PROVISION OF LIST OF COUNSEL.—The Attorney General shall provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in provisional asylum proceedings. Such lists shall be provided to the alien at the time of filing of notice of intention to apply for provisional asylum, and otherwise be made generally available.

"(2) CONSIDERATION OF APPLICATIONS; HEARINGS.—

"(A) ASYLUM OFFICERS.—Applications for provisional asylum shall be considered by officers of the Service (referred to in this Act as 'asylum officers') who are specially designated by the Service as having special training and knowledge of international conditions and human rights records of foreign countries. Pending the designation of such officers, individuals who as of the date of the enactment of the Immigration Enforcement and Asylum Reform Act of 1993 are authorized to perform duties as asylum officers shall be deemed to be qualified to be asylum officers for purposes of this Act.

"(B) SCHEDULING OF HEARINGS.—

"(i) IN GENERAL.—Upon the filing of an application for provisional asylum, an asylum officer, at the earliest practicable time and after consultation with the attorney for the Government and the attorney (if any) for the applicant, shall set the application for hearing on a day certain or list it on a weekly or other short-term calendar, so as to assure a speedy hearing.

"(ii) DEADLINE.—Unless the applicant (or an attorney for the applicant) consents in writing to the contrary, the hearing on the provisional asylum application shall commence not later than 45 days after the date the application was filed.

"(C) PUBLIC HEARINGS.—A hearing on a provisional asylum application shall be open to the public unless the applicant requests that it be closed to the public.

"(D) RIGHTS IN HEARINGS.—The officer shall conduct the hearing in a nonadversarial manner. During such hearing, the applicant shall have the privilege of the assistance and participation of counsel (as provided under paragraph (1)(D)) and shall be entitled to present evidence and witnesses, to examine and object to evidence presented by the Government, and to cross-examine all witnesses presented by the Government.

"(E) COUNTRY CONDITIONS.—An officer may request opinions regarding country conditions from the Secretary of State, but shall not request or consider recommendations from the Secretary of State as to whether a particular named individual should or should not be granted provisional asylum.

"(F) TRANSCRIPT OF HEARINGS.—A complete record of the proceedings and of all testimony and evidence produced at the hearing shall be kept. The hearing shall be recorded verbatim. The Attorney General and the Service shall provide that a transcript of a hearing held under this section is made available not later than 10 days after the date of completion of the hearing.

"(G) DEADLINE FOR DETERMINATIONS ON APPLICATIONS.—The officer shall render a determination on the application not later than 30 days after the date of completion of the hearing. The determination of the officer shall be based only on the evidence produced at the hearing.

"(H) RESOURCE ALLOCATION.—The Attorney General shall allocate sufficient resources so as to assure that applications for provisional asylum are heard and determined on a timely basis. However, nothing in this paragraph relating to scheduling or deadlines shall be construed as creating any right or benefit, substantive or procedural, which is legally enforceable by any party against the United States, its agencies, its officers, or any other person.

"(I) SANCTIONS FOR FAILURE TO APPEAR.—

"(i) Subject to clause (ii), the application for provisional asylum of an alien who does not appear for a hearing on such application shall be summarily dismissed unless the alien can show exceptional circumstances (as defined in section 242B(f)(2)) as determined by the asylum officer.

"(ii) Clause (i) shall not apply if written and oral notice were not provided as required by section 242B(e)(4)(B).

"(J) FINALITY OF DETERMINATIONS.—

"(i) IN GENERAL.—The decision of the asylum officer shall be the final administrative determination of a claim for provisional asylum.

"(ii) TREATMENT OF CASES IN EXCLUSION OR DEPORTATION.—If proceedings are instituted against an alien under section 235 or 242 of this Act and the alien files an application for provisional asylum based on circumstances described in subsection (b)(1)(A)(ii), the asylum officer shall render, on an expedited basis, a decision on the application.

"(c) ASYLUM.—

"(1) ADJUSTMENT OF STATUS.—Under such regulations as the Attorney General may prescribe, the Attorney General shall adjust to the status of an alien granted asylum the status of any alien granted provisional asylum under subsection (a)(2)(A) who—

"(A) applies for such adjustment;

"(B) has been physically present in the United States for at least 1 year after being granted provisional asylum;

"(C) continues to be eligible for provisional asylum under this section; and

"(D) is admissible under this Act at the time of examination for adjustment of status under this subsection.

"(2) TREATMENT OF SPOUSE AND CHILDREN.—A spouse or child (as defined in section 101(b)(A), (B), (C), (D), or (E)) of an alien whose status is adjusted to that of an alien granted asylum under paragraph (a)(2) may be granted the same status as the alien if accompanying, or following to join, such alien.

"(3) APPLICATION FEES.—The Attorney General may impose a reasonable fee for the filing of an application for asylum under this subsection.

"(d) DENIAL OF IMMIGRATION BENEFITS FOR FRIVOLOUS APPLICATIONS.—

"(1) IN GENERAL.—If the asylum officer determines that an alien has made a frivolous application for provisional asylum under this section and the alien has received the notice under subsection (b)(1)(D)(i), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

"(2) TREATMENT OF MATERIAL MISREPRESENTATIONS.—For purposes of this subsection, an application considered to be 'frivolous' includes, but is not limited to, an application which contains a willful misrepresentation or concealment of a material fact.".

(b) CLERICAL AMENDMENT.—The item in the table of contents relating to section 208 is amended to read as follows:

"Sec. 208. Asylum.".

SEC. 202. FAILURE TO APPEAR FOR PROVISIONAL ASYLUM HEARING; JUDICIAL REVIEW.

(a) FAILURE TO APPEAR FOR PROVISIONAL ASYLUM HEARING.—Section 242B(e)(4) (8 U.S.C. 1252b(e)(4)) is amended—

(1) in the heading, by striking "ASYLUM" and inserting "PROVISIONAL ASYLUM";

(2) by striking "asylum" each place it appears and inserting "provisional asylum"; and

(3) in subparagraph (A), by striking all after clause (iii) and inserting "shall not be eligible for any benefits under this Act.".

(b) JUDICIAL REVIEW.—Section 106 (8 U.S.C. 1105a) is amended by adding at the end the following subsection:

"(d) The procedure prescribed by, and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders granting or denying provisional asylum, except that—

"(1) a petition for review may be filed not later than 90 days after the date of the issuance of the final order granting or denying provisional asylum;

"(2) the venue of any petition for review under this subsection shall be in the judicial circuit in which the administrative proceedings before an asylum officer were conducted in whole or in part, or in the judicial circuit wherein is the residence, as defined in this Act, of the petitioner, but not in more than one circuit; and

"(3) notwithstanding any other provision of law, a determination granting or denying provisional asylum based on changed circumstances pursuant to section 208(b)(1)(A)(ii) shall be in the sole discretion of the asylum officer.".

SEC. 203. CONFORMING AMENDMENTS.

(a) LIMITATION ON DEPORTATION.—Section 243 (8 U.S.C. 1253) is amended by striking subsection (h).

(b) ADJUSTMENT OF STATUS.—Section 209(b) (8 U.S.C. 1159(b)) is amended—

(1) in paragraph (2) by striking "one year" and inserting "2 years"; and

(2) by amending paragraph (3) to read as follows:

"(3) continues to be eligible for provisional asylum under section 208,".

(c) ALIENS INELIGIBLE FOR TEMPORARY PROTECTED STATUS.—Section 244A(c)(2)(B)(ii) (8 U.S.C. 1254a(c)(2)(B)(ii)) is amended by striking "section 243(h)(2)" and inserting "clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(B)".

(d) ELIGIBILITY FOR NATURALIZATION.—Section 316(f)(1) (8 U.S.C. 1427(f)(1)) is amended by striking "subparagraphs (A) through (D) of paragraph 243(h)(2)" and inserting "clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(B).".

(e) FAMILY UNITY.—Section 301(e) of the Immigration Act of 1990 (P.L. 101-649) is amended by striking "section 243(h)(2)" and inserting "clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(B).".

SEC. 204. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided, the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) EXCEPTIONS.—

(1) The amendments made by this title shall not apply to applications for asylum or withholding of deportation made before the first day of the first month that begins more than 180 days after the date of the enactment of this Act and no application for provisional asylum under section 208 of the Immigration and Nationality Act (as amended by section 201 of this Act) shall be considered before such first day.

(2) In applying section 208(b)(1)(A) of the Immigration and Nationality Act (as amended by this title) in the case of an alien who has entered or came to the United States before the first day described in paragraph (1), notwithstanding the deadlines specified in such section—

(A) the deadline for the filing of a notice of intention to file an application for provisional asylum is 30 days after such first day, and

(B) the deadline for the filing of the application for provisional asylum is 30 days after the date of filing such notice.

(3) The amendments made by section 203(b) (relating to adjustment of status) shall not apply to aliens granted asylum under section 208 of the Immigration and Nationality Act, as in effect before the date of the enactment of this Act.

TITLE III—INSPECTIONS

SEC. 301. PREINSPECTION AT FOREIGN AIRPORTS.

(a) IN GENERAL.—The Immigration and Nationality Act is amended by inserting after section 235 the following new section:

"PREINSPECTION AT FOREIGN AIRPORTS

"SEC. 235A. (a) ESTABLISHMENT OF ADDITIONAL PREINSPECTION STATIONS AT HIGH VOLUME AIRPORTS.—Subject to subsection (c), not later than 2 years after the date of the enactment of this section, the Attorney General, in consultation with the Secretary of State, shall establish and maintain preinspection stations in at least 3 of the foreign airports that are among the 10 foreign airports which the Attorney General identifies as serving as last points of departure for the greatest numbers of passengers who arrive from abroad by air at ports of entry within the United States. Such preinspection stations shall be in addition to any preinspection stations established or authorized to be established prior to the date of the enactment of this section.

"(b) ESTABLISHMENT OF ADDITIONAL PREINSPECTION STATIONS AT CERTAIN FOREIGN AIRPORTS FROM WHICH UNDOCUMENTED ALIENS DEPART FOR THE UNITED STATES.—

"(1) REPORTS TO CONGRESS.—Not later than November 1, 1993, and each subsequent November 1, the Attorney General shall compile and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report identifying the foreign airports which served as last points of departure for aliens who arrived by air at United States ports of entry without valid documentation during the preceding fiscal year. Such report shall indicate the number and nationality of such aliens arriving from each such foreign airport.

"(2) ESTABLISHMENT OF ADDITIONAL PREINSPECTION STATIONS.—Subject to subsection (c), not later than November 1, 1995, the Attorney General, in consultation with the Secretary of State, shall establish preinspection stations in at least 3 of the foreign airports that are among the 10 foreign airports identified in the first report submitted under paragraph (1) as serving as the last points of departure for the greatest number of aliens who arrive from abroad by air at points of entry within the United States without valid documentation. Such preinspection stations shall be in addition to any preinspection stations established or authorized to be established either under subsection (a) or prior to the date of the enactment of this section.

"(3) ESTABLISHMENT OF CARRIER CONSULTANT PROGRAM.—The Attorney General shall assign additional immigration officers to any foreign airport identified in the first report submitted under paragraph (1) which served as a point of departure for a significant number of arrivals at United States ports of entry without valid documentation, but where no preinspection station is established.

"(c) CONDITIONS FOR ESTABLISHMENT OF PREINSPECTION.—Prior to the establishment of a preinspection station the Attorney General, in consultation with the Secretary of State, shall ensure that—

"(1) employees of the United States stationed at the preinspection station and their accompanying family members will receive appropriate protection,

"(2) such employees and their families will not be subject to unreasonable risks to their welfare and safety, and

"(3) the country in which the preinspection station is to be established maintains practices and procedures with respect to asylum seekers and refugees in accordance with the Convention Relating to the Status of Refugees (done at Geneva, July 28, 1951) or the Protocol Relating to the Status of Refugees (done at New York, January 31, 1967).".

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 235 the following new item:

"Sec. 235A. Preinspection at foreign airports.".

SEC. 302. EXPEDITING AIRPORT IMMIGRATION PROCESSING.

(a) PASSENGER MANIFESTS.—

(1) ELECTRONIC PASSENGER MANIFESTS.—Section 231(a) (8 U.S.C. 1221(a)) is amended in the first sentence by striking "typewritten" and inserting "electronic, typewritten,".

(2) INFORMATION CONTAINED IN PASSENGER MANIFEST.—Section 231(a) (8 U.S.C. 1221(a)) is further amended by inserting immediately before the period at the end of the second sentence ", except that regulations concerning the information contained in such lists may not require information other than the full name, date of birth, passport number, and citizenship of the person transported, and information identifying the flight on which the person was transported".

(b) INSPECTION BY IMMIGRATION OFFICERS.—Section 235(a) (8 U.S.C. 1225(a)) is amended by adding after the second sentence the following: "Except as the Attorney General may provide, nothing in this section shall be construed as requiring a personal interview in the conduct of an examination or inspection.".

(c) EXPEDITED PROCESS FOR THE INSPECTION OF CITIZENS.—

(1) IN GENERAL.—Section 235A, as inserted by section 301(a) of this Act, is amended—

(A) in the heading, by adding at the end the following: "; EXPEDITED PROCESS FOR THE INSPECTION OF CITIZENS", and

(B) by adding at the end the following new subsection:

"(d) EXPEDITED PROCESS FOR THE INSPECTION OF CITIZENS.—Not later than 90 days after the date of the enactment of this section, the Attorney General shall implement an expedited process for the inspection of United States citizens upon arrival from abroad by air at ports of entry within the United States. An expedited process shall be maintained except during a national or airport specific security emergency as determined by the Attorney General.".

(2) CLERICAL AMENDMENT.—The item in the table of contents relating to section 235A, as inserted by section 301(b) of this Act, is amended to read as follows:

"Sec. 235A. Preinspection at foreign airports; expedited process for the inspection of citizens.".

SEC. 303. VISA WAIVER PROGRAM.

(a) PERMANENCY OF PROGRAM.—Section 217 (8 U.S.C. 1187) is amended—

(1) by amending the section heading to read as follows:

"VISA WAIVER PROGRAM FOR CERTAIN VISITORS";

(2) in the heading of subsection (a), (a)(2), and (c) by striking "PILOT" and "PILOT" each place either appears and inserting "VISA WAIVER" and "VISA WAIVER", respectively;

(3) by striking "pilot" each place it appears and inserting "visa waiver";

(4) in subsection (a)(1) by striking "during the pilot program period (as defined in subsection (e)),";

(5) in subsection (c)(3) by striking "(within the pilot program period) after the initial period";

(6) in subsection (c) by striking paragraph (4);

(7) in subsection (e)(1)(A) by striking "(a)(1)(A)" and inserting "(a)(1)"; and

(8) by striking subsection (f).

(b) ELIMINATION OF REQUIREMENT FOR EXECUTION OF IMMIGRATION FORMS.—Section 217 is further amended—

(1) in subsection (a) by striking paragraph (3);

(2) in subsection (a) by redesignating paragraphs (4) through (7) as paragraphs (3) through (6); and

(3) in subsection (e)(1) by striking "subsection (a)(4)" and inserting "subsection (a)(3)".

(c) EXCLUSION AND DEPORTATION OF APPLICANTS FOR ADMISSION UNDER VISA WAIVER PROGRAM.—Section 217(b) (8 U.S.C. 1187(b)) is amended to read as follows:

"(b) EXCLUSION AND DEPORTATION OF APPLICANTS FOR ADMISSION UNDER VISA WAIVER PROGRAM.—

"(1) EXCLUSION.—

"(A) An immigration officer's determination that an applicant for admission under this section is not clearly and beyond a doubt entitled to land shall constitute a final order of exclusion and deportation, enforceable pursuant to section 237. Pending such a determination, the Attorney General may maintain such applicant in custody.

"(B) The procedure described in section 236 shall not apply to an order issued under this paragraph.

"(2) DEPORTATION.—

"(A) Notwithstanding any other provision of law, an alien admitted to the United States under this section who is determined, pursuant to such regulations as the Attorney General shall prescribe, to be subject to deportation shall be deported pursuant to section 243. An immigration officer's determination under this subsection shall constitute a final order of deportation. Pending such determination, the Attorney General may maintain such alien in custody.

"(B) The procedure described in section 242 shall not apply to an order issued under this paragraph.

"(3) REVIEW.—Notwithstanding any other provision of law or the failure of a carrier to provide the notice described in subsection (e)(1)(D), an alien who applies for admission to the United States under this section shall not be entitled—

"(A) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

"(B) subject to paragraph (4), to contest an immigration officer's determination under paragraph (2).

"(4) ASYLUM.—The Attorney General shall establish a procedure for an alien who is applying for admission under this section or who has been admitted under this section to apply for provisional asylum under section 208.

"(5) TREATMENT OF NATIONALS OF VISA WAIVER COUNTRIES.—An alien who—

"(A) is a national of a visa waiver program country or claims to be a national of a visa waiver country, and

"(B) is not in possession of a valid visa,

shall be considered to be an applicant for admission under this section.".

(d) CARRIER AGREEMENTS.—Section 217(e)(1) (8 U.S.C. 1187(e)(1)) is amended—

(1) in subparagraph (B) by striking "and";

(2) in subparagraph (C) by striking the period at the end and inserting "; and"; and

(3) by inserting after subparagraph (C) the following new subparagraph:

"(D) to provide passengers applying for admission to the United States under this section with written notification that they are not entitled (i) to any appeal or review of an immigration officer's determination of admissibility, or (ii) to contest any action for deportation.".

(e) CLERICAL AMENDMENT.—The item in the table of contents relating to section 217 is amended to read as follows:

"Sec. 217. Visa waiver program for certain visitors.".

SEC. 304. TRAINING OF AIRLINE PERSONNEL IN DETECTION OF FRAUDULENT DOCUMENTS.

(a) USE OF FUNDS.—Section 286(h)(2)(A) (8 U.S.C. 1356(h)(2)(A)) is amended—

(1) in clause (iv), by inserting ", including training of, and technical assistance to, commercial airline personnel on such detection" after "United States", and

(2) by adding at the end the following:

"The Attorney General shall provide for expenditures for training and assistance described in clause (iv) in an amount, for any fiscal year, not less than 5 percent of the total of the expenses incurred that are described in the previous sentence.".

(b) COMPLIANCE WITH DETECTION REGULATIONS.—Section 212(f) (8 U.S.C. 1182(f)) is amended by adding at the end the following: "Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.".

(c) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall apply to expenses incurred during or after fiscal year 1994.

(2) The Attorney General shall first issue, in proposed form, regulations referred to in the second sentence of section 212(f) of the Immigration and Nationality Act, as added by the amendment made by subsection (b), by not later than 90 days after the date of the enactment of this Act.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS FOR THE IMMIGRATION AND NATURALIZATION SERVICE

SEC. 401. AUTHORIZATION OF APPROPRIATIONS FOR I.N.S. FOR FISCAL YEARS 1994 AND 1995.

(a) IN GENERAL.—There are authorized to be appropriated for the Immigration and Naturalization Service—

(1) for fiscal year 1994, $1,082,038,100, of which $413,224,900 are authorized to be appropriated for the operation of the Border Patrol and $27,434,000 are authorized to be appropriated for anti-smuggling activities; and

(2) for fiscal year 1995, $1,154,885,900, of which $454,547,000 are authorized to be appropriated for the operation of the Border Patrol and $31,277,400 are authorized to be appropriated for anti-smuggling activities.

Of the amounts authorized to be appropriated under this subsection, such sums as may be necessary are authorized to be available to provide by October 1, 1996, for not less than a 100 percent increase in the average number of asylum officers from the period for fiscal year 1993.

(b) ACTIVITIES INCLUDED.—The amounts provided pursuant to subsection (a) for a fiscal year include—

(1) funds for the purchase for police-type use of passenger motor vehicles, without regard to the general purchase price limit for the fiscal year involved, and for the hire of passenger motor vehicles;

(2) funds for the acquisition, lease, maintenance, and operation of aircraft;

(3) funds for the purchase of uniforms without regard to the general purchase price limitation for the fiscal year involved;

(4) not to exceed $50,000 to meet unforeseen emergencies of a confidential character to be expended under the direction of the Attorney General and to be accounted for solely on the certificate of the Attorney General; and

(5) not to exceed $500,000 of those sums appropriated for research and $17,188,000 of those funds appropriated for construction, which amounts shall remain available until expended.

(c) LIMITATION ON OVERTIME.—None of the funds available to the Immigration and Naturalization Service under this section shall be available for administrative expenses to pay any employee overtime pay in an amount in excess of $25,000 for a fiscal year involved.●

By Mr. LEAHY (for himself, Mr. HARKIN, Mr. SIMON, Ms. MOSELEY-BRAUN, Mr. WOFFORD, Mr. PRYOR, Mr. KERREY, Mr. BAUCUS, and Mr. JOHNSTON):

S. 1359. A bill to amend the Food Stamp Act of 1977 to require the domestic production of food stamp coupons; to the Committee on Agriculture, Nutrition, and Forestry.

NATIONAL FOOD STAMP ANTI-COUNTERFEITING ACT OF 1993

Mr. LEAHY. Mr. President, 2 weeks ago, I sent a letter to the U.S. Department of Agriculture objecting to the Department's proposal to allow foreign production of food stamps. Despite my objection, on July 30 the Department issued its request for proposals [RFP], which I believe will effectively allow for the first time the printing of food stamps in foreign countries.

USDA is making a big mistake. With over $20 billion of food stamps printed annually, I believe it essential to ensure the highest degree of accountability and integrity possible in the manufacture of food stamps.

Therefore, I feel I have no choice but to introduce legislation to prohibit the foreign printing and production of food stamps. We do not allow U.S. currency to be printed overseas, and I will not tolerate food stamps being printed overseas.

Two main concerns have driven me to introduce this bill: increased counterfeiting risk and other security problems which would arise with foreign production of food stamps, and the several thousand domestic jobs that will be lost.

Today, the domestic production of food stamps costs more than $50 million annually and employs thousands of Americans. The production, distribution, and use of food stamps is carefully monitored by the Secret Service, FBI, and police to combat counterfeiting or other illegal activities.

In allowing the foreign production of food stamps, we will force U.S. law enforcement to rely on foreign countries to ensure the security of printing, storage, and shipment of a form of U.S. legal tender. That is a big mistake. While we are trying to combat all forms of food stamp fraud—it makes no sense to open ourselves to unnecessary risks and costs of counterfeiting.

Foreign countries cannot be expected to implement the strict security requirements we have in the United States, nor is it realistic to expect foreign countries to be able to match the considerable resources and expertise of the Secret Service and the Department of Justice.

The United States must keep control over the printing, distribution, and production of food stamps—just as we do for all U.S. currency and other U.S. security documents.

The millions of Americans who participate in the Food Stamp Program receive food coupon books in various denominations. These coupons are accepted by food stores as a substitute for cash for the purchase of food. Food stamps are considered an official obligation of the United States and as such, are backed by the Federal Government just like a currency.

If the distinctive paper and the plates are moved abroad, the enforcement tasks of the Secret Service, FBI, and police become much more difficult, if not impossible. And the risks of counterfeiting and coupon security are very real.

The Department should reconsider its decision. I want to work with the Department of Agriculture on this issue. It is a matter of great importance and we cannot afford unnecessary risks to the integrity of this vital program. Mr. President, I hope USDA changes its mind on this issue. In case they do not, I am introducing this bill and I urge my colleagues to join with me to work this legislation through Congress.

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

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

S. 1359

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 "National Food Stamp Anti-Counterfeiting Act of 1993".

SEC. 2. FINDINGS.

Congress finds that—

(1) the face value of food stamp coupons printed each year exceeds $20,000,000,000, and more than 27,000,000 residents of the United States participate in the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(2) food stamps are a legal obligation of the United States;

(3) throughout the history of the food stamp program, the policy of the United States Department of Agriculture for the production of food stamp coupons has been to produce the coupons within the United States;

(4) in 1991, the Committee on Appropriations of the Senate reiterated the expectation of the Committee that the policy would continue;

(5) the United States Department of Agriculture recently indicated that the Department intends to change the policy of the Department so as to permit foreign production of food stamps;

(6) removing the production of these legal obligations of the United States from the United States could limit the reach of enforcement authorities of the Federal Government and undermine enforcement of criminal laws on counterfeiting and misappropriaton of food stamps, thus threatening the integrity of the food stamp program;

(7) for security reasons, Federal laws in effect on the date of enactment of this Act already require the domestic production of the distinctive paper used in the manufacturing of other forms of currency and secure paper, such as food stamps; and

(8) it is in the public interest for food stamps to be produced domestically to enable law enforcement agencies to prevent counterfeiting and theft.

SEC. 3. DOMESTIC PRINTING REQUIREMENT FOR FOOD STAMP COUPONS.

Section 7(a) of the Food Stamp Act of 1977 (7 U.S.C. 2016(a)) is amended by inserting after "shall be printed" the following: "within the United States and".

By Mrs. MURRAY:

S. 1360. A bill to amend title I of the Employee Retirement Income Security Act of 1974 to exempt from preemption under such title certain provisions of the law of the State of Washington relating to health plans; to the Committee on Labor and Human Resources.

WASHINGTON STATE HEALTH SERVICES REFORM ENABLING ACT OF 1993

Mrs. MURRAY. Mr. President, I am introducing today legislation relating to one of the toughest issues we face—health care reform. It is unlike most others facing our Nation because it has touched all of our lives in some way, all of us have a stake in its outcome. In the State of Washington, we have already taken the first major step toward reform of our health care system and my legislation will keep us moving forward.

Although the people of Washington State spend upward of $17 billion annually on health care, more than one million of our citizens will have no health insurance at some point during the year. Tragically, one of the largest groups of uninsured are children. For a typical Washington family, the cost of health care has increased over 462 percent since 1980. This means that, for many people, the cost of acquiring necessary and even basic health insurance is completely out of reach. For someone with a preexisting condition who loses his or her job, getting insurance is often impossible.

Fortunately, people in my State recognized the magnitude of the health care crisis years ago, and began to discuss how the system could be made to work again for individuals and families. After years of hard work, a consensus was finally reached, and the Washington State Legislature passed the Washington Health Services Act of 1993.

This far-reaching health care reform bill addresses many of the problems worrying a growing number of people throughout the Nation. It ensures all Washington State residents, even those with preexisting conditions, access to affordable health care by 1999. It controls costs through a blending of market and regulatory forces. A five-member Health Services Commission, just appointed by Governor Lowry, will work closely with citizen, business, and labor advisory committees to develop a uniform benefits package with a premium cap. In this managed care system all individuals will enroll in certified health plans which emphasize primary and preventive care.

Gov. Mike Lowry has asked for help of our congressional delegation to obtain Federal approval of the various waivers necessary to implement crucial elements of Washington State's plan. Some of these require legislative action; others require administrative action. The bill I am introducing, the Washington State Health Services Reform Enabling Act of 1993, deals with the most important—and most controversial—waiver: the one relating to ERISA, the Employee Retirement Income Security Act of 1974.

Since its enactment in 1974 to correct widespread pension problems, ERISA has prohibited States from enacting any law that related to health benefits for private sector workers and retirees. States have continued to pass laws regulating private insurance companies, but ERISA has precluded them from ordering employers to provide any minimum level of benefits to workers or retirees. Self-insured companies have been able to offer lesser coverage than traditional insurers must provide. Moreover, the already high cost of health insurance for small businesses has been driven even higher because big companies pull large numbers of employees outside the risk pools. With the foundation of the new Washington health care package being a mandate to employers to pay part of the cost of health care, the plan simply will not come into effect until an ERISA waiver is obtained.

The new Washington State health care reform bill requires all nonfarm

employers to pay at least 50 percent of the premium on a uniform benefits package for their employees. My bill will give Washington State a waiver from the ERISA provisions so that the employer mandate can be implemented.

Passage of the Washington State Health Services Reform Enabling Act permits the following specific provisions of the State's reform bill to be put into effect:

Enrollment of certain employees in the basic health plan;

Taxation of premiums and hospitals;

Medical risk adjustment mechanisms;

Benefits required to be offered to registered employer health plans;

Requirements applicable to registered employer health plans; and

The requirement that employers offer and pay a portion of the costs of employee health care coverage.

I am proud of my State for its leadership in health care reform. While the Washington State plan may not be perfect, it gives us a good model as we begin reforming the health care system at the national level.

The Federal Government must recognize the pioneering work of States like Washington in health care reform. Unless we protect States' flexibility to address their unique health care needs, health care reform at the national level will be unworkable.

I hope my colleagues in the U.S. Senate will support the efforts of the Washington State delegation to see the Washington State Health Act implemented. Compromise and flexibility are the keys to successful reform of our Nation's health care system. Passage of this bill will demonstrate that, by working together, States and the Federal Government can move the country forward on this critical issue.

By Mr. COVERDELL (for himself, Mrs. HUTCHISON, Mr. BENNETT, Mr. FAIRCLOTH, Mr. GREGG, Mr. KEMPTHORNE, Mr. CRAIG, Mr. WALLOP, Mr. THURMOND, Mr. HELMS, Mr. LOTT, Mr. MCCAIN, and Mr. SMITH):

S.J. Res. 120. A joint resolution proposing an amendment to the Constitution prohibiting the imposition of retroactive taxes on the American people; to the Committee on the Judiciary.

RETROACTIVE TAXATION CONSTITUTIONAL AMENDMENT

• Mr. COVERDELL. Mr. President, today I introduce a constitutional amendment banning the U.S. Government from imposing any tax increase retroactively. The amendment states, "No Federal tax shall be imposed for the period before the date of enactment of the tax."

On Friday, we will vote on a tax increase that will actually rewrite tax rates for the past 8 months. We have changed the rules of the road for Americans, and this is wrong.

I am grateful to be joined by Senators BENNETT, FAIRCLOTH, GREGG, HUTCHISON, and KEMPTHORNE in introducing this amendment. It is a telling sign that all Republican freshmen have signed on to this amendment.

We have come fresh from the campaign trail and have heard directly from the voters. Looking backward for extra taxes is unacceptable, and it is not a fair deal to the taxpayers.

Americans have been working under one set of rules regarding taxes. Now we are saying to them, more than two-thirds through this year, that the Government is changing the rules to exact a higher amount of taxes for months you have already worked.

Is it any wonder Americans feel so disillusioned with this Government? If a Government can reach back several months and squeeze more taxes out of our families, what's to stop them from reaching back years to change the rules of the road? It is a reprehensible action on the part of the Government, and it should be stopped.

As Senator DOLE has pointed out, even the draft Constitution of the Russian Federation states that laws introducing new taxes cannot be imposed retroactively.•

ADDITIONAL COSPONSORS

S. 235

At the request of Mr. REID, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 235, a bill to limit State taxation of certain pension income, and for other purposes.

S. 411

At the request of Mr. D'AMATO, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 411, a bill to freeze domestic discretionary spending for fiscal years 1994 and 1995 at fiscal year 1993 levels.

S. 491

At the request of Mr. WELLSTONE, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 491, a bill to provide health care for every American and to control the cost of the health care system.

S. 560

At the request of Mr. NUNN, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 560, a bill to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

S. 570

At the request of Mr. GRASSLEY, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 570, 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. 575

At the request of Mr. KENNEDY, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 575, a bill to amend the Occupational Safety and Health Act of 1970 to improve the provisions of such Act with respect to the health and safety of employees, and for other purposes.

S. 802

At the request of Mr. LAUTENBERG, the names of the Senator from Colorado [Mr. CAMPBELL] and the Senator from California [Mrs. BOXER] were added as cosponsors of S. 802, a bill to require the President to seek to obtain host nation payment of most or all of the overseas basing costs for forces of the Armed Forces of the United States in such nation, to limit the use of funds for paying overseas basing costs for U.S. forces, and for other purposes.

S. 922

At the request of Ms. MOSELEY-BRAUN, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 922, a bill to provide that a State court may not modify an order of another State court requiring the payment of child support unless the recipient of child support payments resides in the State in which the modification is sought or consents to the seeking of the modification in that court.

S. 968

At the request of Mr. BRADLEY, the names of the Senator from New Mexico [Mr. BINGAMAN] and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of S. 968, a bill to establish additional exchange and training programs with the independent states of the former Soviet Union and the Baltic states.

S. 1029

At the request of Mr. GORTON, the names of the Senator from Nevada [Mr. REID] and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of S. 1029, a bill to amend the Job Training Partnership Act to encourage the placement of youths in private sector jobs under the Summer Youth Employment and Training Program, and for other purposes.

S. 1125

At the request of Mr. DODD, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 1125, a bill to help local school systems achieve Goal Six of the National Education Goals, which provides that by the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning, by ensuring that all schools are safe and free of violence.

S. 1209

At the request of Mr. KEMPTHORNE, the name of the Senator from Alabama

[Mr. HEFLIN] was added as a cosponsor of S. 1209, a bill to provide for a delay in the applicability of certain regulations to certain municipal solid waste landfills under the Solid Waste Disposal Act, and for other purposes.

S. 1226

At the request of Mr. AKAKA, the names of the Senator from Hawaii [Mr. INOUYE] and the Senator from South Dakota [Mr. DASCHLE] were added as cosponsors of S. 1226, a bill to amend title 38, United States Code, to provide for the organization and administration of the Readjustment Counseling Service, to improve eligibility for readjustment counseling and related counseling, and for other purposes.

S. 1276

At the request of Mr. LEAHY, the names of the Senator from Arkansas [Mr. PRYOR], the Senator from Tennessee [Mr. SASSER], the Senator from Virginia [Mr. ROBB], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Colorado [Mr. CAMPBELL], the Senator from Ohio [Mr. GLENN], and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of S. 1276, a bill to extend for three years the moratorium on the sale, transfer or export of anti-personnel landmines abroad, and for other purposes.

S. 1310

At the request of Ms. MIKULSKI, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a cosponsor of S. 1310, a bill to amend the Public Health Service Act to revise and extend the program of grants relating to preventive health measures with respect to breast and cervical cancer, and for other purposes.

S. 1329

At the request of Mr. D'AMATO, the name of the Senator from Pennsylvania [Mr. WOFFORD] was added as a cosponsor of S. 1329, a bill to provide for an investigation of the whereabouts of the United States citizens and others who have been missing from Cyprus since 1974.

SENATE JOINT RESOLUTION 58

At the request of Mr. RIEGLE, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of Senate Joint Resolution 58, a joint resolution to designate the weeks of May 2, 1993, through May 8, 1993, and May 1, 1994, through May 7, 1994, as "National Correctional Officers Week."

SENATE JOINT RESOLUTION 90

At the request of Mr. ROBB, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of Senate Joint Resolution 90, a joint resolution to recognize the achievements of radio amateurs, and to establish support for such amateurs as national policy.

SENATE JOINT RESOLUTION 92

At the request of Mr. D'AMATO, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of Senate Joint Resolution 92, a joint resolution to designate both the month of October 1993 and the month of October 1994 as "National Down Syndrome Awareness Month."

SENATE JOINT RESOLUTION 94

At the request of Mr. DOLE, the names of the Senator from Nevada [Mr. REID], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of Senate Joint Resolution 94, a joint resolution to designate the week of October 3, 1993, through October 9, 1993, as "National Customer Service Week."

SENATE JOINT RESOLUTION 113

At the request of Mr. DECONCINI, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of Senate Joint Resolution 113, a joint resolution designating October 1993 as "Italian-American Heritage and Culture Month."

At the request of Mr. D'AMATO, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of Senate Joint Resolution 113, supra.

SENATE JOINT RESOLUTION 115

At the request of Mr. COCHRAN, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of Senate Joint Resolution 115, a joint resolution designating November 22, 1993, as "National Military Families Recognition Day."

SENATE CONCURRENT RESOLUTION 26

At the request of Mr. SIMON, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of Senate Concurrent Resolution 26, a concurrent resolution urging the President to redirect U.S. foreign assistance policies and spending priorities toward promoting sustainable development, which reduces global hunger and poverty, protects the environment, and promotes democracy.

SENATE RESOLUTION 70

At the request of Mr. BRADLEY, the names of the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Michigan [Mr. LEVIN], the Senator from Tennessee [Mr. MATHEWS], the Senator from Nevada [Mr. REID], the Senator from Alaska [Mr. MURKOWSKI], the Senator from New York [Mr. D'AMATO], the Senator from Vermont [Mr. JEFFORDS], the Senator from Colorado [Mr. CAMPBELL], and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of Senate Resolution 70, a resolution expressing the sense of the Senate regarding the need for the President to seek the advice and consent of the Senate to the ratification of the United Nations Convention on the Rights of the Child.

AMENDMENT NO. 756

At the request of Mr. HARKIN the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of Amendment No. 756 proposed to H.R. 2667, a bill making emergency supplemental appropriations for relief from the major, widespread flooding in the Midwest for the fiscal year ending September 30, 1993, and for other purposes.

SENATE RESOLUTION 138—RELATIVE TO THE PRINTING OF A PUBLICATION WITH RESPECT TO BOSNIA

Mr. KENNEDY (for Mr. PELL for himself and Mr. BIDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 138

Resolved, That an additional 250 copies of the publication entitled, "To Stand Against Aggression; Milosevic, the Bosnian Republic, and the Conscience of the West," be printed for the use of the Committee on Foreign Relations.

SENATE RESOLUTION 139—RELATIVE TO OFFICE OF SENATE FAIR EMPLOYMENT PRACTICES

Mr. KENNEDY (for Mr. MITCHELL for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 139

Resolved, (a)(1) If, at any time after a Senate employee (as defined in section 301(c)(1) of the Government Employee Rights Act of 1991 (Public Law 102-166) (hereinafter referred to as the "Act")) files a formal complaint under section 307(a) of the Act with the Office of Senate Fair Employment Practices (hereinafter referred to as the "Office")—

(A) such employee and the head of an employing office (as defined in section 301(c)(2) of the Act) resolve the issues involved and enter into a written settlement agreement requiring the payment of money as provided in subsection (c), and

(B) the agreement is approved by the Director of the Office (hereinafter referred to as the "Director"),

the Director shall submit the agreement, together with a letter of advice by the Director that the agreement is reasonable and appropriate, to the Chairman and Ranking Minority Member of the Committee on Rules and Administration (hereinafter referred to as the "Chairman and Ranking Member") for approval.

(2) Any such settlement agreement that includes any provision regarding Senate payment of a Senate employee's attorney's fees shall be forwarded by the Director to the Senate Legal Counsel who shall also review that provision and advise the Chairman and Ranking Member whether that provision is reasonable and appropriate.

(3) If the Chairman and Ranking Member disapprove the agreement, the agreement shall be returned to the Director with a written explanation for the disapproval. Following such disapproval, a new or revised agreement that is approved by the Director may be submitted by the Director to the Chairman and Ranking Member, and, if appropriate, forwarded to the Senate Legal Counsel, in the same manner as the original. If the Chairman and Ranking Member disapprove such a new or revised agreement, such agreement shall be returned to the Director with a written explanation and such

instructions as the Chairman and Ranking Member may deem appropriate.

(4) If the Chairman and Ranking Member approve the agreement, the payment of money under the terms of such agreement may be authorized as provided in subsection (c).

(5) The time necessary to complete the procedures under paragraphs (1)(B), (2), and (3) shall be excluded in calculating the period within which a hearing shall be conducted under section 307(d) of the Act.

(b) Notwithstanding the third sentence of section 307(h) of the Act, if, upon the conclusion of all proceedings conducted pursuant to sections 307, 308, and 309 of the Act, there is a final order requiring the payment of money, the Chairman and Ranking Member may approve and authorize the payment of money as provided in subsection (c). The Senate Legal Counsel shall provide such advice and assistance as the Chairman and Ranking Member may request for the purposes of this subsection.

(c) The payment of any monetary amount approved as part of a settlement agreement approved under subsection (a) and any payment pursuant to an order under subsection (b) shall be paid from the Contingent Fund of the Senate from the appropriations account "Settlements and Awards Reserve", established by section 1205 of Public Law 103-50, upon vouchers approved by the Chairman and Ranking Member.

(d) The Chairman and Ranking Member, the Senate Legal Counsel, and the Director may review information necessary to carry out the provisions of this resolution notwithstanding the provisions of section 313 of the Act.

(e) The provisions of this resolution shall apply to—

(1) an allegation of a violation as defined in section 301(c)(3) of the Act,

(2) an allegation of an unlawful employment practice under section 312 of the Act, and

(3) an allegation of a violation of a provision of sections 101 through 105 of the Family and Medical Leave Act of 1993.

(f) The first sentence of section 303(e) of the Act is deemed to have inserted the words ", upon the approval of the Committee on Rules and Administration," after "The Director".

AMENDMENTS SUBMITTED

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

SPECTER (AND DODD) AMENDMENT NO. 757

Mr. SPECTER (for himself and Mr. DODD) proposed an amendment to the bill (H.R. 2667) making emergency supplemental appropriations for relief from the major, widespread flooding in the Midwest for the fiscal year ending September 30, 1993, and for other purposes; as follows:

The Senate finds:

Numerous atrocities have been reported on the conflict in the former Yugoslavia;

Such atrocities against innocent civilians and prisoners would violate universally accepted law as embodied in the Geneva Conventions of August 12, 1949 for the Protection of War Victims; the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of October 18, 1907; the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948; and the Charter of the International Military Tribunal of August 8, 1945;

In October 1992 the United Nations Security Council adopted Resolution 780 establishing a Commission of Experts to gather and evaluate evidence of such war crimes;

The Commission of Experts submitted an interim report dated January 26, 1993 which concluded that grave breaches and other violations of international humanitarian law had been committed in the territory of the former Yugoslavia, including willful killing, "ethnic cleansing," mass killings, torture, rape, pillage, and destruction of civilian property, destruction of cultural and religious property and arbitrary arrests;

The Commission of Experts has been hindered in carrying out fully its legal charge because of insufficient resources;

On February 22, 1993, the United Nations Security Council adopted Resolution 808 establishing an international tribunal to try individuals accused of the commission of war crimes in the former Yugoslavia;

On May 3, 1993, the Secretary General of the United Nations issued his report which established the procedures for an international war crimes tribunal;

The United Nations is presently in the process of selecting judges and prosecutors for the international war crimes tribunal;

According to reports, the atrocities in the former Yugoslavia continue unabated; and

There is a dire need to establish promptly the tribunal and commence prosecution of alleged war criminals: Now, therefore,

(a) the Senate hereby commends the United Nations for its recognition of the importance and necessity of the rule of law as evidenced by its establishment of an international tribunal for the prosecution of war crimes in the former Yugoslavia.

(b) It is the sense of the Senate that the United Nations should

(1) expedite the selection of judges and prosecutors for the tribunal in order to begin prosecutions of alleged war criminals; and

(2) provide all assistance necessary to continue gathering evidence for such prosecutions.

HARKIN (AND OTHERS) AMENDMENT NO. 758

Mr. HARKIN (for himself, Mr. BOND, Mr. WELLSTONE, Mr. DASCHLE, and Mr. CONRAD) proposed an amendment to the bill (H.R. 2667), supra, as follows:

On page 2 line 13 at the end of the sentence insert the following: "notwithstanding any other provision of this Act, the following shall be the law with respect to the Commodity Credit Corporation.".

COMMODITY CREDIT CORPORATION

COMMODITY CREDIT CORPORATION FUND

For an additional amount for the "Commodity Credit Corporation Fund" to cover 1993 crop losses resulting from damaging weather or related floods associated with the conditions as defined in section 2251 of Public Law 101-624, in 1993, $1,050,000,000, and in addition $300,000,000, which shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress, the total to remain available until June 30, 1994: *Provided*, That from funds previously made available in Public Law 102-368 by Presidential declaration, $100,000,000 to remain available until June 30, 1994, shall be for 1993 crop losses only: *Provided further*, That if prior to April 1, 1994, the President determines that extraordinary circumstances exist that warrant further assistance, the Secretary of Agriculture shall use such funds of the Commodity Credit Corporation as are necessary to make payments in an amount equal to 100 percent of each eligible claim as determined under title XXII of Public Law 101-624: *Provided further*, That all additional amounts made available herein are subject to the terms and conditions in Public Law 101-624: *Provided further*, That Congress hereby designates the entire amount provided herein as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: *Provided further*, That notwithstanding any provision of Public Law 103-50, funds provided by such Act shall not be expended for 1993 crop losses resulting from 1993 natural disasters, and claims for assistance from funds provided by that Act by producers with 1990, 1991, and 1992 crop losses shall be paid only to the extent such claims are filed by September 17, 1993.

BYRD (AND OTHERS) AMENDMENT NO. 759

Mr. BYRD (for himself, Mr. HATFIELD, Mr. HARKIN, and Mr. WELLSTONE) proposed an amendment to the bill (H.R. 2667), supra, as follows:

Before the period at the end of the first excepted Committee amendment, insert the following: ": *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for Economic Development Assistance programs under the heading "Economic Development Administration" shall be $200,000,000, of which $100,000,000 shall only be available to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for the Disaster Loan Program account under the heading "Small Business Administration" shall be $70,000,000, of which $10,000,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of law, the $500,000 limitation on the amounts outstanding and committed to a borrower provided in paragraph 7(c)(6) of the Small Business Act shall be increased to $750,000 for Presidentially-declared major disasters for recent Midwest flooding: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein under the heading "Employment and Training Administration" for part B of title III of the Job Training Partnership Act shall be $54,600,000 of

which $11,100,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for programs and activities of the Commission on National and Community Service shall be $4,000,000, of which $2,000,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That all of the above amounts are designated by Congress as emergency requirements pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended".

BOND (AND OTHERS) AMENDMENT NO. 760

Mr. HATFIELD (for Mr. BOND for himself, Mr. SIMON, Mr. DANFORTH, Mr. HARKIN, Mr. WELLSTONE, Mr. DURENBERGER, and Mr. PRESSLER) proposed an amendment to the bill (H.R. 2667), supra, as follows:

On page 18, line 10 through line 14, restore the matter stricken.

On line 14, strike the numeral.

On line 25, strike "$6,000,000 of".

DURENBERGER AMENDMENT NO. 761

Mr. DURENBERGER proposed an amendment to the bill (H.R. 2667), supra, as follows:

At the appropriate place, add the following:

FUNDING SPENDING THROUGH SEQUESTERS

SEC. . (a) REMOVAL OF EMERGENCY DESIGNATION.—Not withstanding any other provision of this Act to the contrary, all the amounts designated in this Act as emergency requirements for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be treated as not being emergency spending under the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) It is the sense of the Congress that spending reductions required by this section should be achieved through reductions in administrative expenses rather than in the expenses of underlying programs or assistance.

BROWN AMENDMENT NO. 762

Mr. BROWN proposed an amendment to the bill (H.R. 2667), supra, as follows:

At the end of chapter VIII add the following new section:

SEC. . PROHIBITED FLOOD DISASTER ASSISTANCE.

(a) GENERAL PROHIBITION.—Notwithstanding any other provision of law, no Federal funds made available for assistance under this Act in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property.

(b) AMENDMENT TO THE FLOOD DISASTER PROTECTION ACT OF 1973.—Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a)) is amended—

(1) By striking ", during the anticipated economic or useful life of the project,"; and

(2) By adding at the end of the following: "The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.".

(c) DEFINITION.—For purposes of this section, the term "flood disaster area" means an area with respect to which—

(1) the Secretary of Agriculture finds, or has found, to have been substantially affected by a natural disaster in the United States pursuant to section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. Section 1961(a)); or

(2) the President declares, or has declared, the existence of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.), as a result of flood conditions existing in or affecting that area.

DURENBERGER (AND OTHERS) AMENDMENT NO. 763

Mr. DURENBERGER (for himself, Mr. GRASSLEY, and Mr. PRESSLER) proposed an amendment to the bill (H.R. 2667), supra, as follows:

At the appropriate place, insert the following new section:

SEC. . FEDERAL CROP INSURANCE FAIRNESS.

(a) LEVELS OF COVERAGE IN EXCESS OF 75 PERCENT OF RECORDED OR APPRAISED AVERAGE YIELD.—Subsection (a) of section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508(a)) is amended to read as follows:

"(a) AUTHORITY TO OFFER INSURANCE.—

"(1) IN GENERAL.—If sufficient actuarial data are available, as determined by the Board, the Corporation may insure producers of agricultural commodities grown in the United States under any plan or plans of insurance determined by the Board to be adapted to the agricultural commodity involved.

"(2) CAUSES.—The insurance shall be against loss of the insured commodity due to unavoidable causes, including drought, flood, hail, wind, frost, winterkill, lighting, fire, excessive rain, snow, wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board.

"(3) PERIOD.—

"(A) IN GENERAL.—Except in the case of tobacco, insurance shall not extend beyond the period the insured commodity is in the field.

"(B) DEFINITION OF FIELD.—For purposes of subparagraph (A), in the case of aquacultural species, the term 'field' means the environment in which the commodity is produced.

"(4) STANDARD YIELD COVERAGE.—

"(A) IN GENERAL.—Subject to subparagraph (B), any insurance offered against loss in yield shall make available to producers protection against loss in yield that covers 75 percent of the recorded or appraised average yield of the commodity on the insured farm for a representative period.

"(B) ADJUSTMENTS.—Average yields established under subparagraph (A) shall be subject to such adjustments as the Board may prescribe to the end that the average yields fixed for farms in the same area, that are subject to the same conditions, may be fair and just.

"(5) LESSER YIELD COVERAGE.—In addition, the Corporation shall make available to producers lesser levels of yield coverage, including a level of coverage at 50 percent of the recorded or appraised average yield, as adjusted.

"(7) ADDITIONAL PREMIUMS.—Additional insurance under this subsection shall be provided for an additional premium (for which no premium subsidy or administrative subsidy may be provided) set at such rate as the Board determines—

"(A) appropriate to reflect accurately the increased risk involved; and

"(B) actuarially sufficient to—

"(i) cover claims for losses on the insurance; and

"(ii) establish a reasonable reserve against unforeseen losses.

"(8) LEVELS OF COVERAGE IN EXCESS OF 75 PERCENT OF RECORDED OR APPRAISED AVERAGE YIELD.—The Corporation may make available to producers on a farm located in a growing area a level of coverage in excess of 75 percent of the recorded or appraised average yield, as adjusted, if the Corporation determines that normal variations in yield in the growing area have not resulted in the payment of claims for losses while the level of coverage is limited to 75 percent.

"(9) MAXIMUM LEVEL OF COVERAGE.—Except as provided in paragraphs (6) through (8), the corporation may not make available to producers any level of coverage in excess of 75 percent of the recorded or appraised average yield, as adjusted.

"(10) PROJECTED MARKET PRICE OPTION.—One of the price elections offered shall approximate (but be not less than 90 percent of) the projected market price for the commodity involved, as determined by the Board.

"(11) UNINSURED LOSSES.—Insurance provided under this subsection shall not cover losses due to—

"(A) neglect or malfeasance of the producer;

"(B) the failure of the producer to reseed to the same crop in areas and under circumstances where it is customary to so reseed; or

"(C) the failure of the producer to follow established good farming practices.

"(12) INSURANCE RISKS.—The Board may limit or refuse insurance in any county or area, or on any farm, on the basis of the insurance risk involved.

"(13) AGRICULTURAL INCOME IN COUNTIES.—Insurance shall not be provided on any agricultural commodity in any county in which the Board determines that the income from the commodity constitutes an unimportant part of the total agricultural income of the county, except that insurance may be provided for producers on farms situated in a local producing area bordering on a county with a crop-insurance program.

"(14) ANNUAL REPORTS.—The Corporation shall report annually to Congress the results of the operations of the Corporation as to each commodity insured.

"(15) PROJECT MARKET PRICE LEVEL.—Beginning with the 1994 crop year, the Corporation shall establish a price level for each commodity on which insurance is offered that shall not be less than the projected market price for the commodity, as determined by the Board.

"(16) PRICE ELECTION.—Insurance coverage shall be made available to a producer on the

basis of any price election that equals or is less than that established by the Board. The coverage shall be quoted in terms of dollars per acre.".

(b) DISTRIBUTION OF COVERAGE INFORMATION.—Section 508(m) of such Act (7 U.S.C. 1508(m)) is amended by adding at the end the following new paragraph:

"(3) DISTRIBUTION OF COVERAGE INFORMATION.—The Corporation shall distribute information on Federal crop insurance coverage offered for a commodity to each producer participating in a price support or production adjustment program established for the commodity.".

(c) LATE PLANTING COVERAGE.—Section 508 of such Act (7 U.S.C. 1508) is amended by adding at the end the following new subsection:

"(n) LATE PLANTING COVERAGE.—

"(1) IN GENERAL.—Producers on a farm entering into a crop insurance contract under this Act shall be offered late planting coverage that would permit planting after the final planting date for a commodity by up to 25 days for coverage under the contract.

"(2) REDUCTION OF COVERAGE.—If the producers on a farm purchase late planting coverage under paragraph (1), the yield guarantee shall be reduced by—

"(A) 1 percent per day for each of the 1st through 10th days planting is delayed beyond the normal final planting date;

"(B) 2 percent per day for each of the 11th through 25th days planting is delayed beyond the normal final planting date; and

"(C) such other amounts as can be demonstrated to offset the additional insurer risk of providing the coverage.

"(3) PRESUMPTION OF COVERAGE.—The producers on a farm shall have late planting coverage as part of a basic policy of insurance under this Act unless the producers notify the Corporation that the producers waive late planting coverage.

"(4) RAISES IN PREMIUMS.—If the Corporation determines that late planting coverage would raise premiums to such an extent as to discourage participation in the program established by this Act, the Corporation shall offer late planting as a separate endorsement.".

(d) PREVENTED PLANTING COVERAGE.—Section 508 of such Act (7 U.S.C. 1508) (as amended by subsection (c)) is further amended by adding at the end the following new subsection:

"(o) PREVENTED PLANTING COVERAGE.—

"(1) IN GENERAL.—Producers on a farm entering into a crop insurance contract under this Act shall have prevented planting coverage as part of the basic policy of insurance under this Act.

"(2) COVERAGE.—

"(A) IN GENERAL.—Subject to subparagraph (B), if the producers on a farm are prevented from planting a crop of a covered commodity as the result of excess moisture, drought, or other natural disaster, the producers shall be eligible for coverage equal to 35 percent of the guaranteed level of coverage for the crop.

"(B) OPTIONAL COVERAGE.—The producers on a farm may purchase additional coverage described in subparagraph (A) such that the total coverage for the producers is not greater than 50 percent of the guaranteed level of coverage for the crop.

"(3) SUBSTITUTE CROP.—The producers on a farm shall have the option of planting a substitute crop, in lieu of an insured crop, as part of the basic policy under this Act. The value of the substitute crop shall offset the remaining guaranteed level of coverage of the insured crop.

"(4) PRESUMPTION OF COVERAGE.—The producers on a farm shall have prevented planting coverage as part of a basic policy of insurance made available under this Act unless the producers notify the Corporation that the producers waive prevented planting coverage.

"(5) RAISES IN PREMIUMS.—If the Corporation determines that prevented planting coverage would raise premiums to such an extent as to discourage participation in the program established by this Act, the Corporation shall offer prevented planting as a separate endorsement.".

(f) YIELD AVERAGES.—Section 508A(b) of such Act (7 U.S.C. 1508a(b)) is amended by adding at the end the following new paragraph:

"(4) YIELD AVERAGES.—

"(A) ESTABLISHING A MINIMUM LEVEL OF INSURANCE PROTECTION.—The Corporation shall establish a minimum level of insurance protection for those covered producers who have had reduced yields due to natural disasters.

"(B) NONSTANDARD CLASSIFICATION PROCEDURES.—The Corporation shall make adjustments in the Nonstandard Classification procedures established under subpart O of part 400 of chapter IV of subtitle B of title 7, Code of Federal Regulations, to account for producer yield declines due to recurrent natural disasters.".

(g) DATE OF IMPLEMENTATION.—

The provisions of this amendment will take effect on January 1, 1994.

DURENBERGER AMENDMENT NO. 764

Mr. DURENBERGER proposed an amendment to the bill (H.R. 2667), supra, as follows:

Amendment intended to be proposed by Mr. Durenberger.

At the end of the pending committee amendment, insert the following:

NATURAL DISASTER FUNDING PROCESS

SEC. ____. (a) PRESIDENTIAL DECLARATION.—

(1) IN GENERAL.—(A) Effective beginning with fiscal year 1994, the President may declare that a natural disaster has occurred in a State or States and submit a natural disaster emergency funding request (and a draft bill implementing the request) to Congress to be considered as provided in this section.

(B) The provisions of this section shall not apply to funding requested in a regular appropriations Act.

(C) For purposes of this section, the term "emergency funding" does not include appropriations for the purpose of construction, rehabilitation, removal, or alteration of any public facility, road, bridge, lock, levee, building, airport, or similar object.

(2) REQUIREMENTS FOR A NATURAL DISASTER EMERGENCY FUNDING REQUEST.—(A) A natural disaster emergency funding request shall contain the following provisions:

(i) An appropriation of budget authority available only for assistance needed as a result of the natural disaster.

(ii) A funding offset provision containing any of the following means of funding:

(I) Rescissions of budget authority.

(II) A sequester order that designates an amount to be offset by sequester. The sequester shall be achieved by sequestering some combination of (aa) amounts pursuant to the sequester provisions of section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 for fiscal years 1994 and 1995, and (bb) amounts through the mandatory sequester process established in subsection (c).

(III) If necessary and subject to the provisions of subparagraph (C), a tax.

The funding offset required by this paragraph shall be equal to or greater than the amount to be appropriated. The amount to be appropriated shall be offset by the end of the calendar year beginning after the date of enactment.

(B) The President shall consider rescinding unnecessary funding before requesting a sequester under subparagraph (A). A tax shall be considered only if necessary because of the extraordinary nature of the natural disaster. The Congress shall, similarly, give priority to rescissions in making offsets, then sequesters should be considered, and taxes imposed only in truly extraordinary situations. Priority is to be given, in making offsets, to achieving reductions in administrative expenses rather than in the expenses of the underlying programs or assistance.

(C) A tax may be imposed under this section only if the Director of the Office of Management and Budget certifies that the aggregate total of funds appropriated in a fiscal year (those previously appropriated pursuant to this section and those proposed to be appropriated in the bill in which the tax is contained) exceed 1 percent of all amounts subject to discretionary and mandatory sequester under this section. Any tax enacted pursuant to this section shall expire at the end of the calendar year beginning after the date of enactment.

(3) SOLE FUNDING MECHANISM.—(A) Notwithstanding any other provision of law, it shall not be in order in either the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that contains supplemental emergency funding for a United States natural disaster that is not being considered pursuant to the provisions of this section.

(B) This paragraph may be waived or suspended only by the vote of three-fifths of the Members, duly chosen and sworn.

(b) CONGRESSIONAL ACTION.—

(1) IN GENERAL.—A request for natural disaster funding shall considered by Congress on an expedited basis in accordance with this subsection.

(2) HOUSE ACTION.—(A) Not later than 5 session days after the House of Representatives receives a request pursuant to subsection (a), the Committee on Appropriations shall report out an appropriations bill containing the language of the President's draft bill together with any relevant amendments. The House of Representatives shall consider and dispose of the bill not later than 10 session days after the President's request.

(B) If the House of Representatives does not act upon the bill as required by subparagraph (A) then on the 11th session day any Member may introduce the President's bill and require a vote on the bill during that day.

(C) No amendment that is not germane to the provisions of the funding bill shall be received.

(3) SENATE ACTION.—(A) Not later than 5 session days after the Senate receives a bill passed by the House of Representatives pursuant to paragraph (2), the Committee on Appropriations shall report out the appropriations bill together with any relevant amendments. The Senate shall consider and dispose of the bill not later than 8 session days after receipt of the bill from the House of Representatives.

(B) If the Senate has not disposed of the bill as required by subparagraph (A) then on the 9th session day any Member may call up the bill and require a vote on the bill during that day.

(C) The provisions of section 305 of the Congressional Budget Act of 1974 for consideration in the Senate of concurrent resolutions on the budget or conference reports thereon shall apply to the consideration of bills under this paragraph. Debate on the bill and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours.

(D)(i) No amendment that is not germane to the provisions of the funding bill shall be received. A funding bill and conference report thereon shall contain only relevant provisions.

(ii) This subparagraph may be waived or suspended only by a vote of three-fifths of the Members, duly chosen and sworn.

(c) MANDATORY SEQUESTER.—Amounts required to be sequestered under the provisions of a bill enacted pursuant to subsection (b) shall be sequestered pursuant to an order of the President as follows:

(1) SEQUESTRATION.—Effective on the first day of the fiscal year subject to sequester, there shall be a sequestration to reduce the amount of direct spending in the current policy baseline by the amount specified in the bill enacted pursuant to subsection (b).

(2) UNIFORM REDUCTIONS; LIMITATIONS.—The amount required to be sequestered for the budget year under paragraph (1) shall be obtained from nonexempt direct spending accounts by reducing each remaining nonexempt direct spending account by the uniform percentage necessary to achieve those additional reductions, except that—

(A) the low-income programs specified in paragraph (4)(C) shall not be reduced by sequestration by more than 1 percent, during any one fiscal year;

(B) the retirement and veterans' benefits specified in paragraph (4)(D) shall not be reduced by sequestration by more than 2 percent in any one fiscal year in the manner specified in that section; and

(C) the medicare programs shall not be reduced by more than 4 percent by sequestration in any one fiscal year in the manner specified in paragraph (4)(E).

The limitations set forth in subparagraphs (A), (B), and (C) shall be applied iteratively, and after each iteration the uniform percentage applicable to all other programs under this paragraph shall be increased (if necessary) to a level sufficient to achieve the reductions required by this paragraph.

(3) EXEMPT PROGRAMS AND ACTIVITIES.—

(A) DESCRIPTIONS AND LISTS.—Except as provided in subparagraph (B), the following budget accounts or activities shall be exempt from sequestration:

(i) net interest;

(ii) all payments to trust funds from excise taxes or other receipts or collections properly creditable to those trust funds;

(iii) all payments from one Federal direct spending budget account to another Federal budget account; and all intragovernmental funds including those from which funding is derived primarily from other Government accounts, except to the extent that such funds are augmented by direct appropriations for the fiscal year for which the order is in effect;

(iv) activities resulting from private donations, bequests, or voluntary contributions to the Government;

(v) payments from any revolving fund or trust-revolving fund (or similar activity) that provides deposit insurance or other Government insurance, Government guarantees, or any other form of contingent liability, to the extent those payments result from contractual or other legally binding commitments of the Government at the time of any sequestration;

(vi) credit liquidating and financing accounts;

(vii) the following accounts, which largely fulfill requirements of the Constitution or otherwise make payments to which the Government is committed:

Administration of Territories, Northern Mariana Islands Covenant grants (14-0412-0-1-806);

Bureau of Indian Affairs, miscellaneous payments to Indians (14-2303-0-1-452);

Bureau of Indian Affairs, miscellaneous trust funds, tribal trust funds (14-9973-0-7-999);

Claims, defense;

Claims, judgments, and relief act (20-1895-0-1-806);

Compact of Free Association, economic assistance pursuant to Public Law 99-658 (14-0415-0-1-806);

Compensation of the President (11-0001-0-1-802);

Customs Service, miscellaneous permanent appropriations (20-9992-0-2-852);

Eastern Indian Land Claims Settlement Fund (14-2202-0-1-806);

Farm Credit System Financial Assistance Corporation, interest payments (20-1850-0-1-351);

Internal Revenue collections of Puerto Rico (20-5737-0-2-852);

Panama Canal Commission, operating expenses and capital outlay (95-5190-0-2-403);

Payments of Vietnam and USS Pueblo prisoner-of-war claims (15-0104-0-1-153);

Payments to copyright owners (03-5175-0-2-376);

Payments to the United States territories, fiscal assistance (14-0418-0-1-801);

Payments to widows and heirs of deceased Members of Congress (00-0215-0-1-801);

Salaries of Article III judges;

Soldier's and Airmen's Home, payment of claims (84-8930-0-7-705);

Washington Metropolitan Area Transit Authority, interest payments (46-0300-0-1-401).

(viii) the following noncredit special, revolving, or trust-revolving funds:

Coinage profit fund (20-5811-0-2-803);

Comptroller of the Currency;

Director of the Office of Thrift Supervision;

Exchange Stabilization Fund (20-4444-0-3-155);

Federal Housing Finance Board;

Foreign Military Sales Trust Fund (11-82232-0-7-155);

(ix) Thrift Savings Fund;

(x) appropriations for the District of Columbia to the extent they are appropriations of locally raised funds;

(xi)(I) any amount paid as regular unemployment compensation by a State from its account in the Unemployment Trust Fund (established by section 904(a) of the Social Security Act);

(II) any advance made to a State from the Federal Unemployment Account (established by section 904(g) of such Act) under title XII of such Act and any advance appropriated to the Federal Unemployment Account pursuant to section 1203 of such Act; and

(III) any payment made from the Federal Employees Compensation Account (as established under section 909 of such Act) for the purpose of carrying out chapter 85 of title 5, United States Code, and funds appropriated or transferred to or otherwise deposited in such Account;

(xii) the earned income tax credit (payments to individuals pursuant to section 32 of the Internal Revenue Code of 1986).

(4) EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES.—

(A) THE GUARANTEED STUDENT LOAN PROGRAM.—(i) Any reductions which are required to be achieved from the student loan programs operated pursuant to part B of title IV of the Higher Education Act of 1965 under any sequestration order shall be achieved only from loans described in clauses (ii) and (iii) by the application of the measures described in such clauses.

(ii) For any loan made during the period beginning on the date that a sequestration order takes effect with respect to a fiscal year, the rate used in computing the special allowance payment pursuant to section 438(b)(2)(A)(iii) of such Act for each of the first four special allowance payments for such loan shall be adjusted by reducing such rate by the lesser of—

(I) 0.40 percent, or

(II) the percentage by which the rate specified in such section exceeds 3 percent.

(iii) For any loan made during the period beginning on the date that a sequestration order takes effect with respect to a fiscal year, the origination fee which is authorized to be collected pursuant to section 438(c)(2) of such Act shall be increased by 0.50 percent.

(B) FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS.—Any sequestration order shall make the reduction otherwise required under the foster care and adoption assistance programs (established by part E of title IV of the Social Security Act) only with respect to payments and expenditures made by States in which increases in foster care maintenance payment rates or adoption assistance payment rates (or both) are to take effect during the fiscal year involved, and only to the extent that the required reduction can be accomplished by applying a uniform percentage reduction to the Federal matching payments that each such State would otherwise receive under section 474 of that Act (for such fiscal year) for that portion of the State's payments attributable to the increases taking effect during that year. No State's matching payments from the Federal Government for foster care maintenance payments or for adoption assistance maintenance payments may be reduced by a percentage exceeding the applicable domestic sequestration percentage. No State may, after the date of the enactment of this Act, make any change in the timetable for making payments under a State plan approved under part E of title IV of the Social Security Act which has the effect of changing the fiscal year in which expenditures under such part are made.

(C) LOW-INCOME ENTITLEMENTS.—(i) Benefit payments or payments to States or other entities for the programs listed in clause (ii) shall not be reduced by more than 1 percent under any sequestration order.

(ii) The programs referred to in clause (i) are the following:

Aid to families with dependent children (75-0412-0-1-609);

Child nutrition (12-2539-0-1-605);

Food stamp programs (12-3505-0-1-605) and (12-3550-0-1-605);

Grants to States for medicaid (75-0512-0-1-551); and

Supplemental security income program (75-0406-0-1-609);

(D) FEDERAL RETIREMENT AND VETERANS' PROGRAMS.—For each of the programs listed in clause (ii) and except as provided in clause (iii), monthly (or other periodic) benefit payments shall be reduced by the uniform percentage applicable to direct spending sequestrations for such programs under paragraph

(1), which shall in no case exceed 2 percent under any sequestration order.

(ii) The programs subject to clause (i) are:

Benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act;

Benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974;

Benefits under chapter 21 of title 38, United States Code, relating to specially adapted housing and mortgage-protection life insurance for certain veterans with service-connected disabilities (36-0137-0-1-702);

Benefits under section 907 of title 38, United States Code, relating to burial benefits for veterans who die as a result of service-connected disability (36-0155-0-1-701);

Benefits under chapter 39 of title 38, United States Code, relating to automobiles and adaptive equipment for certain disabled veterans and members of the Armed Forces (36-0137-0-1-702);

Black lung benefits (20-8144-0-7-601);

Central Intelligence Agency retirement and disability system fund (56-3400-0-1-054);

Civil service retirement and disability fund (24-8135-0-7-602);

Comptrollers general retirement system (05-0107-0-1-801);

Foreign service retirement and disability fund (19-8186-0-7-602);

Judicial survivors' annuities fund (10-8110-0-7-602);

Longshoremen's and harborworkers' compensation benefits (16-9971-0-7-601);

Military retirement fund (97-8097-0-7-602);

National Oceanic and Atmospheric Administration retirement (13-1450-0-1-306);

Pensions for former Presidents (47-0105-0-1-802);

Railroad retirement tier II (60-8011-0-7-601);

Railroad supplemental annuity pension fund (60-8012-0-7-602);

Retired pay, Coast Guard (69-0241-0-1-403);

Retirement pay and medical benefits for commissioned officers, Public Health Service (75-0379-0-1-551);

Special benefits, Federal Employees' Compensation Act (16-1521-0-1-600);

Special benefits for disabled coal miners (75-0409-0-1-601);

Tax court judges survivors annuity fund (23-8115-0-7-602);

Veterans' compensation (36-0153-0-1-701); and

Veterans' pensions (36-0154-0-1-701).

(iii) Notwithstanding clauses (i) and (ii), benefit payments from the Old Age and Survivors Insurance and Disability Trust Funds and for Railroad Retirement Tier I shall be reduced only for beneficiaries receiving benefits in excess of $600 per month as follows:

(I) The aggregate amount of all benefits in excess of $600 per month per beneficiary paid out to such beneficiaries shall be the amount subject to reduction.

(II) The reduction required by this clause shall not cause any beneficiaries monthly benefits to fall below $600.

(E) MEDICARE PROGRAM.—

(i) CALCULATION OF REDUCTION IN INDIVIDUAL PAYMENT AMOUNTS.—To achieve the total percentage reduction in those programs required by paragraph (1), the percentage reduction that shall apply to payments under the health insurance programs under title XVIII of the Social Security Act for services furnished after any sequestration order is issued shall be such that the reduction made in payments under that order shall achieve the required total percentage reduction in those payments for that fiscal year as determined on a 12-month basis.

(ii) TIMING OF APPLICATION OF REDUCTIONS.—

(I) IN GENERAL.—Except as provided in subclause (II), if a reduction is made under clause (i) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for services furnished after the effective date of the order. For purposes of the previous sentence, in the case of inpatient services furnished for an individual, the services shall be considered to be furnished on the date of the individual's discharge from the inpatient facility.

(II) PAYMENT ON THE BASIS OF COST REPORTING PERIODS.—In the case in which payment for services of a provider of services is made under title XVIII of the Social Security Act on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs after the effective date of the order, but only (for each such cost reporting period) in the same proportion as the fraction of the cost reporting period that occurs after the effective date of the order.

(iii) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES.—If a reduction in payment amounts is made under clause (i) for services for which payment under part B of title XVIII of the Social Security Act is made on the basis of an assignment described in section 1842(b)(3)(B)(ii), in accordance with section 1842(b)(6)(B), or under the procedure described in section 1870(f)(1) of such Act, the person furnishing the services shall be considered to have accepted payment of the reasonable charge for the services, less any reduction in payment amount made pursuant to a sequestration order, as payment in full.

(iv) NO EFFECT ON COMPUTATION OF AAPCC.—In computing the adjusted average per capita cost for purposes of section 1876(a)(4) of the Social Security Act, the Secretary of Health and Human Services shall not take into account any reductions in payment amounts which have been or may be effected under this part.

(F) FEDERAL PAY.—

(i) IN GENERAL.—New budget authority to pay Federal personnel shall be reduced by the uniform percentage calculated under paragraph (1), but no sequestration order may reduce or have the effect of reducing the rate of pay to which any individual is entitled under any statutory pay system (as increased by any amount payable under section 5304 of title 5, United States Code, or section 302 of the Federal Employees Pay Comparability Act of 1990) or the rate of any element of military pay to which any individual is entitled under title 37, United States Code, or any increase in rates of pay which is scheduled to take effect under section 5303 of title 5, United States Code, section 1009 of title 37, United States Code, or any other provision of law.

(ii) DEFINITIONS.—For purposes of this subsection:

(I) The term "statutory pay system" shall have the meaning given that term in section 5302(1) of title 5, United States Code.

(II) The term "elements of military pay" means—

(aa) the elements of compensation of members of the uniformed services specified in section 1009 of title 37, United States Code,

(bb) allowances provided members of the uniformed services under sections 403a and 405 of such title, and

(cc) cadet pay and midshipman pay under section 203(c) of such title.

(III) The term "uniformed services" shall have the meaning given that term in section 101(3) of title 37, United States Code.

(G) CHILD SUPPORT ENFORCEMENT PROGRAM.—Any sequestration order shall accomplish the full amount of any required reduction in expenditures under sections 455 and 458 of the Social Security Act by reducing the Federal matching rate for State administrative costs under such program, as specified (for the fiscal year involved) in section 455(a) of such Act, to the extent necessary to reduce such expenditures by that amount.

(H) EXTENDED UNEMPLOYMENT COMPENSATION.—(i) A State may reduce each weekly benefit payment made under the Federal-State Extended Unemployment Compensation Act of 1970 for any week of unemployment occurring during any period with respect to which payments are reduced under an order issued under section 254 by a percentage not to exceed the percentage by which the Federal payment to the State under section 204 of such Act is to be reduced for such week as a result of such order.

(ii) A reduction by a State in accordance with subparagraph (A) shall not be considered as a failure to fulfill the requirements of section 3304(a)(11) of the Internal Revenue Code of 1954.

(I) COMMODITY CREDIT CORPORATION.—

(i) POWERS AND AUTHORITIES OF THE COMMODITY CREDIT CORPORATION.—This subsection shall not restrict the Commodity Credit Corporation in the discharge of its authority and responsibility as a corporation to buy and sell commodities in world trade, to use the proceeds as a revolving fund to meet other obligations and otherwise operate as a corporation, the purpose for which it was created.

(ii) REDUCTION IN PAYMENTS MADE UNDER CONTRACTS.—(I) Payments and loan eligibility under any contract entered into with a person by the Commodity Credit Corporation prior to the time any sequestration order has been issued shall not be reduced by an order subsequently issued. Subject to subclause (II), after any sequestration order is issued for a fiscal year, any cash payments made by the Commodity Credit Corporation—

(aa) under the terms of any one-year contract entered into in or after such fiscal year and after the issuance of the order; and

(bb) out of an entitlement account,

to any person (including any producer, lender, or guarantee entity) shall be subject to reduction under the order.

(II) Each contract entered into with producers or producer cooperatives with respect to a particular crop of a commodity and subject to reduction under clause (i) shall be reduced in accordance with the same terms and conditions. If some, but not all, contracts applicable to a crop of a commodity have been entered into prior to the issuance of any sequestration order, the order shall provide that the necessary reduction in payments under contracts applicable to the commodity be uniformly applied to all contracts for succeeding crops of the commodity, under the authority provided in clause (iii).

(iii) DELAYED REDUCTION IN OUTLAYS PERMISSIBLE.—Notwithstanding any other provision of this subsection, if any sequestration order is issued with respect to a fiscal year, any reduction under the order applicable to

contracts described in clause (ii) may provide for reductions in outlays for the account involved to occur in the fiscal years following the fiscal year to which the order applies.

(iv) UNIFORM PERCENTAGE RATE OF REDUCTION AND OTHER LIMITATIONS.—All reductions described in clause (ii) that are required to be made in connection with any sequestration order with respect to a fiscal year—

(I) shall be made so as to ensure that outlays for each program, project, activity, or account involved are reduced by a percentage rate that is uniform for all such programs, projects, activities, and accounts, and may not be made so as to achieve a percentage rate of reduction in any such item exceeding the rate specified in the order; and

(II) with respect to commodity price support and income protection programs, shall be made in such manner and under such procedures as will attempt to ensure that—

(aa) uncertainty as to the scope of benefits under any such program is minimized;

(bb) any instability in market prices for agricultural commodities resulting from the reduction is minimized; and

(cc) normal production and marketing relationships among agricultural commodities (including both contract and noncontract commodities) are not distorted.

In meeting the criterion set out in clause (iii) of subclause (II) of the preceding sentence, the President shall take into consideration that reductions under an order may apply to programs for two or more agricultural commodities that use the same type of production or marketing resources or that are alternative commodities among which a producer could choose in making annual production decisions.

(v) CERTAIN AUTHORITY NOT TO BE LIMITED.—Nothing in this subsection shall limit or reduce in any way any appropriation that provides the Commodity Credit Corporation with funds to cover the Corporation's net realized losses.

(J) THE JOBS PORTION OF AFDC.—

(i) FULL AMOUNT OF SEQUESTRATION REQUIRED.—Any sequestration order shall accomplish the full amount of any required reduction of the job opportunities and basic skills training program under section 402(a)(19), and part F of title VI, of the Social Security Act, in the manner specified in this subsection. Such an order may not reduce any Federal matching rate pursuant to section 403(l) of the Social Security Act.

(ii) NEW ALLOTMENT FORMULA.—

(I) GENERAL RULE.—Notwithstanding section 403(k) of the Social Security Act, each State's percentage share of the amount available after sequestration for direct spending pursuant to section 403(l) of such Act shall be equal to that percentage of the total amount paid to the States pursuant to such section 403(l) for the prior fiscal year that is represented by the amount paid to such State pursuant to such section 403(l) for the prior fiscal year, except that a State may not be allotted an amount under this subparagraph that exceeds the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration not been in effect.

(II) REALLOTMENT OF AMOUNTS REMAINING UNALLOTTED AFTER APPLICATION OF GENERAL RULE.—Any amount made available after sequestration for direct spending pursuant to section 403(l) of the Social Security Act that remains unallotted as a result of subparagraph (A) of this paragraph shall be allotted among the States in proportion to the absolute difference between the amount allotted, respectively, to each State as a result of such subparagraph and the amount that would have been allotted to such State pursuant to section 403(k) of such Act had the sequestration not been in effect, except that a State may not be allotted an amount under this subparagraph that results in a total allotment to the State under this paragraph of more than the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration not been in effect.

(K) POSTAL SERVICE FUND.—Notwithstanding any other provision of law, any sequestration of the Postal Service Fund shall be accomplished by a payment from that Fund to the general fund of the Treasury, and the Postmaster General of the United States shall make the full amount of that payment during the fiscal year to which the Presidential sequestration order applies.

(L) EFFECTS OF SEQUESTRATION.—The effects of sequestration shall be as follows:

(i) Budgetary resources sequestered from any account other than an entitlement trust, special, or revolving fund account shall revert to the Treasury and be permanently canceled.

(ii) Except as otherwise provided, the same percentage sequestration shall apply to all programs, projects, and activities within a budget account (with programs, projects, and activities as delineated in the appropriation Act or accompanying report for the relevant fiscal year covering that account, or for accounts not included in appropriation Acts, as delineated in the most recently submitted President's budget).

(iii) Administrative regulations or similar actions implementing a sequestration shall be made within 120 days of the sequestration order. To the extent that formula allocations differ at different levels of budgetary resources within an account, program, project, or activity, the sequestration shall be interpreted as producing a lower total appropriation, with that lower appropriation being obligated as though it had been the presequestration appropriation and no sequestration had occurred.

(iv) Any cap on the reduction of benefits as determined under a formula for reducing benefits in this paragraph shall be a cap on the total reductions in such benefits for a fiscal year.

(v) Benefit payments or payments to States or other entities for programs subject to sequestration under this paragraph shall not be reduced by a sequestration order below the level of such benefits or payments during the previous fiscal year.

(M) CURRENT POLICY BASELINE.—

(i) IN GENERAL.—The current policy baseline refers to a projection of current-year levels of new budget authority, outlays, revenues, and the surplus or deficit into the budget year and the outyears based on laws enacted through, and discretionary regulations promulgated as final by, the applicable date.

(ii) DIRECT SPENDING AND RECEIPTS.—The baseline shall be calculated using the following assumptions:

(I) IN GENERAL.—Laws providing or creating direct spending and receipts are assumed to operate in the manner specified in those laws for each such year and funding for entitlement authority is assumed to be adequate to make all payments required by those entitlements.

(II) EXCEPTIONS.—

(a) No program with estimated current-year gross new budget authority greater than $100,000,000 shall be assumed to expire in the budget year or outyears. Expiring entitlement programs and programs financed by indefinite budget authority shall be assumed to continue as in effect just prior to their expiration. Expiring programs financed by definite new budget authority shall be assumed to continue with that new budget authority.

(bb) The percentage increase for veterans' compensation for a fiscal year is assumed to be the same as that required by law for veterans' pensions unless otherwise provided by law enacted in that session.

(cc) Excise taxes dedicated to a trust fund, if expiring (in the budget year or outyears), are assumed to continue at the rates in effect immediately prior to their expiration.

(iii) CUTOFF DATE.—The assumptions made under clause (ii) regarding budget-year continuations and percentage increases shall no longer apply after the end of the budget-year.

(d) ELIGIBILITY FOR FUNDING.—It is the sense of Congress that before the adjournment of the 103d Congress, the Congress should enact into law—

(1) a system under which the President would make periodic certifications of the adequacy of preparations for natural disasters in the several States; and

(2) a provision for a system of disincentives, under the various disaster relief programs, to States which have not made adequate preparations for natural disasters, except that such disincentives would not affect any assistance necessary for humanitarian aid or to provide immediate protection to life, health, and property.

(e) SEQUESTER OF AMOUNTS NOT OFFSET.—If the President determines that a bill enacted pursuant to this section does not fully offset the amounts appropriated, the President shall order a sequester of the amount not offset pursuant to the sequester provisions of subsection (a)(2)(A)(ii)(II)(aa) relating to discretionary spending.

KOHL AMENDMENT NO. 765

Mr. KOHL (for himself and Mr. FEINGOLD) proposed an amendment to the bill (H.R. 2667), supra, as follows:

Insert at the appropriate place in the amendment:

The Secretary shall implement an emergency forage program under the same terms and conditions used to administer the 1988 Emergency Forage Assistance Program authorized by section 103 of Public Law 100-387, except that it shall apply to pasture damaged by winterkill, excessive moisture, flooding, drought and/or related conditions in 1993: *Provided*, That funds for this purpose shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the balanced Budget and Emergency Deficit Control Act of 1985, is transmitted by the President to Congress: *Provided further*, That the entire amount of funds used under this paragraph is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

DECONCINI AMENDMENT NO. 766

Mr. DECONCINI proposed an amendment to the bill (H.R. 2667), supra, as follows:

At the appropriate place, add the following:

SEC. . (a) Notwithstanding any other provision of this Act, in the administration of this Act, $118,000,000 of the aggregate amount appropriated by this Act, from such accounts as shall be determined by the Director of the Office of Management and Budget, in consultation with the Secretary of the Interior, and other appropriate heads of Federal departments, agencies and entities receiving appropriations under this Act, and after consultation by the Secretary of the Interior with the tribal governments of the Navajo Indian tribe and the Hopi Indian tribe, shall be available as follows:

(1) $100,000,000 shall be available only for the purpose of providing relief under this Act to the former Bennett Freeze Area within the Navajo Indian Reservation in Arizona, which funds shall remain available until expended; and

(2) $18,000,000 shall be available only for the purpose of providing relief under this Act to the former Bennett Freeze Area within the Hopi Indian Reservation, which funds shall remain available until expended.

(b) for purposes of this section, the term "former Bennett Freeze Area" means that portion of the Navajo Indian Reservation and that portion of the Hopi Indian Reservation for which the restriction referred to in subsection (c)(1) was lifted pursuant to an order of the United States District Court for the District of Arizona on September 25, 1992.

(c) For purposes of this Act—

(1) the 26-year restriction on construction and development on an area of the Navajo Indian Reservation and the area of the Hopi Indian Reservation, commonly referred to as the Bennett Freeze, referred to in section 10(f) of the Act of December 22, 1974 (25 U.S.C. 640d–10(f)) is deemed a natural disaster; and

(2) those portions of the Navajo Indian Reservation and the Hopi Indian Reservation for which such restriction was lifted pursuant to an order of the United States District Court for the District of Arizona on September 25, 1992, are each deemed a disaster area.

(d) No funds made available by this section may be expended on any portion of the Navajo Indian Reservation or any portion of the Hopi Indian Reservation with respect to which there is in effect a restriction on construction or improvement pursuant to the order of the United States District Court for the District of Arizona on December 18, 1992.

BYRD AMENDMENT NO. 767

Mr. BYRD proposed an amendment to the bill (H.R. 2667), supra, as follows:

On page 22 at line 8 after 1993 insert "and other disasters".

PRESSLER AMENDMENT NO. 768

Mr. BYRD (for Mr. PRESSLER) proposed an amendment to the bill (H.R. 2667), supra, as follows:

After section 701, insert the following new section:

SEC. 702. In any case in which the Secretary of Agriculture finds that the farming, ranching, or aquaculture operations of producers on a farm have been substantially affected by a natural disaster in the United States or by a major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) during the 1993 crop year, the Secretary of Agriculture shall not require any repayment under subparagraph (G) or (H) of section 114(a)(2) of the Agricultural Act of 1949 (7 U.S.C. 1445j(a)(2)) for the 1993 crop of a commodity prior to January 1, 1994.

KERREY AMENDMENT NO. 769

Mr. BYRD (for Mr. KERREY) proposed an amendment to the bill (H.R. 2667), supra, as follows:

On page 20, line 17, following "flood", insert the following: ", high winds, hail and other related weather damages".

On page 22, line 8, following "floods", insert the following: ", high winds, hail and other related weather damages".

BYRD AMENDMENT NO. 770

Mr. BYRD proposed an amendment to the bill (H.R. 2667), supra, as follows:

Under the heading "National Park Service, Historic Preservation Fund" strike the following: beginning with the word "to" after "1993," and continuing through "(16 U.S.C. 470),".

GALLATIN RANGE CONSOLIDATION AND PROTECTION ACT OF 1993

BAUCUS AMENDMENT NO. 771

Mr. KENNEDY (for Mr. BAUCUS) proposed an amendment to the bill (H.R. 873) entitled "Gallatin Range Consolidation and Protection Act of 1993", as follows:

In section 3(b)(1), strike "the map entitled Plum Creek Timber and Forest Service Proposed Gallatin Land Exchange, dated May 20, 1988", and insert the following; "two maps entitled 'Proposed BSL Land Acquisitions,' East Half and West Half Gallatin National Forest, dated February, 1993".

In section 3(b)(2), immediately after "as depicted on the maps referred to in paragraph (1)," insert the following: "and the five maps entitled 'H.R. 873, the Gallatin Range Consolidation and Protection Act of 1993,' Lolo and Flathead National Forest,".

In section 4(a), strike "depicted on the map entitled Porcupine Area, dated September, 1992", and insert the following: "listed as 'Exhibit A, Procupine Area,' in the Option."

In section 5(a), strike "depicted on the map entitled Taylor Fork Area, dated September, 1992", and insert the following: "listed as 'Exhibit A, Taylor Fork Area,' in the Option."

In section 6(a), strike "depicted on the map entitled Gallatin Area dated September 1992", and insert the following: "listed as 'Exhibit A, Gallatin Roaded,' in the Option."

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate Wednesday, August 4, 1993, at 10 a.m. to vote on the nominations of Gordon Linton, to be Federal Transit Administrator; and Nelson Diaz, to be General Counsel of the Department of Housing and Urban Development.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on August 4, 1993, at 9:30 a.m. on reauthorization of the Magnuson Fishery Protection Act/Federal process.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be authorized to meet on Wednesday, August 4, for a hearing on the subject: "Auditing the Auditors: Waste and Abuse at IRS and Customs?"

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

COMMITTEE ON FOREIGN RELATIONS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Wednesday, August 4, 1993, at 10 a.m., to hold nomination hearings on the following nominees:

Ms. Aurelia Erskine Brazeal, of Georgia, to be Ambassador to the Republic of Kenya;

Mr. Walter C. Carrington, of Maryland, to be Ambassador to the Federal Republic of Nigeria;

Mr. John S. Davison, of Maryland, to be Ambassador to the Republic of Niger;

Mr. Robert G. Houdek, of Illinois, to be Ambassador to Eritrea;

Mr. Roland K. Kuchel, of Florida, to be Ambassador to the Republic of Zambia;

Mr. Donald J. McConnell, of Ohio, to be Ambassador to Burkina Faso; and

Mr. John T. Sprott, of Virginia, to be Ambassador to the Kingdom of Swaziland.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES AND THE SUBCOMMITTEE ON ENERGY AND WATER DEVELOPMENT

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources and the Subcommittee on Energy and Water Development of the Committee on Appropriations be authorized to meet during the session of the Senate, 9:30 a.m., August 4, 1993, to receive testimony on the superconducting super collider.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES AND THE SUBCOMMITTEE ON ENERGY AND WATER DEVELOPMENT

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources and the Subcommittee on Energy and Water Development of the Committee

on Appropriations be authorized to meet during the session of the Senate, 2:30 p.m., August 4, 1993, to receive testimony on the superconducting super collider.

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

SUBCOMMITTEE ON CLEAN WATER, FISHERIES AND WILDLIFE

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Subcommittee on Clean Water, Fisheries and Wildlife, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Wednesday, August 4, beginning at 9:30 a.m., to conduct a hearing on reauthorization of the Clean Water Act, focusing on regional issues.

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

MEDAL OF HONOR PENSION

• Mr. LAUTENBERG. Mr. President, I am pleased to join with the minority leader in introducing legislation that will provide, for the first time in 15 years, an increase to the Medal of Honor pension. This increase is long overdue.

The Medal of Honor is the Nation's highest distinction that can be awarded to a member of the armed services of the United States. It is an award presented by the President of the United States, in the name of Congress, to an individual who, while serving in the Armed Forces, distinguished themselves by a specific act of heroism, gallantry, bravery, or intrepidity.

This award is a military distinction paid to an individual who put his or her life at risk above and beyond the call of duty.

There are only 204 Americans alive today that are recipients of the Medal of Honor. These Americans should not be forgotten. We should continue to recognize and remember their selfless acts of bravery.

They have earned their pension and we owe it to these recipients to not let their pension disintegrate through inflation. The Medal of Honor pension has not been increased since 1978. I believe the increase proposed in our bill, which will raise the Medal of Honor pension from $200 to $500 per month, is not only justified but it is long overdue.

Mr. President, I ask that letters I have received from New Jersey organizations, in support of this amendment, be included in the RECORD.

The letters follow:

LADIES' AUXILIARY TO PETERSILGE-VELOCK POST 809, V.F.W., LITTLE FERRY, NJ,

July 19, 1993.

Senator FRANK LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: By order of President Coppola and on behalf of the entire membership of the Petersilge-Velock V.F.W. Ladies Auxiliary 809 I have been instructed to urge you to support bill H.R. 1796, that would enable the Medal of Honor recipients special pension be raised from $200 per month to $500.

I am concerned with the legislation procedure and results of voting when it comes to any veterans legislation on every level.

We wish to thank you for your past support of veterans legislation and sincerely hope we can count on you again.

Would you please reply to my letter and let me know how you stand on this issue. Would you also put me on your mailing list.

Thank you for your consideration in this matter.

Sincerely,

ADELE ROVITO,
Secretary.

CORPORAL ARTHUR E. SMITH AUXILIARY TO POST NO. 2856, VETERANS OF FOREIGN WARS OF THE U.S., LIVINGSTON, NJ,

July 15, 1993.

Hon. FRANK R. LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: I am writing to you on behalf of our Medal of Honor recipients who at the present time are receiving an amount of $200,00 per month as a Special Pension.

A bill introduced in Congress, H.R. 1796, and a similar bill to be introduced as I understand with you as one of the sponsoring Senators will raise this Special Pension to $500.00.

I fully support this Bill and hope that you will do all in your power to have this Bill passed.

A reply to the above matter would be appreciated.

Sincerely,

LEONA KANE.

VETERANS OF FOREIGN WARS OF THE UNITED STATES, DEPARTMENT OF NEW JERSEY,

Trenton, NJ, July 12, 1993.

Hon. FRANK LAUTENBERG,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: I am writing to you regarding the bill that you and Senator Dole will introduce in the Senate regarding the raising of the monthly pension to our Medal of Honor recipients from two hundred to five hundred dollars.

This issue is very important to the members of the Veterans of Foreign Wars of the Department of New Jersey, and all veterans of this country.

These heros deserve so much more for what they did for all of us, and this great country of ours.

I am in full support of this issue, and I hope that you will continue to support the veterans of this country.

Sincerely yours,

WILLIAM GOODE,
Sr. Vice Commander.

LADIES AUXILIARY, VETERANS OF FOREIGN WARS OF THE UNITED STATES, DEPARTMENT OF NEW JERSEY,

July 21, 1993.

Hon. FRANK R. LAUTENBERG,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: I understand that you and Senator Dole are about to introduce a bill to increase the special pension for Medal of Honor recipients to $500.000 per month. I agree with the attempt to increase this pension as it is long overdue.

I would appreciate it if you would keep me advised in the event that this bill is held up in some committee or sub-committee so that I can communicate directly with the committee chairpersons.

Thank you for your interest in helping to reward our Medal of Honor recipients.

With warm regards, I remain,

MRS. FRIEDA PRITCHARD
Lyons VFWA Representative.

VETERANS OF FOREIGN WARS OF THE UNITED STATES, DEPARTMENT COMMANDER, NEW JERSEY,

July 6, 1993.

Hon. FRANK LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: A bill has been introduced in The House of Representatives that is near and dear to all Veterans. This bill, HR 1796, raises the special pension for Medal of Honor recipients from $200 per month to $500 per month.

It is my understanding that you, along with Senator Dole, will introduce a similar bill in the Senate. I would like to take this opportunity to thank you and Senator Dole, and wish you well. Raising the pension for these Heros is long over due.

Sincerely,

HARRY MORECROFT,
Past State Commander.

VETERANS OF FOREIGN WARS OF THE UNITED STATES, DEPARTMENT OF NEW JERSEY,

July 26, 1993.

Hon. FRANK LAUTENBERG,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: I am under the impression that Senator Dole and you will be introducing in the Senate a companion bill to H.R. 1796, increasing the monthly pension for Medal of Honor recipients from $200 to $500.

I personally support this legislation, along with the membership of the Veterans of Foreign Wars of the United States.

Please provide me with a copy of your bill when available.

I thank you for taking a leadership role in this matter. Please feel free to contact me if I can be of any assistance.

MICHAEL H. WYSONG,
Legislative Officer.•

TRIBUTE TO THE KENTUCKY HIGHLANDS INVESTMENT CORPORATION

• Mr. MCCONNELL. Mr. President, I rise today to pay tribute to the Kentucky Highlands Investment Corp. (KHIC), which celebrated its 25th year of operation in June.

The Kentucky Highlands Investment Corp. is based in London, KY, and was founded in 1968 as a Job Start corporation within the Johnson administration's War on Poverty. After about a decade of operation, KHIC faced a decline in Federal funding and made a transition from running programs to manage investments. Now, KHIC is operated as a business in every respect except one—its profits go back into job creation.

The Kentucky Highlands Investment Corporation has been praised on many fronts, both inside and outside of Kentucky for its altruistic spirit combined

with capitalist expertise. Today, KHIC has assets of almost $20 million, and its portfolio includes 22 investees—firms in which the corporation has some kind of direct financial involvement.

In a typical year, KHIC manages to create over 200 new jobs for southeastern Kentucky, and the corporation currently employs over 2,800 people. About 60 percent of those people had previously been on some form of public assistance.

Currently, KHIC is planning a number of new projects, including an aspiring entrepreneur program and some innovative forms of financing. Overall, KHIC has never been constrained by the conventional way of doing things.

I applaud KHIC's efforts to bring new jobs to southeastern Kentucky and to encourage growth in the area.

Mr. President, I ask that a recent article from Appalachia be submitted in today's CONGRESSIONAL RECORD.

The article follows:

GRASS ROOTS GIVE AND TAKE

(By Fred D. Baldwin)

Conference speakers like to say that community service agencies should be "run like a business." In southeastern Kentucky there's a nonprofit community development corporation that is a business in every respect but one—its profits go back into job creation.

This June the Kentucky Highlands Investment Corporation (KHIC), based in London (Laurel County), celebrates its 25th year of operation. It was founded in 1968 as a Job Start corporation within the Johnson administration's War on Poverty. A decade or so later, facing a decline in federal funding, KHIC achieved something that few such agencies were able to achieve: a transition from running programs to managing investments.

"We shifted from giving out money," says Jerry A. Rickett, KHIC president and CEO, "to giving it out and then getting it back."

That change was more than a matter of rhetoric.

The Wall Street Journal has called KHIC "a rare mix of altruism and hard-nosed capitalism. . . . A lean operation [that] has toted up a record that might make an orthodox venture capitalist blush."

Today KHIC (legally, a cluster of three corporations of which KHIC is the parent company) has assets of almost $20 million. As of January 1993, its portfolio included 22 "investees"—firms in which the corporation has some kind of direct financial involvement.

The investees bear little resemblance to the "Fortune 500." In fact, "500" happens to be the largest number of people employed at any one firm (Mid South Electronics, a manufacturer of electronics components). Other businesses include a ham processor, a firm that makes walnut plaques and trophy bases, and one that makes stainless-steel kitchen fixtures. Another firm makes automobile air bags. Altogether, the 22 businesses employ over 2,800 people. Rickett estimates that at least 75 percent of these jobs would not exist today except for KHIC's help.

Every job is desperately needed. The KHIC primary service area covers nine counties: Bell, Clay, Clinton, Harlan, Jackson, McCreary, Rockcastle, Wayne and Whitley. They are among the U.S. Department of Agriculture's "perpetually poor" rural counties, with recent poverty rates ranging from 38 percent to 46 percent. In 1992 official unemployment rates for these counties were generally 8 percent to 10 percent, based on the number of people actively looking for work. A recent study produced for the Kentucky legislature by the Appalachian Civic Leadership Project concludes that "discouraged workers" (potential members of the labor force who have given up looking for jobs) swell true unemployment rates to over 50 percent in some KHIC counties.

"We're not in a growth area," Rickett says. "In 1950 there were 40,000 coal mining jobs around here. I think there are less than 8,000 now."

KHIC nevertheless manages to create over 200 new jobs per year. Almost all of these jobs are in manufacturing.

"It's the best way to get the most job return for the dollar invested," Rickett says. "The dollar investment per job is higher than in service businesses. But with retail jobs we'd just be moving jobs from store A to store B in the local community. If you're in manufacturing, you're exporting your product to the world."

EARNINGS ARE REINVESTED

KHIC has a staff of eight employees and two regular consultants. Its 1992 operating expenses were approximately $700,000. Just over $500,000 of these expenses were covered by income from investments—loan interest and rental income. Earnings over the amount needed to cover operating expenses are reinvested. The corporation also received approximately $200,000 in grants to cover the administrative costs of specific federal loan programs that require too much staff time, relative to the amount of income generated, to be self-supporting.

KHIC is governed by a 17-member board "as diverse as you can get," ranging from bankers to individuals with modest incomes. Turnover is slow; the cumulative tenure of the members is 195 years.

"I think we got our last operating grant around 1981," says Wayne Stewart, KHIC board president and a board member for 17 years, "We said, 'What can we do to stay alive?' We turned to things that earned money. As we earned money, we plowed it back into job-making. We know that in the kind of things we do, they can't all work. But our percentage has been good."

In fact, five KHIC-assisted ventures have failed outright, and several others are still in shaky financial condition.

"We put $200,000 equity capital in one company," says Ray Moncrief, KHIC vice president and chief operating officer. "We salvaged $6,000 of our investment. We lost $194,000 on that deal."

Most organizations would avoid mentioning that, but KHIC staffers can afford to talk matter-of-factly about risks and rewards.

"the good news," Moncrief continues, "is that we've made about $5 million. We invested $88,000 into that auto air bag business in 1988 and sold our interest out in 1992 for $2.75 million. And our investment of $500,000 in a plastics company was a success story."

Indeed it was.

Mt. Vernon Plastics, an injection molding company in Rockcastle County, was formed around 1980 by an industrial engineer who turned to KHIC after failing to attract venture capital elsewhere. After a few good years, the business began to show serious losses. The KHIC board was initially divided, Stewart recalls, over whether the situation called for putting in more money or "pulling the plug." "That was a long, drawn-out session," he says. "In the end, about midnight, the board was unanimous."

KHIC exercised an option to take over the company and, although keeping its existing management team intact, installed a staff member, Steve Meng, as temporary CEO. The infusion of money and management help sufficed to turn the company around. In 1989 KHIC sold Mt. Vernon Plastics to Reynolds Metal for a profit of approximately $3 million. The thriving plant employs 420 people, not counting secondary employment.

"The success we've had," says Rickett, "is based on our ability to be entrepreneurial. And on our ability to stay through thin times and give entrepreneurs an opportunity to fight another day."

KHIC's investment opportunities come to it in various ways, but mostly from a network of contacts developed over its 25-year history.

"A lot of our deals are networked to us by bankers, attorneys, state agencies, and just word-of-mouth from people we've partnered with," Rickett says. "Someone may drive in here with a business plan that they first brought next door to the ADD." (The offices of the Cumberland Valley Area Development District are adjacent to those of KHIC.)

THE ENTREPRENEURIAL ADVANTAGE

One of the advantages of "being entrepreneurial" is that KHIC isn't bound by the guidelines of any specific federal or state program. If it's legal, and the board approves, the staff can work out whatever combination of investment strategies seem to make the best business and human sense.

In putting a deal together, KHIC can offer a client not just money but help with special needs, such as identifying the best hardware and software for data processing.

"In an urban area," says Rickett, "you can buy these functions for a relatively inexpensive fee. In rural economic development it just doesn't work that way. Luckily, we have an experience base that allows us to do that."

The KHIC entrepreneurial tool kit has a lot of tools in it, but they can be classified under five broad headings: (1) loans (both for expansion and for working capital), (2) equity investments, (3) real estate, (4) management assistance, and (5) "partnering" (helping to put together deals involving many public and private partners). [See page 9 for how these tools are used in practice.]

Whatever tools KHIC uses, Rickett and Stewart take pains to emphasize that the bottom line for KHIC is always jobs. In September 1992, Rickett testified before a House Education and Labor subcommittee. He acknowledged that, during its 25-year history, KHIC had received roughly $12.5 million in federal grants, most in the first decade of its existence.

What, he asked, could KHIC show for that money?

First, Rickett told the committee, about 60 percent of the 2,800 people now employed by KHIC investees had been on some form of public assistance. Were this still the case, the annual cost to taxpayers would by now be approximately $14 million, taking into account food stamps, unemployment compensation, and other transfer payments. Now these people are themselves taxpayers. A reasonable estimate of their tax payments might be $9 million. Therefore, he concluded, the government's return on its past investment is by now likely to be somewhere around $23 million—per year.

Looking to the future, the KHIC board and staff have a number of projects in varying stages of planning. They'd like to use the "Aspiring Entrepreneur" program to jump-start at least one new company. They're also

considering some innovative forms of financing.

"When you're not constrained by reality, you can do a lot of things," says Rickett. Then he corrects himself: "I shouldn't say, 'reality.' I mean 'the usual way of doing things.' We invest in people. The only bias we have is that they have to put their business in southeastern Kentucky."•

IRISH-AMERICAN HERITAGE MONTH

• Mr. SIMON. Mr. President, it is my pleasure to join my colleagues in sponsoring Senate Joint Resolution 119 to designate March 1994 as Irish-American Heritage Month. This resolution is an effort to give thanks to all Irish-Americans who have contributed to our great Nation.

American men and women of Irish descent have added immeasurably to this Nation through many levels of devotion and allegiance. Whether it is in politics, arts, science, athletics, military service, and so many other fields, Irish-Americans have been able to tap into their ideals and beliefs of hard work and democracy to successfully forge their aspirations into reality.

Irish-Americans have played key roles in the life of our Nation. Irish emigrants arrived in North American as early as 1621 and ever since then have been an important part of our history. I am most proud of those Irish-Americans from my home State of Illinois who have contributed to our Nation's successes.

Industrialist, inventor, and Irish-American Cyrus McCormick used Illinois as his base to promote efficient farming techniques. The Daley family, part of Chicago's southside Irish community, has been an integral part of Chicago's Democratic leadership for the last half of this century. In addition, many of the 44-million Americans of Irish ancestry who live and work in Illinois every day spread their Irish work ethic and cheer to other Americans.

I urge my colleagues to support this resolution because it honors a large portion of our society who have played an indispensable role in shaping our Nation and reiterates how our country has effectively used ethnic diversity as a strength.•

BUT WHERE ARE THE HIGH-SKILL WORKPLACES

• Mr. SIMON. Mr. President, I recently read an article in the magazine America's Agenda by the former Secretary of Labor, Ray Marshall, and Marc Tucker, president of the National Center on Education and the Economy.

What they have to say is extremely important for the future of the economy of this country.

At one point in the article, they say:

Bill Brock, co-chair of the Commission on the Skills of the American Workforce, said when its report was released that "the good news is that there is no shortage of skilled labor in the United States. The bad news is that there is no shortage of skilled labor in the United States." The five percent of American firms moving toward high-performance work organization is the same five percent that is moving toward embracing Total Quality principles * * *. As long as that is so, there will be no real improvement in education and training of our people, because there will be no effective demand for it.

Five percent is not enough. If five percent are struggling to create learning organizations that can compete on quality and productivity and 95 percent are competing on wages and hours, the United States will slip more quickly into relative poverty with every passing year.

Ray Marshall has always been willing to be creative and yet practical. And he shows it once again.

This article is taken from a book that was published last year titled, "Thinking for a Living: Education and the Wealth of Nations."

I also noted in the article that Ray Marshall holds the Audre and Bernard Rapoport Centennial Chair in Economics and Public Affairs at the University of Texas, Austin. I was not aware that my friends, Audre and Bernard Rapoport, had endowed such a chair; but it is typical of their forward thinking that they did so and not surprising that the University of Texas should select Ray Marshall to fill that chair.

I ask to enter the article into the RECORD at this point.

The article follows:

[From America's Agenda, Spring, 1993]

BUT WHERE ARE THE HIGH-SKILL WORKPLACES?

(By Ray Marshall and Marc Tucker)

For much of this century, and indeed, right up to the present, American enterprise has been organized on the principle that most of us do not need to know much to do the work that has to be done. This system may have worked brilliantly for us until recently, but it will do so no longer.

The future now belongs to societies that organize themselves for learning. What we know and can do holds the key to economic progress, just as command of natural resources once did. Everything depends on what firms can learn from and teach to their customers and suppliers, on what countries can learn from one another, on what workers can learn from each other and the work they do, on the learning environment that families provide, and, of course, on what we learn in school. More than ever before, nations that want high incomes and full employment must develop policies that emphasize the acquisition of knowledge and skills by everyone, not just a select few. The prize will go to those countries that are organized as national learning systems, and where all institutions are organized to learn and act on what they learn.

Our most formidable competitors know this. Many newly industrialized countries know it and are vaulting forward as a result. But the United States does not. Because this country continues to operate on the premise that, for the country to be successful, only a few need to know or be able to do very much, we are poised on the precipice of a steep decline in national income, with all that this implies for our material well-being and the stability of our society.

Bill Brock, co-chair of the Commission on the Skills of the American Workforce, said when its report was released that "the good news is that there is no shortage of skilled labor in the United States. The bad news is that there is no shortage of skilled labor in the United States." The 5 percent of American firms moving toward high-performance work organization is the same 5 percent that is moving toward embracing Total Quality principles. As long as that is so, there will be no real improvement in the education and training of our people, because there will be no effective demand for it.

Five percent is not enough. If 5 percent are struggling to create learning organizations that can compete on quality and productivity and 95 percent are competing on wages and hours, the United States will slip more quickly into relative poverty with every passing year, a course, as we have pointed out, on which it is already well embarked * * *.

It is time for the President and the Congress to engage the nation in a debate about social priorities, and to pass legislation that clearly establishes full employment and high wages as the overarching domestic policy goals of the United States and sets forth a framework for achieving those objectives. We begin with proposals intended to lead to the restructuring of American business for high performance.

Provide incentives to employers to pay high wages, improve productivity, and use high-performance forms of work organization—and disincentives to those who don't: In the past, many states have tried to attract new firms or induce firms to stay or expand by offering free training, subsidized infrastructure or services, tax abatements, and so on. In the future, states could offer such inducements only to high-wage employers, which amounts to a tax on low-wage employers; or to high-productivity employers, which amounts to a tax on low-productivity employers; or to employers using high-performance work organizations, which amounts to a tax on employers using conventional forms of work organization. The point is that whereas in the past, states have focused on the quantity rather than the quality of jobs, federal and state policy can and should shift to policies that favor firms that offer the kind of high-pay, high-productivity jobs on which the future of this country depends.

Provide incentives to employers to invest in the development of their employees: The Commission on the Skills of the American Workforce observed that most of the advanced industrial countries and many of the newly industrialized countries require employers to invest a sum equal to 1 percent of salaries and wages in the continuing education and training of their employees. The United States is the rare exception to this rule. . . . There is, as one would expect, considerable resistance in the business community to the introduction of such a requirement, on the grounds that it is a tax that would further disadvantage American employers in the competitive race by adding to their costs, and that it would allow the government to create yet another bureaucracy, this time to tell firms how to carry out their internal training function. It is not clear to us, however, why a requirement of this sort would make American firms less competitive than those in Singapore, Ireland, France, Germany, Sweden, and many other countries where training set-aside requirements have

been in place for years. Nor is any great bureaucracy required; firms could simply certify on their tax return that they have used the funds in the matter required by law, and their auditors could check that they did so, just as they check other fund flows in the organization as a normal part of the audit procedure.

Establish a technical assistance program to move the management of all kinds of enterprises toward high-performance work organization . . . The sources of assistance might be research universities, land grant colleges . . . other four-year institutions, community colleges, industry associations, federal laboratories, and many others. The aid they provide should be coordinated with the state agencies responsible for economic development and related functions. Technology development and assistance should be coordinated with development of improved methods of organization and management, building on the Total Quality approach, and both should be developed in close collaboration with the people who will have to adopt the new methods. The program will have to embrace not just the fashionable fields of biotechnology and new materials technologies, but everything from fisheries to jewelry, from financial services to laundries.

But the key is the extension system [modeled after that in agriculture]: the people who are out there every day, going from firm to firm explaining what is at stake, what is to be gained by taking another route, what kind of assistance is available, what the firm will have to do, how long it will take and how much effort; and the people who actually do the audits, the training, and the hand-holding. . . . If agriculture is in fact an apt precedent, and high-quality resources are deployed to get to a significant number of firms, then such a policy could effect the practices of many employers in a relatively short time. Development of such a program is probably the single most important policy initiative that could be taken to lead employers toward high-quality, high-productivity, and high-performance forms of work organization.

(Ray Marshall, who was Secretary of Labor in the Carter Administration, currently holds the Audre and Bernard Rapoport Centennial Chair in Economics and Public Affairs at the University of Texas, Austin. Marc Tucker is president of the National Center on Education and the Economy.

(This article was adapted from "Thinking for a Living: Education and the Wealth of Nations" by Ray Marshall and Marc Tucker. Copyright ©1992 by Basic Books. Reprinted with permission of Basic Books, a division of HarperCollins Publishers Inc.)•

CONDITIONS IN BOSNIA AND HERZEGOVINA

• Mr. DECONCINI. Mr. President, I commend President Clinton for his leadership in securing an agreement at NATO to undertake military measures in response to the dire humanitarian situation in Bosnia and Herzegovina and particularly in Sarajevo. Despite the threat of intervention, however, the strangulation of Sarajevo continues. Reports this morning indicate that the Bosnian Serb forces are tightening the noose around the Bosnian capital.

Apparently the Serbs have wrested control of a critical government position in defiance of the NATO threat. If this mountain position indeed falls, the last major Moslem supply line to Sarajevo would be cut and the siege ring around the city and its 380,000 inhabitants would be complete. The fall of this key position would, according to U.N. officials, result in the displacement of as many as 32,000 people. These men, women, and children would likely flee into Sarajevo where the humanitarian situation continues to deteriorate, even as military planners prepare plans for possible action.

Most of the capital is without running water, electricity, and gas. Barely half of the humanitarian aid needed reaches the city these days. Efforts to get desperately needed relief supplies into Sarajevo continue to be hampered. As the commander of U.N. forces in Bosnia and Herzegovina said earlier today, "to deliberately withhold humanitarian aid is unforgivable." His remarks came as Bosnian Croat forces blocked a convoy of diesel fuel for the third day. The convoy has fuel for Sarajevo hospitals, fuel for bread ovens to help feed the starving and fuel for water trucks and pumps.

Mr. President, I ask unanimous consent that the text of a letter from President Izetbegovic to Secretary General Boutros Ghali on current conditions in Bosnia and Herzegovina be included in the RECORD.

Mr. President, any further delays in undertaking resolute action to break the 16-month siege of Sarajevo only plays into the hands of the aggressors. We must act.

REPUBLIC OF BOSNIA AND HERZEGOVINA,
August 3, 1993.

(United Nations Secretary General Boutros Boutros Ghali, President of the Council of Ministers of the European Communities, Minister of Foreign Affairs of Belgium, Mr. Willy Claes)

SIRS: The Delegation of The Republic of Bosnia and Herzegovina is here in Geneva negotiating in good faith in order to seek a settlement in accordance with the United Nations Charter, the relevant Security Council Resolutions, and the Principals of the London Conference. Despite the prior assurances we received from the United Nations and the European Community before coming here, we have just now received information that yesterday, the aggressor forces launched repeated attacks against the towns of Brcko, Maglaj, Tesanj, Olovo, and upon the mountains around the capital of our State, Sarajevo. In the town of Tesanj, the aggressors used ground to ground missiles of the Luna type, with devastating affect upon the civilian population. Moreover, the humanitarian situation for the civilian population living in these areas has deteriorated to sub-human conditions. There is no water, food, or gas supplies for tens of thousands of human beings.

We wish to draw to your attention that here at United Nations Headquarters in Geneva we are repeatedly confronted with diktats and ultimatums that we accept faits accomplis based upon the illegal use of force, war crimes, ethnic cleansing and genocide. This is in explicit violation of the United Nations Charter, the relevant Security Council Resolutions, and the Principles of the London Conference.

The recent initiatives by President Clinton and NATO upholding the Principles of the United Nations Charter and the London Conference have encouraged us to remain here despite all these difficulties. However, in the light of these recent developments, we are asking you to take urgent and necessary action to terminate and reverse these results of aggression and genocide for the purpose of promoting a settlement here in Geneva, and to alleviate the catastrophic suffering of our people at home. On our part, this is to inform you that the Presidency of the Republic of Bosnia and Herzegovina has today issued an Order to our Armed Forces to use force strictly in self-defense.

Please accept the expressions of my highest consideration.

ALIJA IZETBEGOVIN,
President of the Presidency.

STATEMENT BY MIKE FARRELL ON CAPITAL PUNISHMENT

• Mr. SIMON. Mr. President, in my 1984 campaign for the U.S. Senate, I had the chance to meet and campaign with Mike Farrell, an actor who is perhaps best known for his work in the television series, "MASH." I came to know and respect Mike Farrell for his dedication to humanitarian causes.

Recently, he made a speech to the Iowa State Legislature on the issue of capital punishment.

I recognize that his position is not popular, but it is of interest to me that my opponent in my reelection campaign in 1990 used the death penalty issue against me, and I ended up with the biggest plurality of any contested candidate for Senator or Governor of either political party in the Nation.

People who stand up for their convictions are respected by the public.

Mike Farrell's statement, delivered in February of this year, is a call for a more humanitarian response than we now provide.

Canada to the north of us does not have capital punishment. Mexico to the south of us does not have capital punishment. The Western European nations do not have capital punishment. In fact, the United States, China, and Russia are among the few industrial nations that still retain capital punishment.

I would add one other point that Mike Farrell doesn't mention: If you have enough money to hire the best lawyers, you can avoid capital punishment. Capital punishment is a sanction we reserve for people of modest means.

If anyone thinks that makes sense, I do not understand how he or she can reach that conclusion.

I urge my colleagues to read Mike Farrell's statement, and I ask to insert it into the RECORD at this point.

The statement follows:

Thank you for allowing me the opportunity to speak before you this evening. Though I am not a resident of the state, I feel a particular affinity for Iowa and Iowans, having been born not far from here in South St. Paul. I have many friends here, have spent a good deal of time in the area

and, of course, have enjoyed my wife's association with the Donna Reed Festival for the Performing Arts in Denison, to name only a few connections.

The subject this evening is a grave one. The notion that this state, the heart of America, which enjoys the distinction of being one of the thirteen states in the Union with the courage to stand firm against the rising tide of blood lust in this country, would consider changing that status, is a chilling one for those of us who believe that the Founding Fathers gave us a higher purpose to live up to when they said we in this country possessed "certain inalienable rights."

The issue of capital punishment has, tragically, become something of a political football in our country today, as a result of which it is the subject of much rhetorical flourish, a great deal of emotionalism and painfully little serious consideration. That being the case, I particularly appreciate the time given here this evening.

I trust you will hear from others that we now know the death penalty is more expensive than keeping the perpetrator in prison for life, that it is insupportable on moral, religious or ethical grounds, and, importantly, that contrary to the conventional wisdom, polls all over the country now show that the majority of people, when the options are available and clearly explained, choose a maximum sentence of life without possibility of parole or life with a minimum of 25 years plus restitution to the victim's family rather than the death penalty, so I'd like to approach it from a slightly different point of view.

Though many continue to turn away in confusion, unable to face their conflicting emotional responses when 20,000 volts surge through the body of one of our own, cooking his flesh, when he writhes, gasping in pain as the cyanide fumes sear his lungs, strangling him, or dangles, gasping, gagging, kicking at the end of the rope, or feels the firing squad's bullets tearing through his flesh or lies, burning, crucified on a gurney as the poison courses murderously toward his heart, today in the United States of America, of all places, human beings are put to death at the hands of the state. How have we come to the place where we, the world-renowned champion of human rights, can pretend to not understand that the ultimate violation of human rights is taking place in our own back yards, with our consent?

The answer is politics. Not politics as Aristotle described it, "the taking care of the common good of all the people," but the worst kind of politics: the manipulation of people's fears in order to advance one's own political agenda.

About 25 years ago, when we were going through the throes of rediscovering who and what we are as Americans, when the Vietnam war was raging and causing us to ask what we truly stood for, opinion polls on the subject of the death penalty were almost exactly the opposite of what they supposedly say today. At that point, claiming they had a "secret plan" to end the war, Richard Nixon and Spiro Agnew came to power and brought with them a right wing agenda which, I submit, has thrown the country into a tailspin from which it has still not recovered.

The tactics, in retrospect, are painfully, almost embarrassingly obvious. They lied to us, they amassed power and wealth for themselves and their friends and they kept us off balance by inflaming our fears, preaching hatred and racial division through the clever use of code words and terms like "Southern Strategy" and "state's rights" and "forced busing." They sowed seeds of distrust among us by denouncing "permissiveness," by insisting our problems would be solved if we'd only "get tough on crime," by enlisting the media through the use of catchy alliterations about "nattering nabobs of negativism" and by labeling young people in our country "bums" and "traitors" who were "soft on communism" because they disagreed with policies which, as we now know, were in fact murderous breaches of international law and antithetical to everything for which we stand.

After a brief respite during the Carter years, when an attempt was made to articulate a new awareness of human rights, the same old right wing agenda, never much out of the news, was breathed new life through the charming simplicity of Ronald Reagan, whose attacks on fictitious "Cadillac-driving welfare queens," on civil rights laws, on "racial quotas," interwoven with false claims that people are out of work because they're "lazy", eat in soup kitchens because "they like the food" and are homeless by choice, gulled many Americans into accepting the notion that the problem was "those others" and the answer was the same old right wing rhetoric, "get tough on crime."

Being "tough on crime," then, had become the new paradigm for manhood and rough and ready Americanism. And politicians of both parties, ever aware of the value of symbolism for the enhancement of their careers, bought in with a vengeance. Some legislators, though recognizing a moral and ethical disaster in the making, took a low profile on the subject because they felt, incorrectly, I think, that they would otherwise appear soft, weak, or be made politically vulnerable. Others, recognizing an opportunity to make points, chose the most dramatic pose available. How better to show you're tough on crime than to come out for killing people? Kill kidnappers, kill drug abusers, kill "drug kingpins," kill traitors, kill sex criminals, kill killers. Let's at least kill killers. Who could be soft on killers?

President Bush, terrified of being thought a wimp, became a champion of death. He Willie Horton-ed his way into the White House, further proved his mettle by attempting to expand the death penalty through legislation and by appointments to the Supreme Court, then set up a couple of Hitlers abroad to demonize, further implanting the notion that manhood equals patriotism equals a willingness to kill.

President Roosevelt was right about fear and we forget his admonition at our peril. The politics of fear, as manipulated by the right wing, has riven our country. Today, while most of their political and economic agenda has been stripped of its glib cover and exposed for the disaster it is, the primary vestige of their social and cultural agenda still in place is the legacy of the mean-spirited insistence that the way to "get tough on crime" is to punish the poor and minorities, to build more prisons so we can put more of them out of sight, and to kill.

The result?

The prison population in our country has nearly tripled since 1975 without creating a noticeable change in violent crime.

There are more young African-American men in prison in our country today than there are in college.

In a recent study, American high school students were asked if they'd rather be rich or smart. They chose rich.

If you don't see the connection, I'm sorry. Something is dreadfully wrong with the way we've been doing things and authoritarianism is not the answer. It's the problem. People have been told they don't matter in so many ways they're beginning to believe it. And act like it. They need to be reinvested with a sense of their own value and that doesn't come from having the state in the business of killing its citizens. The human wreckage left in the wake of a system of state sanctioned killing reaches far beyond the victim, the condemned and their families. It touches all of us.

Studies have now found over 140 instances where Americans sentenced to death in this country were later proven to be innocent. Unfortunately, two dozen of them had already been executed.

The 2,676 inmates on death rows in our country today are disproportionately poor, members of minority groups, and those who had an inadequate, ill-prepared, often criminally incompetent defense. 10% of them are mentally retarded, an unknown number are seriously mentally ill; one study showed that 9 out of 10 were physically and/or sexually abused as children. Since the fetal alcohol syndrome and its effects on adults behavior are only now coming to be fully understood, only God knows how many of its victims populate this community, or are out there knocking at the door.

Let me give you a few specifics:

Barry Lee Fairchild is soon to be executed in Arkansas for the rape/murder of a white nurse. New evidence in the case shows that he was the fourteenth black man to have been brought into the sheriff's office. Each was told there was proof he had done it. Each was beaten in an attempt to extract a confession. The other thirteen refused to submit. Barry gave in. The difference is that he is mentally retarded.

In January of 1993, Charles Stamper was carried to the electric chair in Virginia after being lifted by three guards out of his wheelchair.

On November 20, 1992, Cornelius Singleton was electrocuted after signing, with his X, a confession he couldn't read. He had an IQ of approximately 61.

In January of 1992, Ricky Rector, who had been effectively lobotomized by a self-inflicted gunshot wound at the time of his crime and had virtually no comprehension of his situation, was led to his execution. He left the dessert from his last meal waiting in his cell for when he returned. (The chaplain at that institution subsequently left, went into psychiatric care and today refers to Ricky's execution as a crime in itself. He says "We're not supposed to execute children.")

In Florida, in 1990, Jesse Tafero's head was set afire during his electrocution.

This month the Supreme Court of the United States, in the Herrera case, held that innocence was not sufficient justification to stop an execution; a decision Justice Blackmun, in dissent, said was "perilously close to simple murder."

Rather than take more of your time, let me urge you to read, in this week's New Yorker magazine, a compelling article on the life and death of Ricky Rector. Also, I recommend a new book by Michael Radelet, Hugo Bedau and Constance Putnam, "In Spite of Innocence—The Ordeal of 400 Americans Wrongly Convicted of Crimes Punishable by Death."

I thank you for your time and attention and urge you to remember the words of John Dewey, who said, "The human power to respond to reason and truth protects democracy." Thoughtful, enlightened, compassionate leadership is what is urgently needed

today, both here in the State of Iowa and in our country at large. State sanctioned killing is neither an acceptable answer to today's problems nor an appropriate lesson for us to be teaching our children.

COMMEMORATING GERMAN-AMERICAN DAY

Mr. D'AMATO. Mr. President, I rise today to honor German-Americans and their contribution to the United States of America. In order to commemorate their accomplishments as citizens of America, I urge the President to designate October 6, 1993 as "German-American Day."

German immigrants first arrived in Jamestown, VA, in October 1608, and founded Germantown, PA, on October 6, 1683. This event has already been commemorated as the "German-American Tricentennial Celebration" and has been designated as such by congressional resolution and Presidential Proclamation. Since the arrival of German immigrants in the 17th century, German-Americans have contributed a great deal as a community. The number of American citizens of German descent has grown to over 50 million. In addition to individual accomplishments, German-Americans have added a great deal to American culture and diversity.

Recently, we have had the fortune to witness the unification of Germany. As the Berlin Wall came down, democracy spread to Eastern Germany. Today, Germany has long been a significant actor in the European arena. Peaceful reunification with East Germany has only enhanced its position. German-Americans are proud of the friendship between the United States and Germany as is evidenced by the creation of the German-American Friendship Garden in Washington, DC.

For the past 6 years, Congress unanimously supported and passed joint resolutions designating October 6 as "German-American Day." It is very important that this tradition continues. It shows our support and appreciation for the accomplishments and contributions of German-Americans in the United States.

AUTHORIZING PRINTING OF A PUBLICATION

Mr. KENNEDY. Madam President, I ask unanimous consent that the Senate proceed to the consideration of Senate Resolution 138, a resolution introduced earlier today by Senators PELL and BIDEN authorizing the printing of the publication "To Stand Against Aggression: Milosevic, the Bosnian Republic, and the Conscience of the West;" That the resolution be agreed to, 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 resolution (S. Res. 138) was agreed to; as follows:

S. RES. 138

Resolved, That an additional 250 copies of the publication entitled "To Stand Against Aggression: Milosevic, the Bosnian Republic, and the Conscience of the West" be printed for the use of the Committee on Foreign Relations.

GERMAN AMERICAN DAY

Mr. KENNEDY. Madam President, I ask unanimous consent that the Senate proceed to immediate consideration of Senate Joint Resolution 121, a bill to designate October 6, 1993 and 1994 as "German American Day," introduced earlier today by Senator RIEGLE and others; that the joint resolution be deemed read three times, passed, and the motion to reconsider laid upon the table; that the preamble be agreed to; and that any statements relating to this measure appear in the RECORD at the appropriate place.

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

The joint resolution (S.J. Res. 121) was deemed read three times and passed.

The preamble was agreed to.

The joint resolution (S.J. Res. 121), with its preamble, is as follows:

S.J. RES. 121

Whereas German immigrants first arrived in America at Jamestown, Virginia, in October 1608, and the 400th anniversary of the arrival of these first Germans will be celebrated in 2008;

Whereas the first German settlement in America was founded on October 6th, 1683 at Germantown, Pennsylvania, and October 6, 1983, was designated as the German-American Tricentennial Celebration by Congressional Resolution and Presidential Proclamation;

Whereas the number of American citizens of German ancestry has grown over 50 million since the first German immigrants arrived in this country;

Whereas German-Americans are proud of the existing friendship and cooperation between the Federal Republic of Germany and the United States;

Whereas the German-American Friendship Garden in Washington, D.C., is evidence of this cooperation;

Whereas German-American support expansion of the existing friendship between Germany and the United States, and will continue to contribute to the culture of the United States, support its government and democratic principles, and help ensure the freedom of all people;

Whereas German unification stands as a symbol of greater international cooperation and has reemphasized the prominent position of Germany in the European community and between the East and the West;

Whereas Congress unanimously passed joint resolutions designating October 6th of 1987, 1988, 1989, 1990, 1991, and 1992, each as "German-American Day": Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 6, 1993 and 1994, are each designated as "German-American Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the days with appropriate ceremonies and activities.

DESIGNATION OF OCTOBER 6, 1993 AND 1994 AS GERMAN-AMERICAN DAY

Mr. RIEGLE. Madam President, I stand before you today not only as an American, but as a proud German-American. Today, I am introducing legislation to designate October 6, 1993 and 1994 as German-American Day. On October 6, we will commemorate the common heritage shared by 1 in every 4 Americans—over 50 million people. In my own State of Michigan, more than 2.5 million residents claim at least partial German ancestry.

For more than three centuries, since the first Germans arrived in America near Germantown, PA on October 6, 1983, Germans have contributed to our Nation's unique blend of cultures. German-Americans have brought their talents to all walks of life and have touched each and every one of us. We have all benefitted from the inventions of German-Americans such as Levi Strauss and George Westinghouse. The achievements of German-American scientist Albert Einstein supply the link which joins the knowledge of the past with the advanced technology of today. German-American leaders, including former President Dwight D. Eisenhower and the labor movement's Robert Wagner, answered our country's call to public service, helping to guide us through critical periods of national change. And of course, we have all experienced the delights of German cuisine—from hot dogs to hamburgers, Black Forest cake to sauerbraten.

Elements of German contributions to American life extend to this day. Our challenge is to ensure that they remain a part of our heritage through the 21st century and beyond. We live in an increasingly interdependent world—a world where relationships are evermore important as we emphasize consensus over conflict. In such a world, it is critical that we reaffirm the special bond between the German and American peoples and the spirit of friendship and cooperation that ties our peoples together.

LAND COMPONENTS OF THE NATIONAL WILDERNESS PRESERVATION SYSTEM

Mr. KENNEDY. Madam President, I ask unanimous consent that the Senate proceed to immediate consideration of Calendar No. 176, H.R. 631, an act to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, that the bill be deemed read three

times, passed and the motion to reconsider be laid upon the table; further that any statements relating to this measure appear at the appropriate place in the RECORD.

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

The bill (H.R. 631) was deemed read three times and passed.

Mr. BROWN. Madam President, today we consider H.R. 631, the Colorado Wilderness Act of 1993. Efforts to enact Colorado wilderness legislation have spanned more than a dozen years. This bill is the product of extensive meetings among the Colorado delegation and the House and Senate committee leadership, leading to this compromise. Both Colorado environmental groups and the general public who use Federal property have endorsed this compromise as an acceptable solution. The water issues associated with these proposed wilderness areas were particularly difficult to resolve because of the strong and diametrically opposed views held by many members of the water user and environmental communities. Fortunately, this bill contains water language that is a true compromise that does not injure the fundamental principles that have much value for Colorado—protection of wild lands and protection of Colorado's future ability to develop and use all of its interstate water entitlements.

The issue of the existence of Federal reserved water rights for the upstream areas is moot, because the bill provides that no one can assert a claim for water or water rights based on the designation of these wilderness areas, and no court or agency could ever consider in any fashion such a claim. This ensures that wilderness status will never result in an encroachment on Colorado's ability to use its interstate water allocations. The bill also addresses the difficult issue of downstream wilderness study areas, where there could be conflicts with upstream water storage and diversion. Where potential conflicts exist, the areas are not designated as wilderness areas. This ensures that there will be no effect on existing and future water use. In order to make this intent crystal clear, there is also an explicit disclaimer of a Federal reserved right for these areas, and the existence of these areas cannot be used as a basis to affect upstream activities as a part of any administrative or regulatory program.

As stated in the findings, section 8 is entirely premised on certain specific characteristics of the lands designated as wilderness by section 2(a) of the bill, namely:

First, these lands are located at the headwaters of the streams and rivers located on those lands, with few if any opportunities for diversion, storage, or other uses of water that could occur outside these areas that would adversely affect the wilderness values of the areas;

Second, these lands are not suitable for use for development of new water resources facilities or the expansion of existing water resources facilities; and

Third, therefore, proper management and protection of the wilderness values of the specific areas covered by section 2(a) can be provided for in ways different from those employed with regard to wilderness lands lacking these particular attributes.

This being the case, section 8 is intended to protect the wilderness value of the lands designated by means other than those based on assertion of Federal reserved water rights.

I would like to thank Senator CAMPBELL for his years of working on this legislation, and to ask him to explain how this bill goes about eliminating unnecessary litigation regarding reserved water rights.

Mr. CAMPBELL. I want to thank Senator BROWN for his comments. Subsection 8(b)(1) would prohibit any person, including the Secretary of Agriculture and any other officer, employee, representative, or agent of the United States, from asserting in any court or agency any claim for water or water rights in Colorado based on construing any portion of the bill as construing either an express or implied reservation of water or water rights. It also would deny any court or agency the ability to consider any such claim.

The effect of enactment of paragraph 8(b)(1) will be to deny anyone, including but not limited to a person holding an established office of the national Government, the authority to assert, and to deny a court or agency the jurisdiction to consider, a claim that the bill's designation as wilderness of the lands described in section 2(a) has the effect of reserving any water or water right with respect to those lands. Congress is not consenting to any suit against the United States in State court or to have considered in any other forum any claim that these designations created a basis for a claim to water or water rights.

Mr. BROWN. The explanation of the distinguished Senator is consistent with my own understanding of the provision. I also understand that concern has been raised regarding whether this provision violates the U.S. Constitution in the way it goes about eliminating the threat of unnecessary and burdensome litigation. I think you would agree that the Colorado delegation has considered several issues which have been raised regarding section 8(b)(1) of H.R. 631. First, the preclusion of consideration of any claim to or for water or water right by any court or agency in this section was not intended to and does not address or affect the original jurisdiction of the U.S. Supreme Court under article III, Section 2, clause 2 of the U.S. Constitution.

Second, an act of Congress is required to designate a wilderness area, and Congress is fully aware of its ability to expressly reserve water or water rights for such areas. Congress has considered the issue and has chosen not to assert a Federal reserved water right or claim to water for these areas. Rather, it has decided to protect the resources of these areas in another manner. This legislative decision regarding how best to preserve these areas is within the sole prerogative of Congress. The preclusion of assertion of any claim for water or water rights by any agency or person is a limitation on the assertion of a theoretical cause of action relating to wilderness designation. There cannot be a denial of rights granted under the first amendment to the U.S. Constitution, where, as here, Congress determined that there is no Federal question to be litigated as to the existence of a Federal reserved water right for these areas. Further, the prohibition of any such claim or assertion serves to avoid frivolous litigation while defining the jurisdiction of the courts over Federal questions. In this language, Congress makes clear that it does not want others to assert or claim water or water rights where it has explicitly chosen to not assert a Federal reserved water right or other claim to water for these wilderness areas. Finally, I would like to emphasize that the wilderness areas designated by this act would not have been designated in the absence of this prohibition.

Mr. CAMPBELL. I believe it is clear that the Colorado delegation has adequately considered and addressed these issues. It is my understanding that the committee has also reviewed these issues and have come to the same conclusion.

Mr. BROWN. Looking at paragraph 8(b)(2), I believe this provision is unique in the fact that it clarifies several aspects of the bill's effects with regard to water or water rights. As I read it, subparagraph (b)(2)(A) states that nothing in the bill constitutes or is to be construed as either an express or implied reservation of any water or water right with respect to the Piedra, Robideau, and Tabequache areas identified in section 9, the Bowen Gulch Protection Area identified in section 5, or the Fossil Ridge Recreation Management Area identified in section 6. For this reason, these areas are not designated as wilderness.

Mr. CAMPBELL. I believe Senator BROWN is exactly right. In addition, we should note that subparagraph (b)(2)(B) goes on to state that nothing in the bill is to be construed as a creation, recognition, disclaimer, relinquishment, or reduction of any water rights of the United States in Colorado existing before the bill's enactment, except as provided in subsection 8(g)(2). Thus, with the one exception cited, the bill

would have no effect on any water rights of the United States that may already exist in Colorado. Further, subparagraph (b)(2)(C) provides that with the exception of subsection 8(g)(2), nothing in the bill is to be construed as constituting an interpretation of any other Act and subparagraph (b)(2)(D) provides that nothing in section 8 is to be construed as establishing a precedent with regard to any future wilderness designations.

Mr. BROWN. Key to the protection of the wilderness values in this newly designated wilderness is the provision in subsection 8(c) dealing with water resource facilities. Senator CAMPBELL, could you explain to us exactly how this subsection would work?

Mr. CAMPBELL. I would be happy to discuss this important provision. This subsection would simply prohibit any U.S. officer, employee, or agent, including the President, from funding, assisting, authorizing, licensing, or permitting the development of any new water resource facility or the enlargement of any existing water resource facility within the Fossil Ridge Recreation Management Area, the Bowen Gulch Protection Area, the Piedra, Roubideau, and Tabeguache Areas, or the lands the bill designates as wilderness areas. This prohibition would apply notwithstanding any other provision of the law.

In addition to the excellent protection for wilderness areas, I understand that protection for existing water facilities is also offered. Is that correct?

Mr. BROWN. Senator CAMPBELL is correct. Subsection 8(d) addresses access to and operation of existing water resource facilities within the areas described in sections 2, 5, 6, and 9 of the bill. Paragraph (d)(1) would direct the relevant Secretary to allow reasonable access to such facilities in existence on the date of enactment of the bill, including motorized access where necessary and customarily employed on routes in existence on that date, subject to the provisions of subsection 8(d).

Paragraph (d)(2) specifies that existing access routes within the areas described in sections 2, 5, 6, and 9 customarily employed as of the date of the bill's enactment may be used, maintained, repaired, and replaced to the extent necessary to maintain their present function, so long as the function, design, and serviceable operation of these routes is not modified so as to increase the adverse impacts on these areas.

Paragraph (d)(3) provides that, subject to other provisions in this bill, the relevant Secretary is to allow water resource facilities in existence on the date of the bill's enactment within the areas described I've previously outlined to be used, operated, repaired, maintained, and replaced to the extent necessary for the continued exercise, in accordance with Colorado law, of vested absolute or conditional water rights adjudicated prior to the bill's date of enactment by a court of competent jurisdiction for use in connection with such facilities. The paragraph also specified that the impact of an existing facility within an area previously mentioned on the water resources and values of such an area shall not be increased as a result of any change in the adjudicated type of use of such a facility (as compared with the type of use adjudicated as of the date of enactment of the bill).

This paragraph (d)(3) establishes that the obligation of the relevant Secretary to allow the continued operation, maintenance, and use of water resource facilities is limited to those facilities that are in existence as of the date of this act for the exercise, in accordance with Colorado law, of all water rights adjudicated for use in connection with those facilities prior to enactment of this act. These existing water rights may also be changed under State law so long as the impact on the water resources and values of the wilderness area is not increased as a result of the change. Consequently, by way of example, there would be no barrier to changes in the location or type of use so long as the change did not increase the quantity or time of diversion from these facilities in a manner which increased the impact of the existing facility on the water resources and values of the area. This paragraph does not modify or change Colorado law relating to these water rights in any respect.

Paragraph (d)(4) is a mandatory requirement that water resources facilities, and access routes serving such facilities, in existence on the date of the bill's enactment within the areas described in sections 2, 5, 6, and 9 shall be maintained and repaired when and to the extent necessary to prevent increased adverse impacts on the resources and value of those areas.

Finally, subsection 8(e) is a savings clause, stating that except as provided in subsections 8(c) and 8(d), neither the provisions of the bill related to the Fossil Ridge Recreation Management Area, the Bowen Gulch Protection Area, the Piedra, Roubideau, and Tabeguache Areas, and the lands designated as wilderness by section 2(a), nor the wilderness status of the lands so designated by section 2(a), is to be construed to affect or limit the use, operation, maintenance, repair, modification, or replacement of water resource facilities in existence on the date of the bill's enactment within the boundaries of any of these areas. The intent of subsection 8(e) is to make clear that subsections 8(c) and 8(d) are the only parts of the bill that govern such use, operation, maintenance, repair, modification, or replacement of existing water resource facilities within these areas.

Subsection 8(g) addresses a number of difficult interstate water matters. Senator CAMPBELL has asked to be recognized to disusss this particular matter.

Mr. CAMPBELL. I thank the Senator. Subsection 8(g) has two paragraphs. Paragraph 8(g)(1) provides that nothing in the bill or in any previous act designating any lands as wilderness is to be construed as limiting, altering, modifying, or amending any of the interstate compacts or equitable apportionment decrees that apportion water among and between the State of Colorado and other States. This paragraph also states that except as expressly provided in section 8, nothing in the bill will affect or limit the development or use of Colorado's full apportionment of such waters by existing and future holders of vested water rights.

Paragraph 8(g)(2) relates solely to the Platte River Wilderness established by Public Law 98-550, which is located on the boundary between Colorado and Wyoming. This paragraph provides that no person, including the Secretary of Agriculture or any other officer, employee, or agent of the United States, shall assert in any court or agency any rights, and no U.S. court or agency shall consider any claim or defense based on such rights, which may be determined to have been established for waters of the North Platte River for purposes of such wilderness area, to the extent that such rights would limit the use of development of water within Colorado by present and future holders of vested water rights in the North Platte River and its tributaries to the full extent allowed under interstate compact or applicable U.S. Supreme Court equitable decree. The paragraph also provides that any such U.S. rights are to exercised so as not to prevent the use or development of Colorado's full entitlement to interstate waters of the North Platte and its Colorado tributaries allowed under interstate compact or U.S. Supreme Court equitable decrees.

Mr. BROWN. As has been fully explained, H.R. 631 represents a bipartisan effort on behalf of the Colorado delegation to establish wilderness areas within their State. I would like to commend the committee for allowing the Colorado delegation to determine wilderness issues within their own boundaries. I urge support of H.R. 631.

COLORADO WILDERNESS ACT

Mr. CAMPBELL. Madam President, Senator BROWN and I nearly succeeded in passing this bill in the waning hours of the 102d Congress. Unfortunately, although the Senate passed the bill, the House adjourned before it could be passed by unanimous consent.

Twelve years in the making, crafting this bill has taken Herculean efforts. The delegation first developed a compromise wilderness bill in 1984. The bill

passed the House, but before action could be taken by the Senate in 1985, U.S. District Court Judge Kane decided Congress intended wilderness areas to have water rights, just as previous decisions reserved water for Indian reservations and forests. Judge Kane did not decide the basis on which those rights should be quantified, and was immediately appealed. The decision, however, halted the work of the Colorado congressional delegation to resolve the fate of forested areas that were left in study status following the passage of the first Colorado wilderness bill, Public Law 95-560, in 1980.

In 1980, by enactment of Public Law 96-560, Congress specified the future management of most of the Colorado national forest lands with regard to which the President, pursuant to the Wilderness Act, previously had made recommendations relating to wilderness designation, including recommendations resulting from the Forest Service's RARE II review process.

Regarding 11 other areas in Colorado, however, Public Law 96-560 provided for further study and for the submission of recommendations for their future management as components of the National Wilderness Preservation System or otherwise.

This bill is the product of the Energy and Natural Resources Committee's consideration of the administration's recommendations regarding not only those 11 areas, but also some other portions of Colorado's national forests, and also addresses the future management of some public lands managed by the Bureau of Land Management [BLM], which pursuant to section 603 of the Federal Land Policy and Management Act of 1976 have been studied for possible designation as wilderness. In the bill as reported, some of these public lands would be transferred to management by the Forest Service while others would continue to be managed by the BLM.

WATER RIGHTS

Obviously, the most significant aspect of the bill is the language regarding wilderness reserve water rights. The water related provisions of S. 206 has three basic purposes:

First, to provide for the operation, maintenance, repair and replacement of existing water facilities within the wilderness additions;

Second, to alleviate Federal preemption of Colorado water law as to the newly designated wilderness lands;

Third, to utilize Colorado water law in the protection of wilderness values.

The water language of S. 206 provides explicit recognition of, and protection for, water-related resource values of the wilderness area. This is accomplished by preventing the construction of any new water projects or expansion of existing facilities in the wilderness areas designated by this act. Preservation of the water-related wilderness values of the newly designated headwaters wilderness areas are protected by a prohibition on new facilities—not by restricting Colorado's right to its own water.

The water language in the bill is entirely premised on certain specific characteristics of the lands designated as wilderness by section 2(a) of the bill, namely:

First, these lands are located at the headwaters of the streams and rivers located on those lands, with few if any opportunities for diversion, storage, or other uses of water that could occur outside these areas that would adversely affect the wilderness values of the areas;

Second, these lands are not suitable for use for development of new water resource facilities or the expansion of existing water resource facilities; and

Third, therefore, proper management and protection of the wilderness values of the specific areas covered by section 2(a) can be provided for in ways different from those employed with regard to wilderness lands lacking these particular attributes.

This being the case, section 8 is intended to protect the wilderness values of the lands described in section 2(a) by means other than those based on assertion of Federal reserved water rights.

For instance, subsection 8(b)(1) of the bill would prohibit any person—including the Secretary of Agriculture and any other officer, employee, representative, or agent of the United States—from asserting in any court or agency any claim for water or water rights in Colorado based on construing any portion of the bill—or the designation by the bill of any lands as wilderness—as constituting either an express or implied reservation of water or water rights. It also would deny any court or agency the jurisdiction to consider any such claim.

The effect of enactment of paragraph 8(b)(1) will be to deny anyone—including but not limited to a person holding an established office of the National Government—the authority to assert and to deny a court or agency the jurisdiction to consider, a claim that the bill's designation as wilderness of the lands described in section 2(a) has the effect of reserving any water or water right with respect to those lands. Congress is not consenting to be sued in State court or to have considered in any other forum any claim that a reserved water right exists for these areas.

The preclusion of consideration of any claim to or for water or water right by any court or agency in this section was not intended to and does not address or affect the original jurisdiction of the U.S. Supreme Court under article III, section 2, clause 2 of the U.S. Constitution.

Second, an act of Congress is required to designate a wilderness area, and Congress is fully aware of its ability to expressly reserve water for such areas. Congress has considered the issue and has chosen not to assert a Federal reserved water right for these areas. Rather, it has decided to protect the resources of these areas in another manner. This legislative decision regarding how best to preserve these areas is within the sole prerogative of Congress. The preclusion of assertion of any claim for water or water rights by any agency or person is a limitation on the assertion of a theoretical cause of action relating to wilderness designation. There cannot be a denial of rights granted under the first amendment to the U.S. Constitution, where, as here, Congress determined that there is no Federal question to be litigated as to the existence of a Federal reserved water right for these areas. Further, the prohibition of any such claim or assertion serves to avoid frivolous litigation while defining the jurisdiction of the courts over Federal questions. Congress does not want others to assert or claim water or water rights where it has explicitly chosen to not assert a Federal reserved water right for these wilderness areas. Finally, I wish to emphasize that the wilderness areas designated by this act would not have been designated in the absence of this prohibition.

The language pertaining to water rights found in paragraph 8(b)(2) clarifies several aspects of the bill's effects with regard to water or water rights. Subparagraph (b)(2)(A) states that nothing in the bill constitutes or is to be construed as either an express or implied reservation of any water or water right with respect to the Piedra, Roubideau, and Tabequache areas identified in section 9, the Bowen Gulch Protection Area identified in section 5, or the Fossil Ridge Recreation Management Area identified in section 6. These areas are not designated as wilderness.

The language in subparagraph (b)(2)(C) provides that with the exception of subsection 8(g)(2), nothing in the bill is to be construed as constituting an interpretation of any other act or any designation made by or pursuant thereto; and subparagraph (b)(2)(D) provides that nothing in section 8 is to be construed as establishing a precedent with regard to any future wilderness designations.

The language in subsection 8(c) of the bill deals with water resource facilities—meaning irrigation and pumping facilities, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, transmission and other ancillary facilities, and other water diversion, storage, and carriage structures.

This subsection would prohibit any U.S. officer, employee, or agent—including the President—from funding, assisting, authorizing, licensing, or

permitting the development of any new water resource facility or the enlargement of any existing water resource facility within any of the areas described in sections 2, 5, 6, or 9—that is, the Fossil Ridge Recreation Management Area, the Bowen Gulch Protection Area, the Piedra, Roubideau, and Tabequache Areas, and the lands the bill designates as wilderness. This prohibition would apply notwithstanding any other provision of law.

The language also directs the relevant Secretary to allow reasonable access to such facilities in existence on the date of enactment of the bill, including motorized access where necessary and customarily employed on routes in existence on that date, subject to the provisions of subsection 8(d).

The language in paragraph 8(d)(2) specifies that existing access routes within the areas described in sections 2, 5, 6, and 9 customarily employed as of the date of the bill's enactment may be used, maintained, repaired, and replaced to the extent necessary to maintain their present function, so long as the function, design, and serviceable operation of these routes is not modified so as to increase the adverse impacts on these areas.

The language in paragraph 8(d)(3) provides that, subject to subsections 8(c) and 8(d), the relevant Secretary is to allow water resource facilities in existence on the date of the bill's enactment within the areas described in sections 2, 5, 6, and 9 to be used, operated, repaired, maintained, and replaced to the extent necessary for the continued exercise, in accordance with Colorado law, of vested water rights adjudicated prior to the bill's date of enactment by a court of competent jurisdiction for use in connection with such facilities. The paragraph also specifies that the impact of an existing facility within an area described in section 2, 5, 6, or 9 on the water resources and values of such an area shall not be increased as a result of any change in the adjudicated type of use of such a facility—as compared with the type of use adjudicated as of the date of enactment of the bill.

The language of paragraph 8(d)(3) also establishes that the obligation of the relevant Secretary to allow the continued operation, maintenance, and use of water resource facilities is limited to those facilities that are in existence as of the date of this act for the exercise, in accordance with Colorado law, of all water rights adjudicated for use in connection with those facilities prior to enactment of this act. Such a water right may be utilized under State law so long as the impact on the water resources and values of the wilderness area is not increased. Consequently, by way of example, there would be no barrier to changes in the location or type of use so long as the change did not increase the quantity or time of diversions from these facilities in a manner which increased the impact of the existing facility on the water resources and values of the area. This paragraph does not modify or change Colorado law relating to these water rights in any respect.

The language of paragraph 8(d)(4) is a mandatory requirement that water resource facilities, and access routes serving such facilities, in existence on the date of the bill's enactment within the areas described in sections 2, 5, 6, and 9 shall be maintained and repaired when and to the extent necessary to prevent increased adverse impacts on the resources and values of those areas.

Subsection 8(e) of the bill contains a savings clause, stating that except as provided in subsections 8(c) and 8(d), neither the provisions of the bill related to the Fossil Ridge Recreation Management Area, the Bowen Gulch Protection Area, the Piedra, Roubideau, and Tabeguache Areas, and the lands designated as wilderness by section 2(a), nor the wilderness status of the lands so designated by section 2(a), is to be construed to affect or limit the use, operation, maintenance, repair, modification, or replacement of water resource facilities in existence on the date of the bill's enactment within the boundaries of any of these areas. The intent of subsection 8(e) is to make clear that subsections 8(c) and 8(d) are the only parts of the bill that govern such use, operation, maintenance, repair, modification, or replacement of existing water resource facilities within these areas.

Subsection 8(f) of the bill provides that the Secretaries of Agriculture and the Interior are to monitor the operation of and access to water resource facilities within the areas described in sections 2, 5, 6, and 9 of the bill and are to take all steps which they determine are necessary to implement the provisions of section 8 of the bill.

Subsection 8(g) of the bill has two paragraphs. Paragraph 8(g)(1) provides that nothing in the bill or in any previous act designating any lands as wilderness is to be construed as limiting, altering, modifying, or amending any of the interstate compacts or equitable apportionment decrees that apportion water among and between the State of Colorado and other States. This paragraph also states that except as expressly provided in section 8, nothing in the bill will affect or limit the development or use of Colorado's full apportionment of such waters by existing and future holders of vested water rights.

Paragraph 8(g)(2) relates solely to the Platte River Wilderness established by Public Law 98-550, which is located on the boundary between Colorado and Wyoming. This paragraph provides that no person—including the Secretary of Agriculture or any other officer, employee, or agent of the United States—shall assert in any court or agency—of the United States or other jurisdiction—any rights, and no U.S. court or agency shall consider any claim or defense based on such rights, which may be determined to have been established for waters of the North Platte River for purposes of such wilderness area, to the extent that such rights would limit the use or development of water within Colorado by present and future holders of vested water rights in the North Platte river and its tributaries to the full extent allowed under interstate compact or applicable U.S. Supreme Court equitable decree. The paragraph also provides that any such U.S. rights are to be exercised so as not to prevent the use or development of Colorado's full entitlement to interstate waters of the North Platte and its Colorado tributaries allowed under interstate compact or U.S. Supreme Court equitable decrees. This means that while existing water rights associated with wilderness or other Federal reservations may still be recognized in the North Platte and its tributaries, such rights associated with this specific wilderness area may not be asserted or exercised in a way that would prevent Colorado from using its full entitlement under Federal law to the waters of the North Platte system.

Both water users and environmentalists support this approach. But, this language was an important means to achieve an end—the designation of 17 new wilderness areas comprising more than 611,000 acres of forested land as wilderness.

DESCRIPTION OF THE DESIGNATED WILDERNESS AREAS

American Flats, Bill Hare Gulch/Larson Creek

This 3,390 acre addition to the existing Big Blue Wilderness—which the bill renames as Uncompahgre Wilderness—are located north of Lake City, CO. Bureau of Land Management [BLM] wilderness studies determined these additions would be a logical extension of the wilderness, especially with regard to American Flats, an area above treeline marked by undulating hills that from the watershed divide separating Cow Creek and Wildhorse Creek from Henson Creek. They provide unobstructed views of Wetterhorn and Uncompahgre Peaks and much of the San Juan Mountains. The Bill Hare Gulch and Larson Creek areas are comprised mostly of alpine tundra, some lower elevation ponderosa pine and spruce fir forests and are a summer habitat for several species of big game. Hinsdale and Ouray Counties are popular with tourists and outdoor enthusiasts, including off-road vehicle users who especially enjoy the scenery along the Engineer Pass Road. While the wilderness additions in the bill as reported are greater than in the Senate bill, the increase presents no conflicts with off-road vehicle use, and special care was taken to exclude from wilderness several patented mining claims in the

south portion of the American Flats addition.

Bowen Gulch

This 815 acre wilderness area was considered for wilderness designation during the Forest Service's RARE II review, but was not recommended. The area is adjacent to the Continental Divide and is unusual for Colorado because of its abundant rainfall caused by the effects of the mountains on the prevailing westerly winds, and includes one of the most important stands of old-growth trees in the State—some as large as 5 feet in diameter and more than 600 years old. In 1984, prior to adoption of new policies for protection of old-growth trees, the Forest Service carried out the environmental analysis of a proposed sale of timber in this area, and in 1988 completed a sale contract allowing harvesting of timber in the Bowen Gulch area. However, the Louisiana Pacific Co., in response to controversy about the sale agreed not to log the area if substitute timber was provided, which the committee understands has now been done. The reported bill designates a portion of the Bowen Gulch area as an addition to the existing Never Summer Wilderness. Section 6 of the bill prohibits timber harvest on another portion of the area that is withdrawn from mineral exploration and development and designated as the "Bowen Gulch Protection Area."

Buffalo Peaks

This 43,410 acre wilderness area is located some 10 miles southeast of Leadville, CO, between the South Platte River and Arkansas River drainages, within Lake, Park, and Chaffee Counties. The area's rolling terrain, subalpine meadows and timbered basins provide habitat for bighorn sheep. Roads once existed in the area, but they have been closed since 1971 and there is little, if any, conflict with grazing or off-road vehicle use. The wilderness boundaries have been drawn to avoid most patented mining claims and an electronic site near South Peak.

Davis Peak

This 20,750 acre wilderness area is an addition to the Mt. Zirkel Wilderness Area is a lower-elevation area that includes a portion of the Encampment River. The bill includes in wilderness the Manzanares Lake area, but excludes the Dome Peak area, which is managed for timber production, livestock grazing and motorized recreation, as well as the area which serves as the Big Creek campground water collection system and the South Hog Fork Creek drainage, one of the highest producing watersheds in the State.

Fossil Ridge

The bill designates as wilderness a 33,060 acre portion of the Fossil Ridge Wilderness Study Area—designated in 1980 by Public Law 96-560—between Crested Butte and Gunnison, CO. The Forest Service once identified this as among the highest ranking potential wilderness areas in Colorado, but has failed to manage the area to adequately maintain its wilderness character—mostly by allowing excessive use of mechanized equipment for recreation. Nonetheless, the area remains a very special place, marked by alpine lakes, notable wildlife values—including mountain goats and elk—and the fossil-bearing limestone strata which give the area its name. The remainder of the wilderness study area is included within the Fossil Ridge Recreation Management Area designated by section 5.

Greenhorn Mountain

This rugged, broken and ecologically diverse 22,040 acre wilderness area is in the southern Front Range. It is part of a slightly larger area designated as a Wilderness Study Area by Public Law 96-560 in 1980. At the suggestion of the Forest Service, the boundaries of this area have been drawn to designate as wilderness lands within a "Greenhorn Mountain Cherrystem" that were excluded from wilderness in past proposals. The "Greenhorn Mountain Cherrystem" was closed in 1987 and subsequently ripped and reseeded, leaving only a four-foot-wide hiking trail.

Lost Creek

This 14,700 acre addition to the existing Lost Creek Wilderness Area is directly south of Denver, CO, near Kenosha Pass. The boundaries include South Twin Cone Peak at the northern end of the Platte River Mountains as well as the upper reaches of Rock and Shutetown Creeks and Foster Gulch.

Oh-Be-Joyful

This 5,500 acre wilderness area was considered for wilderness in 1980, but not designated because of the need for further consideration of possible conflicts. While some possible conflicts may still remain, inclusion of the area in wilderness—as an addition to the existing Raggeds Wilderness—will provide protection for important resource values and the area's status as a part of the municipal watershed for the community of Crested Butte. The boundaries include the Oh-Be-Joyful Peak—part of the Ruby Range—Pass and Creek, from which the area takes its name, and the Peeler Lakes.

Powderhorn

Even this 60,100 acre wilderness area's most famous visitor, Alfred Packer, must have been awed by the its expanse of alpine tundra, the largest in the lower-48 States, much of which has been managed by the BLM as the Powderhorn Primitive Area—part of the area bears the name "Cannibal Plateau," a reminder of Packer's notoriety. The boundaries straddle the line between Gunnison and Hinsdale Counties. The portion of the wilderness which has been managed as the Powderhorn Primitive Area will continue to be managed by the Bureau of Land Management, while the remainder will continue under management of the Forest Service.

Sangre de Cristo

The Sangre de Cristo Wilderness is by far the most complex area dealt with in this bill. This 226,455 acre wilderness area is generally located between the towns of Salida and Alamosa, in Custer, Fremont, Saguache, Huerfano, and Alamosa Counties. The mountains themselves rise steeply from the floor of the San Luis Valley, location of some of Colorado's oldest settlements—the name Sangre de Cristo, or "Blood of Christ", is said to have been bestowed by Juan De Onate in 1647 and to refer to the red hues tinting the range at sunset. Extending from northern New Mexico into central Colorado, the range with its 30 peaks rising above 13,000 feet—7 rise above 14,000—forms a natural barrier between southeast and southwest Colorado and causes the wind currents responsible for formation of the remarkable dunes in the Great Sand Dunes National Monument. While the South Colony Lakes road is not included in the Sangre de Cristo Wilderness designated in subsection 2(a), and therefore may be managed to permit motorized use, the committee intends the Forest Service to strictly and universally prohibit—and physically restrict—any motorized access into the lands included in this wilderness area, including the South Colony Lakes and the sensitive alpine tundra areas in the vicinity. The boundary of the southernmost portions of the wilderness area has been drawn so as to exclude from wilderness a number of private holdings—including patented mining claims—in the Como Lake and Blanca Peak areas. The area includes some BLM acreage, administered by the San Luis Resource Area, which is to be transferred to the Forest Service and added to the Rio Grande National Forest.

Service Creek

This 47,140 acre wilderness area—given the name Sarvis Creek Wilderness—is a low-elevation forest, different from most of the State's wilderness areas that are characterized by rugged terrain. It has extraordinary wildlife habitat, and is used for recreation by many Steamboat Springs residents. The boundaries exclude from wilderness Walton Peak in the north because of the need for continued accessibility to an electronic transmission site and a popular snowmobile trail near Forest Road 100. The boundary will not impact the work the Forest Service has been doing to prepare a thorough Environmental Impact Statement [EIS] on the proposed Lake Catamount Ski Area near Steamboat Springs. The Silver Creek Trail is included within the wilderness, but the committee has drawn the northeastern boundary of this area so as to exclude from wilderness the Routt Divide Trail,

partly within wilderness under other proposals, so that it can continue to be managed to permit mechanized use, including use by bicycles, if and as authorized by the Forest Service.

South San Juan Addition

The South San Juan Wilderness is located east of Pagosa Springs, CO. The 31,100 acres that would be added to this existing wilderness area by the bill as reported include the V-Rock and Montezuma Peak Wilderness Study Areas. This is one of the wildest areas in Colorado, and not only attracts fishermen, backpackers, cross-country skiers, rock climbers, hunters and horseback riders, but also is prime habitat for endangered species. The Colorado Division of Wildlife believes the area is suitable habitat for grizzly bears—the last reported sighting of a grizzly in Colorado occurred in the existing South San Juan Wilderness—as well as for wolverines and river otters. According to Forest Service data, less than nine percent of this area's acreage is suitable for timber harvesting, and no sales have been planned. The Committee understands that the Forest Service and the U.S. Geological Survey have noted the presence of oil, gas, and minerals, but consider them too small and isolated for mining.

Spruce Creek

The 8,330 acre Spruce Creek Wilderness Area is surrounded by the existing Hunter-Fryingpan Wilderness Area, northeast of Aspen, and is appropriate for management as an addition to that wilderness. It was considered for wilderness in 1980, but was not designated because of perceived conflicts with timber harvesting that have now been resolved. The bill as reported includes provisions to clarify that the addition of this area to wilderness will not interfere with continued operation of the Fryingpan-Arkansas project.

St. Louis Peak ("Byers Peak Wilderness") and Vasquez Peak

These areas, in Grand County, CO, are a high, rugged expanse of tundra and rock mostly above treeline that straddles the Continental Divide. Because of their proximity to Denver, they are an important recreational resource, attracting many visitors. Their forest provide little commercial timber. Some unpatented mining claims do exist within the areas, but no exploration activities have recently taken place. While the Vasquez Peak Wilderness Study Area [WSA] was recommended for wilderness, the Forest Service felt there were too many "external influences" to recommend such designation for the adjacent St. Louis Peaks area. However, the committee has decided that both areas, comprising 8,095 acres should be designated as wilderness.

Weminuche and the West Needles

This 28,740 acre addition to the existing Weminuche Wilderness Area provide wilderness designation for lands on both sides of the Las Animas River and the famous narrow-gauge railroad from about 4 miles south of Silverton to the Teft Spur, just downstream from the mouth of Crazy Woman Gulch. This is some of the most spectacular mountainous country in Colorado. Some of these lands were originally omitted from National Forests status (remaining public lands were managed by the Bureau of Land Management and its predecessor agencies) because of possible mineral significance. Pursuant to section 603 of the Federal Land Policy and Management Act of 1976 [FLPMA], the Needle Creek, West Needles Contiguous, Whitehead Gulch, and Weminuche Contiguous areas were identified as wilderness study areas subject to interim management pending a Congressional decision as to their possible inclusion in the National Wilderness Preservation System. In December, 1981, then-Secretary of the Interior James G. Watt directed that these areas no longer be subject to such interim management, but by enactment of section 12 of the Public Lands and National Park Act of 1983—Public Law 98-141—Congress added some of these lands to the National Forest System, mandating they be managed as part of the West Needles Wilderness Study Area, and directed that the remainder continue to be managed pursuant to section 603 of FLPMA. The reported bill adds to the existing wilderness acreage within the West Needles Wilderness Study Area.

Wheeler Area (addition to La Garita Wilderness)

This 25,640 acre wilderness area is truly special and offers visitors some spectacular views of a rather unique part of Colorado. High in the La Garita Mountains east of Creede, the pancake rocks and pinnacles of the area have long been recognized as an unusual resource, and were given the administrative designation of geologic area prior to being included within the lands for which a special study status was established by Public Law 96-560 in 1980. The bill includes the area previously designated as the Wheeler Geologic Area—part of the area required to be studied by section 105(b) of Public Law 96-560—within wilderness, and omits from wilderness the road leading to the geologic area itself, recognizing the viewpoint at the end of the road as a popular recreation site for handicapped persons and other users of motorized vehicles. The designation of wilderness in this area will not preclude Forest Service installation of toilets, picnic facilities and similar small structures outside the wilderness boundaries.

Ptarmigan Peak Wilderness

This 13,175 acre wilderness area boasts excellent recreational opportunities in high-altitude terrain within a short hour's drive from Denver. The area stretches from Coon Hill near the portal of the Eisenhower Interstate Highway tunnel, west to Ptarmigan Pass, and then northwest nearly to Ute Peak in the Williams Mountains. The northern and eastern boundaries exclude an operating mine and water rights associated with the Williams Fork Diversion Project.

RELEASE LANGUAGE

The bill also adopts an approach I suggested with regard to release language. Section 4 repeals the provisions of P.L. 96-560 dealing with areas dealt with in this bill. Section 4 acknowledges that this act completes the wilderness study initiated by the act of December 22, 1980, and releases nondesignated acreage to multiple use consistent with the national forest planning process. This section preserves the Act of December 22, 1980, exemption of the Roadless Areas Review [RARE II] environmental impact statement from judicial review. In essence, my language simplifies the issue of releasing areas not designated as wilderness by repealing the provisions of the 1980 Colorado Wilderness Act that direct the Forest Service to conduct studies and manage these areas to preserve their wilderness characteristics. The Forest Service will now manage these lands for multiple use.

OTHER PROTECTED AREAS

The bill also protects six other areas that were not suitable for wilderness because they were either downstream areas or were popular recreation areas. These include the Fossil Ridge Recreation Management Area, the Bowen Gulch Protection Area, the Piedra Area, the Roubideau Area, the Tabequache Area and the Spanish Peaks Further Planning Area. All these areas are to be closed to mineral activities, timber harvesting, developed campgrounds, restricted or closed to motor or mechanized vehicles and no new roads or trails will be built. Of these, the Rubideau and Tabequache Area are especially important to me.

Section 5 would designate 43,900 acres of National Forest lands as the "Fossil Ridge Recreation Management Area." The area would be established to conserve, protect and enhance its scenic, wildlife, recreational and other natural resource values; would be withdrawn—subject to valid existing rights—from mineral entry and from mineral and geothermal leasing; would be closed to timber harvesting, except as permitted by the Wilderness Act for necessary control of fire, insects and diseases for public safety; would be closed to construction of developed campgrounds and new roads or trails; and would be closed to motorized travel except on established trails or roads existing on July 1, 1991. Designation of the area would not prohibit or change the administration of livestock grazing on the lands involved. Section 5 also requires the Secretary to identify such routes and trails and to prepare and make public a map showing these

routes and trails. Consideration was given by the committee as to whether the identification of the trails and routes, and the subsequent publication of the map, ought to be subject to a public-commenting process. Because of the lengthy negotiations surrounding motorized travel in the area, the committee, after conferring with the sponsors of H.R. 631/S. 206 rejected opening up the issue to further debate. Consequently, it is our intent that the identification of routes and trails established as of July 1, 1991, shall be primarily ministerial in nature and shall not constitute an amendment to the Forest Plan for the Gunnison National Forest. It is my understanding that the U.S. Forest Service has begun the identification of these routes and trails, and I encourage the Forest Service to complete this inventory and make public a map at the earliest possible date.

Section 6 would designate 11,600 acres of National Forest lands as the "Bowen Gulch Protection Area". While all of the Bowen Gulch area would be appropriate for management as wilderness, the portion covered by section 6 has been given a different status so as to accommodate snowmobiling and use of mountain bicycles under appropriate regulations. The area is now going to be withdrawn from mineral entry and from mineral and geothermal leasing; would be closed to new developed campgrounds, roads, and trails; would be closed to timber harvesting except as permitted by the Wilderness Act for necessary control of fire, insects and diseases for public safety; and would be closed to motorized travel except on designated trails and routes in existence on July 1, 1991 during periods of adequate snow cover—but open to mechanized, nonmotorized travel. The Forest Service would be required to develop a management plan for the area during revision of the relevant National Forest plan.

Section 7 of the bill provides that nothing in the bill will affect ownership or use of lands not owned by the United States or access to such lands available under other applicable law. Under the Wilderness Act inholdings in National Forest wilderness areas cannot be acquired without the consent of the owner, and that adequate access is to be provided to the owner.

Section 9 of the bill provides management requirements for the Piedra area (62,550 acres) in the San Juan National Forest and for two areas—Roubideau (19,650 acres) and Tabequache (17,240 acres)—in the Gunnison National Forest and the Bureau of Land Management's San Juan Resource Area. Each of these areas is withdrawn from all forms of location, leasing, patent, disposition under the public land laws, the mining laws, and the mineral and geothermal leasing laws.

The Piedra area is characterized by notable mid elevation forest and canyons as well as a stretch of the Piedra River. Located just to the south of the Weminuche Wilderness, the Piedra Area also encompasses several mountain streams and stands of old growth.

The Roubideau Area, like the Tabeguache Roadless Area, was targeted by the Forest Service for timber cutting before public outcry forced the Forest Service to re-evaluate its position. A prime feature of the area located 15 miles west of Montrose, CO, is Roubideau Creek, which has carved one of Colorado's most unique canyons. Named after a French fur trapper, the creek originates in subalpine spruce and aspen forests high on the Uncompahgre Plateau before it flows 20 miles into the Gunnison River. The area is rich in native cutthroat trout, beaver, black bear, deer, bobcat, and cougar, as well as golden eagles and other birds.

Finally, the Forest Service's Tabeguache Roadless Area and an adjacent BLM wilderness study area, both in Montrose County, encompass one of the last pristine canyons of the Uncompahgre Plateau, the higher country that divides the drainage of the Uncompahgre and Gunnison Rivers from that of the Dolores. The areas have exposed geologic strata that represent a time-span of nearly 100 million years and afford opportunities for relatively low-elevation, year-round recreational uses such as horseback riding, hiking, camping, and fishing. The roadless area was recommended for wilderness designation by the Forest Service, while the BLM has suggested that the natural resources and extremely high cultural values—including evidence of both the Anasazi and Fremont cultures—of its portion would be suitable for management as an Outstanding Natural Area.

Section 9 of the bill also specifies that no further study for possible wilderness designations is required for any of these areas, but that until Congress determines otherwise, activities within these areas are to be managed so as to maintain the present wilderness character of the areas and their potential for inclusion in the National Wilderness Preservation System. The section specifies that livestock grazing will be permitted and managed in the areas to the same extent and in the same manner as of the date of the bill's enactment. The section specifies that except as provided elsewhere in the bill—that is, in section 8—mechanized or motorized travel generally will not be permitted in the areas, but that motorized—snowmobile—travel on Trail 535 in the Piedra area may be allowed when there is adequate snow cover. It is the intent of Congress that the Forest Service carefully consider the corridor width necessary to maintain Trail 535 consistent with snowmobile use during periods of adequate snow cover.

With regard to the Spanish Peaks Planning Area, section 10 would require the Secretary of Agriculture to continue to manage the Spanish Peaks Planning Area as provided by the Colorado Wilderness Act of 1980—that is as a wilderness study area—for 3 years after the bill's enactment. It would also require the Secretary, before the end of this 3-year period, to report the location, acreage, and nature of all private property interests located within the Spanish Peaks Planning Area of the Pike-San Isabel National Forest, and report whether the owners of these interests would be willing to transfer these to the United States—by sale or exchange—on a fair-market-value basis if that could be done in the near future. Subsection 9(c) clarifies that nothing in the bill is to be construed as a grant of new authority for acquisition of property by eminent domain.

We have gone to these lengths to protect this area because in 1977, the Spanish Peaks, or Wahyatoya—"Breasts of the World"—were designated as a National Natural Area because its outstanding scenic values. This area has also been inventoried for potential historic recognition because due to two volcanic peaks—easternmost extensions of the Rocky Mountains—which served as a landmark to some of Colorado's early settlers. In fact, the trail between Bent's Old Fort and Taos, NM, passes within sight of Spanish Peaks. Although some private inholdings currently exist within the area, the Forest Service has been working to acquire them through exchanges and acquisition. The western boundary of the Spanish Peaks Planning Area excludes a water right associated with a proposed reservoir on the Cuchares River.

ADMINISTRATIVE PROVISIONS

Finally section 3 of the bill includes a number of administrative provisions. It provides for appropriate management of the areas designated as wilderness—including the management of livestock grazing—clarifies that the bill will not affect the jurisdiction or responsibilities of the State of Colorado relating to wildlife and fish or create any buffer zones around wilderness. The section also changes the name of the Big Blue Wilderness. Subsection 3(a) would transfer to the Forest Service the administration of BLM lands within the Bill Hare/Larson Creek Additions to the Uncompahgre Wilderness and Sangre de Cristo Wilderness Areas. Under subsection 3(f), the Big Blue Wilderness as designated by Public Law 96-560 and as it would be expanded by additions made by this bill, would be renamed as the "Uncompahgre Wilderness," as originally provided in the Senate version of that 1980 legislation and in recognition that much of these lands were part of the Uncompahgre Primitive Area prior to enactment of Public Law 96-560.

CONCLUSION

Some may cry that Congress is "locking up" more Federal lands. But, the lands the congressional delegation have been arguing about have already been withdrawn from most public uses since 1980. The majority of the people of Colorado, and indeed, most Americans, continually express their desire for more wilderness in Colorado.

If wilderness were simply a land management issue, it would be an easy matter to separate the areas that have conflicts from those that do not. Wilderness, however, is a complicated political issue requiring elected officials to make tough choices. Representatives and senators from every State have the opportunity to judge the work we have done and to add areas to the bill that they have heard have "outstanding wilderness values."

Coloradoans have been arguing about wilderness long enough. A significant majority of my constituents want to see more wilderness in the State protected. Compared to other troubling issues that Congress must address—like hunger, homeless, unemployment, the deficit, bank failures, world peace and the like—the hue and cry over designating more wilderness in a state where tourism is the single largest industry, and in areas that have been managed to protect their wilderness characteristics and which remain rugged, remote and roadless, seems ridiculous to me.

It is time to get on with it.

THE COLORADO WILDERNESS ACT OF 1993

Mr. BROWN. Madam President, efforts to enact a Colorado wilderness legislation have spanned more than a dozen years. Senator CAMPBELL and I believe that Colorado Wilderness Act represents a compromise that will benefit both Colorado and the Nation. Many portions of this bill are the same as the bill that passed the Senate last session and received your support and that of the Colorado delegation. Colorado environmental groups and some resource user groups have endorsed this compromise as an acceptable solution.

The Colorado Wilderness Act will designate as wilderness 611,730 acres in 19 areas throughout Colorado. An additional 99,440 acres comprising the Roubideau, Tabeguache, and Piedra areas will be managed as wilderness. Our bill also creates two special management areas, the Fossil Ridge Recreation Management Area and the Bowen Gulch Protection Area, which comprise 55,500 acres. The land management plans for these areas were crafted to allow for recreational activities while enhancing the scenic, wildlife, and other natural resources values of the areas.

It is important to recognize the diligent efforts of countless groups and individuals who worked together for more than a decade to develop the boundaries for these areas. Thousands of conflicts created by private property, mining claims, water rights, oil and gas leases, timber suitable areas and existing access trails were carved out in order to preserve every acre of wilderness that was suitable.

Because of this willingness to negotiate and compromise, Colorado will boast new wilderness additions including over a quarter of a million acres in Colorado's most majestic mountain range, the Sangre de Cristo. Home to three of the State's 14,000-foot peaks, this area contains some of the most beautiful back-country with cascading waterfalls and sparkling trout-filled streams. In addition, the Sangre de Cristo provides winter range for deer, elk, and bighorn sheep. Adjacent to the Great Sand Dunes, this wilderness area will provide the people of Colorado some of the most spectacular recreational opportunities in the State.

Passage of the Colorado Wilderness Act will not only protect more than three-quarters of a million acres of some of Colorado's most beautiful wilderness, it is another way to ensure preservation of the Colorado's past. It is a past rich in history and full of respect for the land that will be given to our children and our children's children.

The Colorado Wilderness Act protects Colorado's ability to divert, store and use water allocated to it under the equitable decrees and interstate compacts. It protects all existing, absolute and conditional water rights and no compromise would have been possible if it did not.

The issue of the existence of Federal reserved water rights for the upstream areas is moot, because the Colorado Wilderness Act provides that no one can assert such a right, and no court or agency could ever consider in any fashion such a claim. This ensures that wilderness status will never result in an encroachment on Colorado's ability to use its interstate water allocations. The bill addresses the difficult issue of downstream wilderness study areas, where there could be conflicts with water storage and diversion. Where conflict exists, the areas are not classified as wilderness areas. This ensures that there will be no effect on existing and future water use.

In order to make this intent crystal clear, there is also an explicit disclaimer of a Federal reserved right for these areas, and the existence of these areas cannot be used as a basis to affect upstream activities as a part of any administrative or regulatory program. At this time, I ask that a copy of a letter signed by 15 Colorado water attorneys, interpreting the language in the water section of this bill, be printed in the RECORD.

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

JANUARY 20, 1993.

Senator HANK BROWN,
Senator BEN NIGHTHORSE CAMPBELL,
U.S. Senate,
Washington, DC.

DEAR SENATORS BROWN and CAMPBELL: We understand that you are considering re-introduction of the October, 1992 version of S. 1029 ("S. 1029"), but that questions have been raised regarding whether this resolution of the wilderness issue presents unacceptable risks to existing and future development of Colorado's interstate water entitlements. We urge you to re-introduce the October, 1992 version of S. 1029 and to work toward its swift enactment into law.

With regard to some of the concerns that have been raised about S. 1029, as you well know, it is impossible to draft, and even more impossible to enact into law, legislation that is entirely free of risk. However, we have reviewed S. 1029, and conclude as follows:

1. FEDERAL RESERVED WATER RIGHTS

This legislation does not create a federal reserved water right. Federal reserved water rights do not exist unless Congress expressly creates them or a court finds that they are necessary to avoid the "entire defeat" of the primary purpose of the reservation.

The recognition of "implied" federal reserved water rights was based on the conclusion of the Supreme Court that Congress would have explicitly reserved such rights had it been aware of and considered the issue. It is no longer possible to assert that Congress is not aware of the issue of federal reserved water rights, and it is clear that if the issue was carefully considered by Congress in the course of its deliberation on the creation of additional wilderness areas in Colorado. Consequently, "implied" federal reserved water rights cannot exist for new federal wilderness reservations or designations.

In the October, 1992 version of S. 1029, Congress explicitly states that no person shall assert, nor shall any agency or court consider, any claim for a federal reserved water right. Therefore, the necessary implication of S. 1029 is that a federal reserved water right is not required to achieve the primary purpose of the wilderness designation. Moreover, in the absence of an explicit Congressional reservation of water, the McCarran Amendment requires that implied water rights only be recognized through judicial proceedings, and S. 1029 precludes a claim of this nature from being asserted in any forum, including federal or state courts.

S. 1029's bar to assertion or consideration of such a claim has been asserted to represent an implication that such a right exists. This conclusion is incorrect—the purpose of this provision is to prevent the assertion of meritless litigation, and the resulting waste of time and financial resources. Simply put, the issue of whether this Act creates a federal reserved water right can never be asserted by anyone or considered by any court or agency. Speculation about what a court might do if it were to ignore this explicit Congressional prohibition requires that one attempt to predict the actions of a court which does not consider itself bound by the law—an inherently illogical exercise.

It has also been argued that S. 1029 bears on the determination of whether implied federal reserved water rights exist for existing wilderness areas. This is also an incorrect

conclusion. First, under *Sierra Club* v. *Yeutter*, an imminent threat of harm to a wilderness area must exist before the courts will consider whether such a water right exists. If such a threat exists, the court will then determine whether a reserved water right is necessary to avoid the entire defeat of the primary purpose of the reservation. Second, Section 8(b)(2)(C) of S. 1029 explicitly provides that it cannot be used to interpret Congressional intent for prior wilderness reservations. Under the applicable law regarding the recognition of implied federal reserved water rights, i.e. *United States* v. *New Mexico*, Congressional intent is to be determined as of the time of the reservation. Accordingly it would be improper for any court to use this bill to interpret the 1964 Wilderness Act.

2. PROTECTION OF EXISTING WATER RIGHTS

The October, 1992 version of S. 1029 provides better protection for existing water rights than any prior version. The original version of S. 1029 which was co-sponsored by Senators Wirth and Brown and passed by the Senate in August, 1991, did not protect access to and use of conditional water rights for existing facilities. In contrast, the October, 1992 version provides explicit protection for access to and use of "vested water rights" as determined under Colorado law. This will allow owners of conditional water rights for existing facilities to assert that the use of these facilities for those conditional rights is protected under this Act. It is ironic that the water users in wilderness areas designated under S. 1029 would have greater protection from attempts by the Forest Service to require by-pass flows than water users located outside of such areas because it explicitly requires the Forest Service to allow the continued use and operation of existing water facilities. However, this demonstrates the strength of the protection accorded to existing water rights by S. 1029.

3. DOWNSTREAM WILDERNESS STUDY AREAS

The October, 1992, version of S. 1029 provides the most favorable political precedent for the future debate on BLM downstream wilderness areas. First, existing wilderness study areas are not designated as wilderness, and are instead designated as something else—an "Area" which is not part of the National Wilderness Preservation System. And while Congress can always act in the future to change the status of these "Areas", their protection under S. 1029 will substantially reduce the need to do so. Second, federal reserved water rights are explicitly disclaimed for these "Areas". Third, the management of these Areas to preserve wilderness characteristics is limited to activities within the areas, which therefore excludes management of upstream activities to protect these wilderness characteristics. Finally, this solution does not require the CWCB to expand the methodology used to quantify its instream flow water rights beyond its present standard.

4. INTERSTATE WATER ALLOCATIONS

We agree with your December 14, 1992 analysis of Section 8(g) of S. 1029, which provides protection of Colorado's interstate compact and equitable apportionment water allocations. This protection is superior to that contained in any other wilderness bill which has been enacted by Congress.

In conclusion, we believe that the October, 1992 version of S. 1029 protects existing and future water development and use in Colorado. We further believe that this legislation represents a legitimate and fair compromise of an extremely complex and divisive issue, and that it would be difficult, if not impossible, to make additional improvements in any future negotiations.

Thank you for your steadfast leadership on this important issue.

SIGNATORIES TO JANUARY 20, 1993 LETTER

Gregory J. Hobbs, Jr.,
Robert V. Trout,
Bennett W. Raley,
William H. Brown,
John Akolt,
Timothy Beaton,
David Robbins,
Jim Lochhead,
Steve Leonhardt,
Jim Witwer,
Frank E. (Sam) Maynes,
William Bohlender,
Hamlet J. (Chips) Barry III,
Thomas R. Sharp,
Mark J. Wagner,
Stan Cazier,
Richard Bratton.

Mr. BROWN. Madam President, if enacted, the water language of the Colorado Wilderness Act will provide explicit recognition of, and protection for, water-related resource values of the wilderness areas. This would be accomplished by preventing the construction of any new water projects or expansion of existing facilities in the wilderness areas designated by this act. Preservation of the water-related wilderness values of newly designated headwaters wilderness areas are protected by a prohibition on new facilities in the wilderness—not by restricting Colorado's right to its own water.

Colorado is at the headwaters of the Colorado, Arkansas, South Platte, North Platte, White, Yampa, Rio Grande, Animas, La Plata, Costilla, and Republican Rivers, to name a few, and each of these rivers is subject to interstate compacts or equitable apportionment decrees of the U.S. Supreme Court. Under these compacts and decrees, Colorado is obligated to pass water through the State so that it can be delivered to and used by downstream States.

Taking the Colorado River as an example, under the 1922 compact, the upper basin States of Colorado, Utah, New Mexico, and Wyoming are obligated to pass by Lee Ferry not less than 7.5 million acre feet for any period of 10 consecutive years of the flows in the Colorado River to lower basin States of Arizona, Nevada, and California. The 7.5 million acre feet was estimated to be half the flows of the Colorado River. Subsequent information has proven that the estimate was inaccurate and overly optimistic. The 1948 Upper Basin Compact further limits Colorado's ability to use water from the Colorado River, as Colorado was allocated 51 percent of the upper basin's 50 percent share of the Colorado River. In other words, Colorado has been allocated in the neighborhood of 25 percent of the Colorado River, and 75 percent must flow downstream to other States. The Mexican Treaty of 1944 also granted Mexico 1.5 million acre feet of water, part of which comes from the upper basins' allocation and may further reduce Colorado's ability to use water from the Colorado River. In addition, claims for Federal Indian reserved water rights under the Winters doctrine may also limit the amount of water which may be used under Colorado law. So even though the Colorado River starts in the Colorado mountains, Federal law limits Colorado's use of water in the river to less than 25 percent of the water in the Colorado River, and guarantees that over 75 percent of the water in the Colorado River will flow through and out of the State.

But that is not the end of the story. Colorado has a very strong instream flow program established under Colorado law. Under this program, the Colorado Water Conservation Board [CWCB] is authorized to appropriate or acquire instream flow water rights to "protect the natural environment to a reasonable degree." There are currently in excess of 7,300 miles of streams in Colorado which are protected by the CWCB instream flow program, including instream flow water rights in the proposed Piedra Wilderness Area, and the CWCB is in the process of obtaining decrees to protect an additional 100 miles of Colorado streams. Most of these instream flow water rights are high in the mountains, and in fact many of them are within the wilderness areas proposed for designation in Colorado Wilderness Act. This recognition of environmental values in Colorado has a cost, however, as each and every one of these instream flow water rights further limits Colorado's ability to appropriate and use water for new projects.

Over 84 percent of the water in the Colorado River now flows out of the State. California gets over 100 percent of the water it contributes to the Colorado River basin. Arizona gets over 100 percent of the water it contributes to the Colorado River. Colorado now uses about 16 percent of the Colorado River water that originates in the State. Compared against the ability of States like Arizona and California to use the water that originates in the State and more from upstream States, Colorado is significantly restricted in its ability to use and develop its own water. Colorado cannot give more without inflicting serious damage to its environment. So, Colorado already makes a greater contribution to in-stream flows than any State on the river. This bill is being enacted only because this measure protects and enhances Colorado's ability to fully utilize all of its water rights under the various interstate water compacts and decrees.

At the present time there is only one downstream wilderness area in Colorado, the Platte River Wilderness on the Colorado/Wyoming State line which was established by the Wyoming Wilderness Act of 1984. One mile of that

wilderness area extends up the North Platte River into North Park in Colorado. The designation of downstream wilderness lands within Colorado, combined with the threat of the 1984 Sierra Club lawsuit that implied reserved water rights at some time in the future may be found to exist, has caused great alarm among water users in North Park and the elected officials of citizens who rely on that water. I am happy to say that with the 1993 Colorado Wilderness Bill, Senator CAMPBELL, Representatives SKAGGS, MCINNIS, SCHROEDER, and I have agreed upon guarantees that present and future water users in Colorado can fully develop Colorado's share of North Platte River waters without any interference that might otherwise arise because of designation of those downstream lands included in the Platte River Wilderness Area.

We have also agreed that interstate compacts and equitable apportionment decrees allocating water among and between Colorado and other States will not be altered or modified by designation of additional Colorado wilderness lands.

No one will have their Colorado water rights taken away from them or extinguished by denial of wilderness access. The language guarantees reasonable access, including motorized access where necessary, to keep existing water facilities and access routes related to the exercise of water rights in serviceable condition.

This bill protects 766,670 acres of Colorado's most pristine lands, and explicitly protects access to and the use of existing water rights in these areas.

Madam President, I would like to take this opportunity to respond to some of the legal challenges made to the water language in this bill. In its June 15, 1993 letter from Acting Assistant Attorney General M. Faith Burton to Chairman BRUCE VENTO of the House Subcommittee on National Parks, Forests and Public Lands, the Department of Justice questions the constitutionality of section 8(b)(1) of the Colorado Wilderness Act of 1993. The Department of Justice raises the same constitutional concerns with respect to section 8(g)(2) of the act. The language of section 8(g)(2) is similar to that of section 8(b)(1). Therefore, the responses in this memorandum to the Department's claims pertaining to section 8(b)(1) apply equally to its claims as to section 8(g)(2). Section 8(b)(1) prohibits the assertion in court or agency of any claim for water or water rights "based on any construction of any portion of this act, or the designation of lands as wilderness by this act, as constituting an express or implied reservation of water or water rights."

The Department claims that section 8(b)(1) may violate the following constitutional provisions:

First, the first amendment right of free speech and the right to petition;

Second, the duty of the President to faithfully execute the laws of the United States; and

Third, the grant of original jurisdiction to the Supreme Court over disputes between States.

The Department's arguments alleging the possible unconstitutionality of the act based upon these three provisions either seriously misstate the law or mischaracterize the legal effect of the language in section 8(b)(1), or both. In addition, the Department alleges that the 1993 act does not provide sufficient protection of the wilderness values of the designated lands.

Section 8(b)(1) does not violate the right of free speech because it does not in any way limit speech; it only prohibits a certain cause of action. The right to sue on a claim is not the same as the right of free speech. Moreover, the act does not violate the right to petition. The right to petition is basically a right of access to judicial procedures to protect legally recognized rights. Section 8(b)(1) is simply an expression of congressional intent not to create a legally recognizable right.

Moreover, the act does not interfere with the duty of the President to execute the laws. The act creates the law which the President then has a duty to execute. Since the act states that no person can assert a claim for water or water rights for the designated lands, the President would then have a duty to avoid making such a claim.

Nor does the act interfere with the Supreme Court's original jurisdiction over disputes between States. Section 8(b)(1) clarifies congressional intent that the act does not create a cause of action that could be the subject of a dispute between States. But the Supreme Court still has original jurisdiction over interstate disputes where there is a valid cause of action.

Finally, the location of the designated lands at headwaters, and other provisions in the act, ensure that wilderness values will be adequately protected without federally reserved water or water rights.

The Department questions the constitutionality of this provision as violating the open access clause of the first amendment. According to the Department, based upon the first amendment rights of free speech and petition, Congress "may not constitutionally prohibit persons from asserting whatever claims they choose in courts or agencies." The Department appears to be arguing that any person has a right of access to the courts—or agencies—to assert claims that have no basis in the Constitution, or statutory or common law. This construction of the open access provision represents a novel, and untenable, interpretation of the constitutional right of access to the courts.

The act clearly does not violate the first amendment right of free speech because it does not prohibit, or even limit, speech in any manner. It does not prohibit certain types of speech. What section 8(b)(1) does is to clarify that a cause of action for Federal reserved water or water rights does not exist. This is not, in any way, a limitation on the right of free speech.

Moreover, section 8(b)(1) does not violate the first amendment right to petition. The right of access to the courts, which is founded primarily on the right to petition, is a guarantee of access to process to protect recognized legal rights.

Federal courts do not automatically possess the authority to hear and determine any claim. Unless there exists a legal cause of action, a legally recognized right, then courts have no jurisdiction to hear a claim, and there can be no violation of the right of access. There is no right of access unless a party has a clause of action.

The right of judicial access, which is founded primarily upon the first amendment right to petition and the fifth amendment right to due process, guarantees access to the courts to enforce or protect constitutional, statutory or common law rights. It is a right of access to judicial process, in courts or agencies, to enforce or protect existing substantive rights. Larry Tribe, in his constitutional law treatise states that it is "a fundamental right of access to a neutral and fair tribunal in which to ventilate such claims of right as one may have under the governing body of substantive law."

Furthermore, private parties have no right to sue to enforce a statute unless Congress provides a private cause of action expressly or by implication. Section 8(b)(1) of the 1993 act disclaims the existence of any claim, including one by a private party, for federally reserved water or water right for lands designated by the act. It puts up no roadblocks to meaningful access to protect any existing claim or right: it says no claim or right exists. The purpose of the provision is to clarify congressional intent that passage of the act does not create a judicially enforceable claim or right because Congress does not want a claim for Federal reserved water or water rights to be implied from the legislation.

The Department also argues that the 1993 act seeks to impede the ability of the President to fulfill his constitutional duties, in contravention of article II, section 3 of the Constitution. While it is true that the President has a duty to "take care that the laws be faithfully executed," The Colorado Wilderness Act of 1993 in no way affects, or seeks to affect, the authority of the President. The "Laws" of the United States to which the provision refers are the Constitution, Federal statutes, and treaties. Unless a Federal statute is unconstitutional, this Executive duty means that the President shall execute

the laws as passed by Congress. Therefore, the act does not prevent the President from fulfilling any constitutional duty. Moreover, the President has no power to claim a Federal reserved water right for lands designated as wilderness by the 1993 act because to make such a claim would not be a faithful execution of the law. And the President, like other persons, has no authority to make baseless claims in court.

Further, contrary to the Department's assertion, the 1993 act does not purport to limit the Court's original jurisdiction over disputes between States. The Department cryptically states that "Federal reserved water rights may be at issue in an interstate stream adjudication before the Supreme Court." Apparently, the Department is asserting that the 1993 act's prohibition against any court considering a claim for water or water rights for the newly added wilderness areas in Colorado is an attempt to limit the Court's jurisdiction over interstate disputes. But the act's provision merely clarifies that it does not intend to create a cause of action for water or water rights in these wilderness areas that could be a cause for dispute between States. It does not withdraw the Court's jurisdiction to hear interstate disputes where there is a valid cause of action.

It is important to emphasize that, although the act precludes a claim for federally reserved water or water rights, the wilderness values of the areas will not be compromised in any way because: First, all of the lands are located on headwaters with few, if any, actual or proposed facilities located upstream, and second the act provides that, in the event water resource facilities are located in the designated lands, the impacts of such existing facilities shall not be allowed to increase beyond current impacts. The Sierra Club has testified before this committee and before the House committee that this is sufficient protection.

For these reasons as well as others, the Justice Department's concerns are baseless and should be disregarded.

This bill breaks a 12-year stalemate in the designation of new Colorado wilderness. The water provisions of this bill are designed to both protect the new wilderness additions, including wilderness water values, and at the same time protect Colorado's ability to develop and use its full water entitlements. And while those on either side who refuse to compromise may object, people who truly value Colorado wilderness and water should support this bill so that we as a State and a Nation can move forward with protection and recognition of these important wilderness lands.

RECOGNIZING THE CONTRIBUTION OF SENATOR BILL ARMSTRONG TO THE COLORADO WILDERNESS ACT OF 1993

Mr. BROWN. Madam President, former U.S. Senator Bill Armstrong fiercely protected property rights during his two terms in the U.S. Senate, especially water rights and administration of water laws at the State level.

In August of 1989, after years of unsatisfactory negotiations, he began his final attempt to secure a reasonable Colorado wilderness bill by eliciting the assistance of hundreds of Coloradans and directing staff to map all proposed wilderness areas. His staff met with every possible organization throughout Colorado to hear ideas on the proposed areas and to learn of every possible private property right potentially included in a proposed wilderness area.

Extensive grassroots discussion revealed numerous water and mining rights and other inholdings and preexisting recreational uses in proposed wilderness. Proposed wilderness boundaries were drawn by Senator Armstrong to emphasize the mandate of the original wilderness bill to preserve "areas where the earth and its community of life are untrammeled by man", but to exclude private property claims. This Armstrong boundary proposal is the foundation upon which this compromise bill is built.

Of key concern to Senator Armstrong was protecting the most important private property right in the West, water rights. Colorado water rights are on streams originating in the Rocky Mountains. To date our wilderness areas have been in the high country of the Rockies. High country reservoirs and ditch systems bring water not only to farmers, but to Colorado's growing municipalities and industries from ski areas to mining to high tech. Federal conditions on those water rights would render them valueless. Imposition of an unquantified federal reserved water right on 100 years of Colorado water law would mean economic chaos and costly takings of private property.

All wilderness areas are designated "subject to valid existing rights". That phrase recognizes the priority of existing land and water rights. Including wilderness language which erodes those rights threatens not only the private property encompassed by wilderness in a particular bill, but sets unfortunate precedent for future bills. For example, while water rights encompassed by Colorado wilderness bills to date are comparatively few, any future lower elevation wilderness bills unavoidably will encompass thousands of water rights.

I am grateful to Senator Armstrong for his outstanding work not only on water rights, but his tireless commitment to develop a balanced proposal which will be a legacy for all Coloradans. I also thank Senator Armstrong's legislative assistants, Christine Kadlub and Denise Malone-Jones, and his chief of staff Howard Propst. They worked tirelessly with other Coloradans to develop the boundaries which are very similar to the ones included in the bill I ask you to vote for today. Without the significant contribution of Senator Armstrong and his staff this bill would not be before us today.

GALLATIN RANGE

Mr. KENNEDY. Madam President, I ask unanimous consent that the Senate proceed to immediate consideration of Calendar No. 180, H.R. 873, an act to provide for the consideration and protection of the Gallatin Range.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 873) to provide for the consideration and protection of the Gallatin Range.

AMENDMENT NO. 771

(Purpose: To make technical corrections to the maps in H.R. 873, the "Gallatin Range Consolidation and Protection Act of 1993")

Mr. KENNEDY. Madam President, I send to the desk an amendment by the Senator from Montana [Senator BAUCUS]

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for Mr. BAUCUS, proposes an amendment numbered 771.

Mr. KENNEDY. Madam 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:

In section 3(b)(1), strike "the map entitled Plum Creek Timber and Forest Service Proposed Gallatin Land Exchange, dated May 20, 1988", and insert the following: "two maps entitled 'Proposed BSL Land Acquisitions,' East Half and West Half Gallatin National Forest, dated February, 1993".

In section 3(b)(2), immediately after "as depicted on the maps referred to in paragraph (1)," insert the following: "and the five maps entitled 'H.R. 873, the Gallatin Range Consolidation and Protection Act of 1993,' Lolo and Flathead National Forest,".

In section 4(a), strike "depicted on the map entitled Porcupine Area, dated September, 1992", and insert the following: "listed as 'Exhibit A, Porcupine Area,' in the Option."

In section 5(a), strike "depicted on the map entitled Taylor Fork Area, dated September, 1992", and insert the following: "listed as 'Exhibit A, Taylor Fork Area,' in the Option."

In section 6(a), strike "depicted on the map entitled Gallatin Area dated September 1992", and insert the following: "listed as 'Exhibit A, Gallatin Roaded,' in the Option."

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 771) was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment 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 read 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. 873), as amended, was passed.

Mr. KENNEDY. Madam President, I move to reconsider the vote and move to lay that motion on the table.

The motion to lay on the table was agreed to.

SENATE FAIR EMPLOYMENT PRACTICES

Ms. MOSELEY-BRAUN. Madam President, I ask unanimous consent the Senate proceed to the consideration of Senate Resolution 139, a resolution submitted earlier today by Senators MITCHELL and DOLE regarding the procedures followed by the Office of Senate Fair Employment Practices, that the resolution be agreed to, the motion to reconsider be laid upon the table, and any statements thereon appear at the appropriate place in the RECORD as though read.

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

Mr. MITCHELL. Madam President, the purpose of this resolution is to establish procedures for the approval and payment of awards and settlements in cases administered by the Office of Senate Fair Employment Practices under title III of the Civil Rights Act of 1991. As Senators will recall, Congress enacted the provisions of this title, which may be cited as the Government Employee Rights Act of 1991, into law on November 21, 1991. There is, however, no existing procedure in the Senate for the payment of awards and settlements in cases arising under this title.

The purpose of title III is to provide procedures to protect the right of Senate employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability. Under these procedures, a Senate employee alleging a violation under this title may commence a four-step process for consideration of allegations that includes: First, counseling; second, mediation; third, a hearing by a hearing board; and fourth, review of a hearing board decision by the Select Committee on Ethics of the Senate and the U.S. Court of Appeals for the Federal Circuit.

With the procedures of title III now in operation, employees of the Senate can bring cases seeking remedies for the alleged violation of laws prohibiting discriminary practices. Also, beginning this August, Senate employees may use title III procedures for cases brought under the Family and Medical Leave Act of 1993.

Among the remedies employees may seek under title III is a hearing board order awarding the payment of money under section 307 of this title. Until recently, however, there was no fund available or procedure in place for the payment of such awards. As a preliminary step to provide an appropriate mechanism for such payments, the Senate established the "Awards and Settlements Reserve Account" in the contingent fund of the Senate by enacting section 1205 of the Supplemental Appropriations Act of 1993 earlier this month.

The same principle is true with respect to section 310 of title III. This section authorizes an employee and the head of an employing office to enter a written settlement agreement if they are able to resolve the issues involved. Such settlements commonly include the payment of money and are encouraged by the Civil Rights Act of 1991 as an economical and expeditious method to resolve disputes. Again, until section 1205 of the Supplemental Appropriations Act was enacted establishing a reserve account, no fund existed for the Senate to pay such settlements.

While the "Awards and Settlements Reserve Account" established by section 1205 provides a source of funds for the Senate to use in these cases, the resolution proposed here establishes procedures necessary for payments to be withdrawn from this account within the contingent fund of the Senate. Under separate statutory authority, the Committee on Rules and Administration of the Senate has oversight of payments from the contingent fund. For this reason, under this resolution the process to approve and make payments of money from this account in the contingent fund will be administered by the Rules Committee. In administering this process, the Rules Committee will rely on information and advice provided by the Director of the Office of Senate Fair Employment Practices and the Senate Legal Counsel.

I wish to add that this resolution has been carefully crafted to provide the proper balance between the efficient administration of claims, the interests of the parties who bring and defend against these claims, and the protection of the Federal Treasury which funds the payment of awards and settlements in these cases. I also believe that it is worth noting in this context that section 118 of the Civil Rights Act of 1991 reads as follows:

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title.

The resolution (S. Res. 139) was agreed to.

The resolution reads as follows:

S. RES. 139

Resolved, (a)(1) If, at any time after a Senate employee (as defined in section 301(c)(1) of the Government Employee Rights Act of 1991 (Public Law 102-166) (hereinafter referred to as the "Act")) files a formal complaint under section 307(a) of the Act with the Office of Senate Fair Employment Practices (hereinafter referred to as the "Office")—

(A) such employee and the head of an employing office (as defined in section 301(c)(2) of the Act) resolve the issues involved and enter into a written settlement agreement requiring the payment of money as provided in subsection (c), and

(B) the agreement is approved by the Director of the Office (hereinafter referred to as the "Director"),

the Director shall submit the agreement, together with a letter of advice by the Director that the agreement is reasonable and appropriate, to the Chairman and Ranking Minority Member of the Committee on Rules and Administration (hereinafter referred to as the "Chairman and Ranking Member") for approval.

(2) Any such settlement agreement that includes any provision regarding Senate payment of a Senate employee's attorney's fees shall be forwarded by the Director to the Senate Legal Counsel who shall also review that provision and advise the Chairman and Ranking Member whether that provision is reasonable and appropriate.

(3) If the Chairman and Ranking Member disapprove the agreement, the agreement shall be returned to the Director with a written explanation for the disapproval. Following such disapproval, a new or revised agreement that is approved by the Director may be submitted by the Director to the Chairman and Ranking Member, and, if appropriate, forwarded to the Senate Legal Counsel, in the same manner as the original. If the Chairman and Ranking Member disapprove such a new or revised agreement, such agreement shall be returned to the Director with a written explanation and such instructions as the Chairman and Ranking Member may deem appropriate.

(4) If the Chairman and Ranking Member approve the agreement, the payment of money under the terms of such agreement may be authorized as provided in subsection (c).

(5) The time necessary to complete the procedures under paragraphs (1)(B), (2), and (3) shall be excluded in calculating the period within which a hearing shall be conducted under section 307(d) of the Act.

(b) Notwithstanding the third sentence of section 307(h) of the Act, if, upon the conclusion of all proceedings conducted pursuant to sections 307, 308, and 309 of the Act, there is a final order requiring the payment of money, the Chairman and Ranking Member may approve and authorize the payment of money as provided in subsection (c). The Senate Legal Counsel shall provide such advice and assistance as the Chairman and Ranking Member may request for the purposes of this subsection.

(c) The payment of any monetary amount approved as part of a settlement agreement

approved under subsection (a) and any payment pursuant to an order under subsection (b) shall be paid from the Contingent Fund of the Senate from the appropriations account "Settlements and Awards Reserve", established by section 1205 of Public Law 103–50, upon vouchers approved by the Chairman and Ranking Member.

(d) The Chairman and Ranking Member, the Senate Legal Counsel, and the Director may review information necessary to carry out the provisions of this resolution notwithstanding the provisions of section 313 of the Act.

(e) The provisions of this resolution shall apply to—

(1) an allegation of a violation as defined in section 301(c)(3) of the Act,

(2) an allegation of an unlawful employment practice under section 312 of the Act, and

(3) an allegation of a violation of a provision of sections 101 through 105 of the Family and Medical Leave Act of 1993.

(f) The first sentence of section 303(e) of the Act is deemed to have inserted the words ", upon the approval of the Committee on Rules and Administration," after "The Director".

ORDERS FOR THURSDAY, AUGUST 5, 1993

Mr. KENNEDY. Madam President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11 a.m., Thursday, August 5; that following the prayer, the Journal of proceedings be deemed approved to date; and following the time reserved for the two leaders, the Senate then return to executive session to resume consideration of Executive Calendar No. 309, the nomination of Dr. M. Joycelyn Elders to be Surgeon General.

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

RECESS UNTIL 11 A.M. TOMORROW

Ms. MOSELY-BRAUN. Madam President, if there be no further business to come before the Senate today, I now ask unanimous consent the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 10:52 p.m., recessed until 11 a.m., Thursday, August 5, 1993.

NOMINATIONS

Executive nominations received by the Senate August 4, 1993:

DEPARTMENT OF STATE

REGINALD BARTHOLOMEW, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO ITALY.

ROGER R. GAMBLE, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SURINAME.

MARK GREGORY HAMBLEY, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF LEBANON.

WILLIAM DALE MONTGOMERY, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF BULGARIA.

EXECUTIVE OFFICE OF THE PRESIDENT

JOHN ROGGEN SCHMIDT, OF ILLINOIS, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS THE CHIEF UNITED STATES NEGOTIATOR TO THE URUGUAY ROUND.

FEDERAL COMMUNICATIONS COMMISSION

REED E. HUNDT, OF MARYLAND, TO BE A MEMBER OF THE FEDERAL COMMUNICATIONS COMMISSION FOR A TERM OF 5 YEARS FROM JULY 1, 1993, VICE ALFRED C. SIKES, RESIGNED.

ENVIRONMENTAL PROTECTION AGENCY

JEAN C. NELSON, OF TENNESSEE, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE E. DONALD ELLIOTT, RESIGNED.

DEPARTMENT OF DEFENSE

JOHN J. HAMRE, OF SOUTH DAKOTA, TO BE COMPTROLLER OF THE DEPARTMENT OF DEFENSE, VICE SEAN CHARLES O'KEEFE, RESIGNED.

NORA SLATKIN, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF THE NAVY, VICE GERALD A. CANN, RESIGNED.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. ROBERT J. SPANE [redacted] U.S. NAVY.

IN THE ARMY

THE FOLLOWING NAMED OFFICER, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE:

To be colonel

WILLIAM C. KIRK [redacted] JUDGE ADVOCATE GENERAL'S CORPS.